

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष  
BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं. / ITA No.668/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Umesh Chandrashekhar Kabbur,  
1, Chaitali Coop Hsg Soc, Degaon Phata,  
Kodoli, Satara – 415002

PAN : ABOPK4117D

.... अपीलार्थी/Appellant

Vs.

The Income Tax Officer,  
Ward – 2, Satara

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Smt. Deepa Khare  
प्रत्यर्थी की ओर से / Respondent by : Shri Ajay Modi

सुनवाई की तारीख / Date of Hearing : 09.05.2018	घोषणा की तारीख / Date of Pronouncement: 23.05.2018
---	---

**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by the assessee is against the order of CIT(A)-4, Pune dated 10.12.2016 relating to assessment year 2013-14 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *The learned CIT(A) erred in law and on facts in confirming disallowance of Rs.8,57,649/- towards interest on borrowings on the ground of diversion of funds for non-business purpose.*
2. *The learned CIT(A) erred in not appreciating that the appellant had sufficient interest free funds as also there was no nexus between the interest bearing funds and funds advanced to various parties.*
3. *The appellant craves to add, alter, modify or substitute any ground of appeal at the time of hearing.*

3. The limited issue arising in the present appeal is disallowance made under section 36(1)(iii) of the Act on account of the alleged diversion of interest bearing funds for non-business purposes.

4. Briefly, in the facts of the case, the assessee was engaged in the business of manufacturing of Industrial compressed Gas, Medical Oxygen, Liquid Nitrogen, Nitrogen Gas Air under the name and style of M/s. Bharat Distributors. The Assessing Officer noted that on verification of the audit report and the financial statements filed by the assessee that the assessee had advanced loans to some persons/companies. The Assessing Officer also noted that no interest receipts were appearing and shown as income of the assessee against those loans. On the other hand the assessee had paid huge interest on various loans taken for the business purpose. The assessee was show caused in this regard and as to why the proportionate interest should not be disallowed. In response, the assessee pointed out that the assessee was director in M/s. Lonand Gases (P) Ltd. and he had given advances to the company and the same were not diversion of fund. Some loans were claimed to be given for business purpose. The Assessing Officer further noted that the loan of Rs.10,50,000/- to R.S. Dandoti and Rs.45,73,925/- was advanced to M/s. Lonand Gases (P) Ltd., which were not for the benefit of business. The

Assessing Officer was of the view that where the assessee had taken huge amount of loan/borrowing and created a liability for payment of interest thereon; in absence of any business warranted of advancing interest free amount to the parties, interest relatable to such advances are to be disallowed under section 36(1)(iii) of the Act. The Assessing Officer disallowed sum of Rs.8,57,649/-.

5. Before the Commissioner of Income Tax (Appeals) the assessee pleaded that it had interest free own funds i.e. capital balance of Rs.42,47,024/- and unsecured loan taken without interest is Rs.41,45,650/-, total Rs.83,92,674/- as against the advancement of loan of Rs.56,23,925/-. Reliance was placed on the decision of Mumbai Bench of the Tribunal in the case of Reliance Capital Ltd. Mumbai. The Commissioner of Income Tax (Appeals) was of the view that even if the total own funds were more than the amount lent but in the absence of any material placed on record to co-relate the funds, the plea of the assessee could not be accepted. The addition made by the Assessing Officer was upheld.

6. The Id. AR for the assessee before the Tribunal pointed out that the issue stands covered by the ratio laid down by the Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Reliance Utilities & Power Ltd. reported in 313 ITR 340 (Bombay) where the own funds were more than the interest free funds made by the assessee.

7. The learned Departmental Representative for the Revenue on the other hand placed reliance on the order of Commissioner of Income Tax (Appeals).

8. The issue arising in the present appeal is against the disallowance made under section 36(1)(iii) of the Act where the assessee had made interest free advances totaling Rs.56.23 lakhs. The Assessing Officer was of the view that where there was interest burden upon the assessee then interest relating to such interest free advances merits to be disallowed in the hands of the assessee. The Commissioner of Income Tax (Appeals) though accepted the plea of the assessee of availability of interest free funds with the assessee but upheld the disallowance made under section 36(1)(iii) of the Act, in the absence of establishing any nexus between the interest free funds available and the interest free advances made.

9. The issue raised in the present appeal is squarely covered by the ratio laid down by the Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Reliance Utilities & Power Ltd. (supra) wherein it has been held that where the assessee has interest free funds on its own it can be presumed that the investments were from the interest free funds available.

10. In the facts of the present case and as pointed out by the Commissioner of Income Tax (Appeals) the assessee had interest free funds available in the form of own capital of Rs.42.47 lakhs and unsecured loan raised on which no interest was being paid to the tune of Rs.41.45 lakhs totaling Rs.83.92 lakhs as against which the assessee had advanced interest free funds of Rs.56.23 lakhs. The availability of interest free funds was sufficient to meet the interest free advances made by the assessee and applying the ratio laid down by the Hon'ble Bombay High Court, there is no merit in the disallowance made under

section 36(1)(iii) of the Act. Accordingly, allowing the claim of assessee, the Assessing Officer is directed to delete the disallowance of Rs.8,57,649/-.

11. In the result, appeal of assessee is allowed.

Order pronounced on this 23<sup>rd</sup> day of May, 2018.

**Sd/-**  
**(SUSHMA CHOWLA)**

न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 23<sup>rd</sup> May, 2018.

*RK*

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-4, Pune;
4. The Pr. CIT-3, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य  
मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune