

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “C” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and  
**Shri, M. Balaganesh, Accountant Member**

**ITA No.650/Kol/2013**  
Assessment Year :2009-10

Shubh Shanti Services Ltd. 31, Netaji Subash Road, 2 <sup>nd</sup> Floor, Kolkata-700 001 <b>[PAN No.AAGCS 9381 R]</b>	<b>V/s.</b>	JCIT,(OSD), Circle-5, Aayakar Bhavan, P-7, Chowringhee Square, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

**ITA No.2074/Kol/2013**  
Assessment Year :2009-10

DCIT, Circle-5, P-7, Chowringhee Square, Kolkata-69	<b>V/s.</b>	M/s Shubh Shanti Services Ltd., 31, Netaji Subhas Road, Kolkata-01
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri Subash Agarwal, Advocate
राजस्व की ओर से/By Respondent	Shri G. Mallikarjuna, CIT-DR
सुनवाई की तारीख/Date of Hearing	22-05-2018
घोषणा की तारीख/Date of Pronouncement	25-05-2018

**आदेश /O R D E R**

**PER S.S.Godara, Judicial Member:-**

The assessee and Revenue have filed appeal their instant cross-appeals for assessment year 2009-10 against the Commissioner of Income Tax (Appeals)-VI, Kolkata's order dated 30.01.2013 in case No.171/CIT(A)-VI/Cir-5/08-09/Kol, involving proceedings u/s 143(3) off the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties vehemently reiterating their respective pleadings.  
Case file perused.

2. The Revenue's appeal ITA 2074/Kol/2013 suffers from 77 days delay in filing. The DCIT Circle-5(1) Kolkata has filed his condonation affidavit dated 19.04.2013 citing various procedural aspects in explaining the impugned delay. Learned Authorized Representative is fair enough in not disputing the said solemn averments. We thus condone the impugned delay of 77 days in of filing Revenue's appeal to be neither intentional nor deliberate but due to circumstances beyond its control. This Revenue's appeal is therefore taken up for adjudication on merits.

3. We now advert to rival pleadings. The assessee raises four substantive grounds in the instant appeal. Its first and foremost grievance is that both the lower authorities have erred in law as well as on facts in making u/s 14A r.w Rule 8D disallowance of ₹11,61,799/-. Learned Departmental Representative takes us Revenue's first corresponding similar substantive ground that the CIT(A) ought not to have deleted proportionate interest expenditure disallowance of ₹27,97,400/- in lower appellate proceedings.

4. We come to the relevant facts *qua* instant u/s. 14A r.w. 8D disallowance issue. This assessee is an NBFC. It had derived exempt dividend income of ₹5,04,544/- in the relevant previous year. The Assessing Officer framed the regular assessment in question on 08.12.2011 invoking Section 14A r.w. Rule 8D(2) of the Income Tax Rules *inter alia* disallowing direct expenditure, proportionate interest and administrative expenditure(s) of ₹1,18,289/-, ₹27,94,400/- and ₹1,61,799; respectively coming to ₹40,74,788/- as reduced to the extent of *sum motu* disallowance of ₹1,18,989/- coming to ₹39,56,199/-.

5. The assessee preferred appeal. The CIT(A) has partly accepted its grievance *qua* proportionate interest expenditure disallowance under section

second limb of the computation provision in Rule 8D(2) of the Income Tax Rules (supra). The said proportionate interest expenditure disallowance stands deleted as per netting method as assessee's interest income is of ₹93,37,840/- against interest expenditure of ₹73,12,943/-; respectively leaving behind positive interest income figure. It is in this backdrop of facts that both the parties are challenging the CIT(A)'s findings partly affirming Assessing Officer's action invoking the impugned disallowance.

6. We have given thoughtful consideration to rival submissions. We advert to the first component of Rule 8D disallowance regarding direct expenditure. Learned Authorized Representative is very fair in conceding the fact that the assessee had actually incurred demat charges of ₹1,18,289 *qua* its tax free investments. We therefore uphold the impugned disallowance to the extent these demat charges figure.

7. Coming to proportionate interest expenditure, we find that there is no rebuttal coming from the Revenue's *qua* the clinching fact that the assessee has derived positive interest income in the impugned assessment year (supra). The CIT(A) has admittedly followed "**netting**" principle in deleting this proportionate interest expenditure disallowance. Hon'ble Gujarat high court's decision in *DCIT vs. Nirma Credit and Capital Pvt. Ltd.* (2018) 300 CTR 286 (Guj) has already upheld the above "**netting**" method. Learned Departmental Representative fails to quote any case law to the contrary during the course of hearing. We therefore confirm the CIT(A)'findings under challenge in Revenue's first substantive ground.

8. The assessee next challenges administrative expenditure disallowance component of ₹11,61,799/-. Case record contains all the relevant details so far as the impugned investments are concerned. The assessee had invested in 32D ICCI Prudential Liquid Plan on 27.05.2008. The said investments stood redeemed on 25.06.2008. Meaning thereby there is no investment made on

the first and last date of the previous year before us. We make it clear that we are dealing with a statutory computation formula prescribed in Rule 8D (2)(iii) of the IT Rules. It is therefore clear that the net figure emanating from application of the said computation formula comes to ₹ nil only. We thus find no merit in the impugned administrative expenditure disallowance going as per the prescribed formula. The assessee's corresponding substantive ground seeking to delete the impugned disallowance of ₹11,61,799/- is accepted.

9. The assessee's next substantive ground pleads that the CIT(A) has erred in law as well as on facts in disallowing its interest expenditure claimed of ₹44,89,377/- alleging diversion of interest bearing fund for loans and advances made to its sister concern(s). The CIT(A)'s detailed discussion on the instant issue reads as under:-

*"30. I have considered the observations of the Assessing Officer in the assessment order and submissions of the appellant. The appellant is a Non Banking Finance Company registered with Reserve Bank of India. The perusal of the loans given by the appellant shows that it has given interest free loans amounting to Rs.2,99,29,178/-. The appellant has advanced loans to various persons including its sister concerns allegedly as a business proposition. The appellant has also advanced interest free loans to various persons out of which first four are sister concerns and only M/s Dhankuni Trading Co Pvt. Ltd. is not sister concern. The details are given below:-*

<i>Name of company</i>	<i>Amount (in Rs)</i>
<i>Unimers India Ltd.</i>	<i>12,00,000/-</i>
<i>Duncans Industries Ltd</i>	<i>2,46,22,679/-</i>
<i>Julex Commercial Co Ltd.</i>	<i>19,50,000/-</i>
<i>Andhra Cements Ltd</i>	<i>1,56,499/-</i>
<i>Dhankuni Trading Co. Pvt. Ltd</i>	<i><u>20,00,000/-</u></i>
<b>TOTAL</b>	<b><u>2,99,29,178/-</u></b>

*31. The appellant has borrowed money free of interest as well as on interest @ 15%. The appellant has paid interest amounting to Rs.73,12,943/-. The appellant has also not been able to recognise the interest on various loans because it has become NPA as per the details filed by the appellant. The money i.e. principal amount has been received but interest has not been received so far during the year from M/s Napier Softech Pvt Ltd. M/s JSTI Investments Ltd. is not a sister concern but the loan of 3,70,000/- has become NPA. The list of debtors, the loan of which has become NPA and given to sister concerns is as follows;-*

<i>Name of Company</i>	<i>O/s Amount</i>	<i>Rate of interest</i>
<i>Kavita Marketing Pvt. Ltd.</i>	<i>1,27,00,000</i>	<i>15%</i>

Sprint Trading Co Ltd	35,000	15%
Infratech Software Services Pvt. Ltd.	35,000	15%
Skylight Trading Co Ltd	50,000	15%
Napier Softech Pvt Ltd.	0	15%

32. The list of debtors the loan of which has become NPA other than sister concern is as follows:-

Name of Company	O/s Amount	Rate of interest
JSTI Investments Ltd.	3,70,000	8.5%

33. The appellant has also given interest free loans to the Group Companies which are as follows:-

Name of Company	Amount (in Rs)
Unimers India Ltd	12,00,000/-
Duncans Industries Ltd	2,46,22,679/-
Julex Commercial Co Ltd.	19,50,000/-
Andhra Cements Ltd.	<u>1,56,499/-</u>
	2,79,29,178/-

34. The appellant has submitted that in many cases the interest has been recognised although these are non performing assets and an amount of Rs.93,37,840/- has been offered for taxation in the computation of income. The amount of Rs.93,37,840/- includes TDS certificates of Rs.1,11,946/- and interest of Rs.92,25,894/-. These are the persons who have also recognised interest in their own account and deducted TDS and deposited the same. The appellant also claimed the credit of the said TDS in the return of income. The appellant after suo motto disallowance had also filed an appeal as ground No.5 which has been subsequently submitted as not pressed during the appellate proceedings. The appellant has offered this interest of Rs.93,37,840/- including TDS of Rs.1,11,946/- and interest of Rs.92,25,894/- for taxation.

35. The appellant has submitted that it has given advances amounting to Rs.34,92,79,000/- as on 01.04.2008 and Rs.66,37,57,559/- as on 31.03.2009 as given below:-

Name of Company/Account	Amount (in INR)
Axiom Agrobased Cement Trading Co. Pvt Ltd	22,914
Jubileant Fertilizers Trading Pvt. Ltd.	22,909
Duncans Industries Ltd Current Account	10,56,193
Odyssey Travels Limited	10,15,000
ICICI Ltd.	37,335
Manjula Agarwal	2,000
T T Investments Pvt Ltd	10,00,000
J.R. Marketing Pvt Ltd	10
Andhra Cements Ltd	50,000
Recoverable against Assigned Debts	32,71,56,377
Staff Advance	2,70,687
Sundry Debtors	33,31,24,064
Share Applied for	<u>70</u>

66,37,57,559

36. The majority of the advances (Rs.32,71,56,377) were the debts taken over from M/s Duncan Industries Ltd. who was a debtor and has been referred to BIFR. So to realise money, it has taken over debts and these were not actually advances given by the appellant as interest free to the sister concern but now it was taken as advance in the books of account to realise the amount from the debtors of the appellant's debtor i.e. M/s Duncan Industries Ltd. Similarly, the appellant has debts of Rs.33,31,24,064/- who were the buyers of the shares sold by the assessee. The said amount was realised subsequently.

37. On the analysis of the above data from Par No. 30 to 36 it is observed that the interest free loans are only as given in Para 30 and the appellant has paid interest @ 15% on interest bearing loans. Looking into the facts and circumstances and transactions of the appellant, it is held that the interest free loans have been given without business purpose or any business expediency. The interest, if calculated at the rate of 15% on such interest free loans of Rs.2,99,29,178/- for the year amounts to Rs.44,89,377/- on day to day basis i.e. product method. Therefore, out of interest paid by the appellant, a corresponding amount of Rs.44,89,377/- is disallowed as expenses u/s. 37 of the IT Act, 1961. The amount of Rs.44,89,377/- is disallowed out of the total interest expenditure of Rs.73,12,943/-. The notional interest of Rs.9,30,95,549/- added by the Assessing Officer is deleted but a disallowance of Rs.44,89,377/- is upheld.

38. It is also noted that the appellant had advanced interest bearing loans but interest was not recognised since the loans had become NPA totalling to Rs.1,31,90,000/-. The interest was not recognised by the appellant since it claimed that such interest was to be recognised on receipt basis as per RBI guidelines. The submissions of the appellant are not accepted. The interest has to be recognized on accrual basis for income-tax purposes. The assessee has given the calculation of interest which is neither recognised nor offered to tax for the year amounting to Rs.33,04,987/- on the loan (amount) given as loan to sister concerns but being claimed as NPA. The appellant has not accepted this as accrued interest chargeable to income during the appellate proceedings since the amounts are NPA according to it. Accordingly the accrued interest income of Rs.33,36,437/- which has not been offered to tax by the appellant is held to be taxable as interest income. accordingly the interest expense of Rs.44,89,377/- is held to be disallowed and an amount of Rs.33,04,987/- is added as interest income of the appellant as accrued interest on NPA of sister concerns. The appellant therefore gets partial relief of Rs.8,53,01,185/- (9,30,95,549 – 33,04,987 – 44,89,377) out of the addition made by the Assessing Officer. The additions of Rs.44,89,377/- is actually disallowance out of the interest expenditure and the amount of Rs.33,04,987/- is the accrued interest on NPA given as loan to sister concerns in addition to the interest on NPA already offered by the appellant. These grounds of appeal are accordingly partly allowed.”

10. The CIT(A) has admittedly reversed the Assessing Officer's action is partfirst of all adding notional interest income of ₹9,30,95,549/-. He has

thereafter chosen to disallow the impugned interest amount of ₹44,89,377/- on account of alleged diversion of borrowed funds for non-business purposes to its sister concern. Relevant details of inter-corporated deposits / loans as on 31.03.2009 (page 98 in paper book) suggest that the impugned interest expenditure pertains to loan given to four related parties namely, Unimers India Ltd, Duncans Industries Ltd, Julex Commercial Co. Ltd. and Andhra Cements Ltd. as well an unrelated party M/s Dhan Trading Co. Ltd. involving ₹12 lakh, 2,46,22,679/-, ₹19.05 lakh, ₹1,56,499/- and ₹20 lakhs; respectively totaling to ₹261,79,178. The assessee's non-interest bearing unsecured loans and figure in the relevant previous year is much more than that coming to ₹30 crores (page 6 paper book read with clause-9 in notes of accounts at page 11). We therefore presume that the assessee has advanced its non interest bearing funds only to the above parties as per hon'ble Bombay high court's decision in *CIT vs. Reliance Utility and Power Ltd* 313 ITR 340 (Bom) as well as hon'ble apex court's judgment in *Munjil Sales Corporation vs. CIT* (2008) 298 ITR 298 (SC). The assessee's instant second substantive grievance is accepted. We notice that it has also filed its additional technical ground(s) in petition dated 01.06.2016. The same are rendered academic as we have accepted its main substantive ground on merits itself.

11. Learned counsel representing assessee inform us he is not pressing for its third substantive grievance challenging additional interest income addition of ₹33,04,987/-. The same is accordingly rejected as not pressed.

12. The assessee's fourth substantive ground pleads that both the lower authorities have erred in law as well as on facts in disallowing its long and short terms capital loss on sale of shares to the tune of ₹241,92,882/-. The Revenue's second substantive ground also raises the very issue that the CIT(A) ought not to have deleted long term and short term capital loss disallowance(s) of ₹760,09,487/- and ₹710,2,000; respectively. It quotes Rule 46A of the Income Tax Rules that the CIT(A) has admitted assessee's

additional evidence in violation of principles of natural justice. This common issue raised in both parties of respective pleadings is therefore taken up disposal together. The CIT(A)'s detailed discussion *qua* the same reads as under:-

*“42. I have carefully considered the observations of the Assessing Officer in the am order and submissions of the appellant. During the appellate proceedings, the appellant submitted that the sale of various shares was of listed & public companies except the shares of M/s Silent Valley Investments Limited and M/s Silver Cross Marketing (P) Ltd. The appellant has filed the copies of the listed price on the date of sale and for the earlier and later period also available on the internet during the appellate proceedings. The appellant is free to sell the shares either in the market or to the sister concerns. So long as the price is genuine the loss cannot be disallowed merely because of sale to the sister concerns. The transfer is complete as soon as the shares are sold/transferred and the receipt of money cannot effect the sale transaction and resultant capital gain/loss. The appellant is free to sell the shares to anybody as per the agreement and it has to watch its interest regarding sale price and completion of transactions. The appellant has planned the sale of flat resulting into profit and has planed further to sell off the loss making shares for taking the benefit of set off of gain with the loss. It is not prohibited under the law so long as the transactions are genuine. The Assessing Officer has not brought on record any illegality or under hand dealing in the sale of shares incurring loss to the appellant. The appellant was asked the following details son 10.01.2013 during the appellate proceedings:-*

*‘Why the price of Silent Valley Investments Ltd and Silver Cross Marketing Pvt Ltd was so high at the time of purchase and so low at the time of sale. Give the copy of Board Resolution approving rates and method to determine the price at the time of purchase and sale. Give the details whether these are associated companies who purchased it.’*

*43. The appellant during the appellant proceedings on 21.01.2013 submitted as follows:-*

*‘Mr. D Damle, CA and Mr G.A Seshan, A/R attended the proceedings and filed documents. The appellant did not file any documents concerning Silver Cross Marketing Pvt Ltd and Silent Valley Investments Ltd.’*

*44. In the case of shares of Duncan Tea Ltd. there is only indexation loss and the price of the sale and purchase are the same, therefore, the said transactions is considered to be genuine. The appellant could not produce evidence regarding the valuation of the shares as asked on*

*10.01.2013 and the reasons why the price of Silent Valley Investments Ltd. and Silver Cross Marketing Pvt. Ltd. was so high at the time of purchase and so low at the time of sale. The appellant submitted on 21.01.2013 that the information on these two companies is not available but the sale has been done at the rate mentioned in the books of account. The appellant has not asked for any further opportunity to produce the said evidence during appellant proceedings. The appellant has incurred a loss of Rs.55,562,500/- on the sale of shares of M/s Silent Valley Company and Rs.1,86,30,382/- on the sale of shares of M/s Silver Cross Marketing (P) Ltd. totaling to Rs.2,41,92,882/-.*

*45. Therefore, it is held that the appellant was not able to justify the loss with documentary evidence during the appellate proceeding for an amount Rs.2,41,92,882/- out of the total loss incurred by it amounting to Rs.10,02,02,368/-. There is a long term capital gain also as well as long term capital loss on investment in shares by the appellant and the net figure of loss was Rs.10,02,02,369/-. The appellant has short term capital loss of Rs.71,02,000/-. In the absence of information regarding valuation of shares of M/s Silver Cross Marketing (P) Ltd, and M/s Silent Valley Investments Limited; the loss of Rs.2,41,92,882/- is disallowed as long term capital loss and will not be allowed as loss. The appellant therefore get partial relief in respect of long term capital loss of Rs.7,60,09,487/- and short term capital loss of Rs.71,02,000/-. The Assessing Officer is therefore directed to allow the said long term capital loss of Rs.7,60,09,487/- and short term capital loss of Rs.71,02,000/- to be set-off and/or carry forward as per the provisions of the Income Tax Act, 1961. These grounds of appeal are accordingly partly allowed.”*

12. We advert to assessee's grievance first. It has come on record that taxpayers had failed to place on record all necessary documents regarding two entities M/s Silent Valley Co. and M/s Silver Cross Marketing (P) Ltd. involving figures of ₹55,62,500 and ₹18,63,382/-; respectively. The very factual position contentions in the instant appellate proceedings as well. We thus conclude that the lower authorities have rightly disallowed assessee's in twin loss claims under both long as well as short term heads. The assessee's last substantive ground fails accordingly. Its appeal ITA 650/Kol/2013 is partly accepted.

13. Learned Departmental Representative invites our attention to the alleged violation of Rule 46A in lower appellate proceedings. We sought to

know as to what additional evidence has been admitted. It transpires that the assessee had sought to place the relevant details pertaining to above two entities (supra) only in whose cases the impugned disallowance has already been confirmed. There is no material on record suggesting that the CIT(A)'s findings under challenge accepting assessee's case on merits *qua* all other entities suffer from any legal or procedural error. The Assessing Officer appears to have doubted assessee's impugned loss claim mainly on the ground that it was a method adopted to reduce the corresponding assessment of long and short term capital gains. Learned Departmental Representative fails to rebut the fact that the assessee's said transactions pertaining to these loss figures are genuine. We therefore find no merit in Revenue's second substantive ground. The same stands rejected.

14. This leaves us with Revenue's last substantive ground that CIT(A) has erred in law as well as on facts in allowing relief of ₹2,80,380/- to the assessee as expenditure u/s. 48 of the Act *qua* transfer charges jointly incurred with its vendee concerned. The corresponding detailed discussion is in paragraphs 46 to 47 in page 25 of lower appellate order. It emanates therefrom that assessee had claimed itself to have equally shared the corresponding transfer charges in the nature of stamp duty and registration with its vendee. The assessee had raised an additional ground to this effect before the CIT(A). It filed corresponding agreement as well. The CIT(A) accepted contents of the said agreement for deleting the impugned disallowance. We sought to know from the learned counsel as to whether there is any corresponding condition incorporated in the sale deed or not. He states very fairly that there is no such stipulation forthcoming from the record. We therefore conclude that such a claim of expenditure beyond the terms and conditions stipulated in final sale deed is not liable to be accepted. The CIT(A)'s findings to this effect are accordingly reversed. The Revenue's instant third and last substantive grounds succeeds.

15. Both these assessee and Revenue's cross-appeal ITA No.650/Kol/2013 and ITA 2074/Kol/2013 are partly allowed.

Order pronounced in the open court 25/05/2018

Sd/-  
(लेखा सदस्य)  
(M.Balaganesh)  
(Accountant Member)  
Kolkata,  
\*Dkp, Sr.P.S

Sd/-  
(न्यायिक सदस्य)  
(S.S.Godara)  
(Judicial Member)

दिनांक:- 25/05/2018 कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. आवेदक/Assessee-M/s Shubh Shanti Services Ltd., 31, Netaji Subhas Road, Kolkata-01
2. राजस्व/Revenue-JCIT(OSD)/DCIT Cir-5, Aayakar Bhawan, P-7, Chowringee Sq. Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,  
Sr. Private Secretary, Head of  
Office/DDO  
आयकर अपीलीय अधिकरण,  
कोलकाता ।