

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA

BEFORE SHRI A. T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1649/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2011-12)

ACIT, Cir-2(2), Kolkata Aayakar Bhawan, P-7, Chowringhee Square, Kol-69.	Vs.	M/s. TCG Urban Infrastructure Holding (P) Ltd. Sector-V, Salt Lake City, Kolkata – 700 091.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. :AADCS 8821 M		
(Revenue/Department)	..	(Assessee)

&

आयकरअपीलसं./ITA No.1622/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2011-12)

M/s. TCG Urban Infrastructure Holding (P) Ltd. Sector-V, Salt Lake City, Kolkata – 700 091.	Vs.	ACIT, Cir-2(2), Kolkata Aayakar Bhawan, P-7, Chowringhee Square, Kol-69.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. :AADCS 8821 M		
(Assessee)	..	(Revenue/Department)

Revenue/Department by :Shri G. Hanshing, CIT (DR)
Assessee by :Shri A.K. Tibrewal, FCA

सुनवाईकीतारीख/ Date of Hearing : 12/04/2018

घोषणाकीतारीख/Date of Pronouncement : 25/05/2018

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned Cross-Appeals filed by the Assessee and Revenue, pertaining to Assessment Year 2011-12, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-2, Kolkata, in Appeal No.45/CIT(A)-2/2014-15/2016-17, dated 14.06.2016, which in turn arises out

of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), dated 30.03.2014.

2. Since, these two appeals relate to the same assessee, same Assessment Year and identical issues are involved, therefore, these have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. The Revenue's appeal, in ITA No.1649/Kol/2016, for Assessment Year 2011-12, is taken as the lead case.

3. The grievances raised by the Revenue as follows:

- *“That in the facts and circumstances of the case the ld. CIT(A) has erred in law by upholding the deletion of additions u/s 14A for Rs.23,11,599/-; Interest on loans and advances for Rs.6,45,37,903/-; & u/s 2(22)(e) for Rs.57,36,65,505/-; and thereby holding that the Assessing Officer was not justified in making the disallowance as whatever expenses claimed by the appellant are already disallowed by the Assessing Officer separately.*
- *That in the facts and circumstances of the case the ld. CIT(A) has failed to appreciate the fact that before proceeding for disallowances the Assessing Officer has conducted necessary examination and ground work, which are evident from the recordings of note-sheet.*
- *That the Department craves leave to add, modify or alter any of the ground(s) of appeal and / or adduce additional evidence at the time of hearing of the case.”*

4. The grievances raised by the Assessee as follows:

“1. That , on the facts and in the circumstances of the case and in law, the learned CIT(Appeals) has erred in confirming the disallowance of interest paid on borrowings of Rs.3,71,91,110 (Rs.10,17,29,013/- - Rs.6,45,37,903/-) being net amount of interest paid and received by the assessee company.

2. That, on the facts and in the circumstances of the case, the ld. Commissioner of Income Tax(Appeals) erred in confirming the aforesaid disallowance when admittedly there was no direct nexus of the investments in subsidiaries with the borrowed funds on which interest was paid and claimed as deduction by the assessee company and that the investment made were strategic in nature to regain control of the management of its fellow subsidiaries/sister concerns.

3. That the appellant craves leave to add, alter or withdraw any ground or grounds of appeal at or before the hearing of the appeal.”

5. First, we shall take up Revenue's appeal in ITA No.1649/Kol/2016. The issues raised by the Revenue are briefly stated as follows:

- i) Ld. CIT(A) erred in deleting the addition u/s 14A to the tune of Rs.23,11,599/-;
- ii) Ld. CIT(A) erred in deleting addition on account of interest on loans and advances to the tune of Rs.6,45,37,903/-;
- iii) Ld. CIT(A) erred in deleting addition u/s 2(22)(e) of the Act to the tune of Rs.57,36,65,505/-.

6. The issue No.1 raised by the Revenue relates to addition u/s 14A to the tune of Rs.23,11,599/-.

7. The brief facts qua the issue are that on perusal of the balance sheet furnished by the assessee it was observed by the assessing officer that the value of investments as on 01.04.2010 and 31.03.2011 stood at Rs.46,23,07,349/- and Rs.46,23,32,349/- respectively. The assessee, was requested to furnish details of expenses incurred on such investments, income from which is not includible in the total income of the assessee. The assessee in its reply dated 13.10.2013, stated that the Company did not incur any expenditure for earning the said dividend income and therefore no disallowance had been made in this regard.

The reply furnished by the assessee was not accepted by the AO, since investments were managed and monitored to yield optimum returns to the Company and as such a claim that no expenses were incurred in maintaining the same cannot be accepted. Further, the AO noted that as per the provisions of Circular No.05/2013, dated 11.02.2014 issued by the CBDT, it was held in the said Circular that the legislative intent is to allow only that expenditure which are relatable to earning of income and it therefore follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance. Since, the assessee did not maintain any

separate books of accounts for accounting for expenses incurred in relation to income not includible in its total income, the amount of expenses actually incurred cannot be ascertained from the assessee's books of accounts satisfactorily. Accordingly, the provisions of section 14Ar.w. Rule 8D of the Act are attracted in the case of the assessee and the AO computed the related disallowance as follows:

The average of value of investment is Rs.46,23,19,849/- as worked out earlier. In this view of the matter the disallowance under rule 8D(2)(iii) was made as under: -

Disallowance u/r 8D(2)(iii) = 0.5% of the average of value of investment

= 0.5% of Rs 46,23,19 849/-

= Rs.23,11,599/-

Therefore, Rs.23,11,599/- was added back u/s 14A r.w.r 8D(2)(iii) in computing the income under normal provisions as well as in computing book profit u/s 115JB of the Act.

8. On appeal by the assessee, the Id. CIT(A) deleted the addition. The Id. CIT(A) held that since there was no exempt income received during the relevant Assessment Year, therefore, following the judgment of Delhi High Court in the case of Chemninvest vs. CIT-VI, ITA No.749/2014 dated 02.09.2015 deleted the addition made by the Assessing Officer.

9. Aggrieved by the order of Id CIT(A), the Revenue is in further appeal before this Tribunal. The Learned Departmental Representative (DR) did not have much to say but he nevertheless relied upon the order of the Assessing Officer. On the other hand, the Id. Counsel for the assessee has defended the order passed by the Id. CIT(A).

10. We have heard both the parties and perused the materials available on record, we note that it is an admitted fact that the assessee company has not

earned any dividend income during the year in respect of investments made as per the audited accounts since no exempt income earned by the assessee, therefore, there should not be any disallowance on account of section 14A of the Act. The said issue of the assessee is squarely covered by the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Holcim India Pvt. Ltd. in ITA No.486/2014 wherein it was held that in the absence of any tax free income, the corresponding expenditure could not be worked out for making disallowance u/s. 14A of the Income Tax Act, 1961. The Hon'ble Delhi High Court in the case of Chemninvest vs. Commissioner of Income Tax-VI, ITA 749/2014 order dated, 02.09.2015 held that section 14A will not apply if no exempt income is received during the relevant previous year. Therefore, in view of above, the disallowance made u/s 14A of the Act r.w.r. 8D is not sustainable. That being so, we decline to interfere in the order passed by the Id. CIT(A), his order on this issue is hereby upheld and the ground raised by the Revenue is dismissed.

11. The second issue raised by the Revenue relates to interest on loans advances to the tune of Rs.6,45,37,903/-.

12. The brief facts qua the issue are that during the assessment proceedings, the assessing officer observed that as per Schedule 10 of the audited annual accounts, the assessee has given advance for purchase of shares amounting to Rs.114,72,29,480/- and has invested in share application money pending allotment amounting to Rs.190,86,83,785/-. It was noticed that interest bearing loan funds have been utilized for the purpose of such advances. Furthermore, it was also observed that the shares have not been allotted during the year under consideration. Correspondingly, it was taken loan funds at an average interest rate of 12.50% during the year under consideration. Looking at the availability of funds in the business, it was observed that the business did not have adequate funds for the day to day ordinary affairs of the business as well as advancing of such huge amounts. Even if, it is held that some portion of own

funds were used for the above advances, it is evident that such advances had no nexus with the day to day business of the assessee and the assessee had to borrow huge funds and bear huge interest expenses, owing to such advances not connected to the business of the assessee. By way of the abovementioned interest free advances cumulatively amounting to Rs.305,59,13,265/- out of its interest bearing loans, the assessee has shouldered the burden of interest and claimed such interest outgo as its business expenditure. Since no commercial exigency is found or established in the granting of such interest free advances, therefore, the AO noted that the assessee has diverted its interest bearing loans into non-business purposes. Such interest expenditure is neither admissible u/s 36(1)(iii) nor u/s 37(1) of the Act. Accordingly, interest at the rate of 12.50% on the abovementioned advances which comes to Rs.38,19,89,158/- should be disallowed.

However, the assessing officer noted that as per details furnished by the assessee, which is evident from the annual accounts of the assessee, it was noticed by the AO that the assessee has incurred expenses on account of interest and other finance charges amounting to Rs.38,95,58,243/- on borrowed funds. Out of which an amount of Rs.10,17,29,013/- has been charged to the Profit and Loss account and the balance has been capitalized. Accordingly, the assessing officer restricted the disallowance, (which was debited in the Profit & Loss account by the assessee), to the tune of Rs 10,17,29,013/-.

13. On appeal by the assessee, the Id. CIT(A) partly deleted the addition made by the Assessing Officer. The Id. CIT(A) observed that assessee provided loans and advances to subsidiaries and interest on that is credited in the Profit & Loss Account to the tune of Rs.5,70,25,065/-. The interest on fixed deposits credited in the Profit & Loss Account to the tune of Rs.75,00,593/- and the interest on deposits credited in Profit & Loss Account to the tune of Rs.12,245/-, therefore, the total interest credited in Profit & Loss

Account comes to the tune of Rs.6,45,37,903/- (that is, Rs.5,70,25,065 + Rs.75,00,593 + Rs.12,245). Therefore, the Id. CIT(A) noted that out of total disallowance of Rs.10,17,29,013, a sum of Rs.6,45,37,903/- should be netted off and, therefore, the Id. CIT(A) confirmed the disallowance of interest to the tune of Rs.3,71,91,110/- (that is, Rs.10,17,29,013 - Rs.6,45,37,903/-).

14. Not being satisfied with the order of the Id. CIT(A), the Revenue as well as the assessee in ITA No.1622/Kol/2016, are in appeal before us.

15. The Id. Counsel for the assessee has submitted before us that these loans and advances have been provided by the assessee to its subsidy companies/associates in order to gain control and expand their business base. The Id. counsel stated that these loans and advanced provided to the subsidy companies are on account of commercial expediency, and the investments made in subsidy companies are on account of strategic investments. The Id. Counsel stated that assessee company had given an advance of Rs.114.72 Crores to Jaxverse Holding Limited, for purchase of equity shares. The said Company, Jaxverse Holdings Limited, during the financial year 2007-08, had made investment into Cumulative Convertible Debentures (CCDs) of EnergeticConstructions Private Limited and Technainfrastructure Private Limited,(subsidiaries of theAppellant Company). These CCDs were converted into equity in January, 2011. As a result ofthis conversion and issue of equity to Jaxverse Holdings Limited, it become the HoldingCompany of the said two Companies. In order to regain its hold over the said twoCompanies viz. Energetic Constructions Private Limited and Technainfrastructure Private Limited, the Assessee Company as a strategic decision based on commercial expediencydecided to buy the shares of these two Companies from Jaxverse Holdings Limited and made an advance of the aforesaid sum of Rs. 114.72 Crores.

The Counsel submitted thatthe Appellant Company did not borrow any funds for aforesaid investment in sharesof its erstwhile subsidiary companies. On perusal of the Balance Sheet of the appellant Company as on 1stday of the

F.Y. 2010-11 it would be found that the interest free funds available with the company were as under:

Share Capital (Paid up)	Rs.202,58,61,540
Free Reserves	Rs. 70,54,34,441
Sundry creditors	Rs. 12,54,82,041
Interest free advances from Subsidiaries	Rs. 52,38,77,228
Sundry deposits	Rs. 47,05,78,069
	<u>Rs.385,12,33,319</u>

Therefore, the counsel submitted that the investment of the sum of Rs.114,72,29,480/- allegedly made out of borrowed funds is incorrect on the aforesaid facts of the case. The investment of Rs.114,72,29,480/- is much lower than the interest free amounts available with the Appellant Company at Rs.385,12,33,319/-. In such circumstances, it would be presumed that no borrowed funds were used for the purposes of aforesaid investments and therefore the AO was incorrect in disallowing the amount of interest of Rs.10,17,29,013/- on the alleged ground that borrowed funds were used for investments.

Without prejudice, the Counsel submitted that investment in share capital of subsidiaries is for commercial expediency and therefore the funds were borrowed wholly necessarily and exclusively for the purposes of the business of the Appellant Company. In support of the aforesaid contention, the Counsel refers to and relies on the Judgment of Hon'ble Supreme Court in the case of S. A. Builders Ltd. vs. CIT(A), 288 ITR 1 (SC). The Hon'ble Supreme Court held that the interest borrowed for investment in subsidiary or sister concern is allowable deduction under section 36(1) (iii) and section 37(1) of the Act.

16. On the other hand, the Id. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our

earlier para and is not being repeated for the sake of convenience and brevity.

17. We have given a careful consideration to the rival submissions and perused the materials on record. At the cost of repetition we would like to narrate basic facts that as per Assessing Officer the assessee has given advance for purchase of shares amounting to Rs.114,72,29,480/- and has invested in share application money pending allotment amounting to 190,86,83,785/- out of the interest bearing loan funds. These shares have not been allotted during the year under consideration. The assessee did not have adequate funds for the day to day ordinary affairs of the business as well as advancing of such huge amounts. Even if it is held that some portion of own funds were used for the above advances, it is evident that such advances had no nexus with the day to day business of the assessee and the assessee had to borrow huge funds and bear huge interest expenses owing to such advances not connected to the business of the assessee. The AO further concludes that since no commercial exigency is found or established in the granting of such interest free advances, therefore, the assessee has diverted its interest bearing loans into non-business purposes. Such interest expenditure is neither admissible u/s 36(1)(iii) nor u/s 37(1) of the Act.

However, the assessing officer noted that as per details furnished by the assessee, which is evident from the annual accounts of the assessee, it was noticed by the AO that the assessee has incurred expenses on account of interest and other finance charges amounting to Rs.38,95,58,243/- on borrowed funds. Out of which an amount of Rs.10,17,29,013/- has been charged to the Profit and Loss account and the balance has been capitalized. Accordingly, the assessing officer restricted the disallowance, (which was debited in the Profit & Loss account by the assessee), to the tune of Rs 10,17,29,013/-.

18. We note that assessee company did not borrow any funds for aforesaid investment in shares of its subsidiary companies. On perusal of the Balance

Sheet of the appellant Company as on 1st day of the F.Y. 2010-11 it would be found that the interest free funds available with the company were as under:

Share Capital (Paid up)	Rs.202,58,61,540
Free Reserves	Rs. 70,54,34,441
Sundry creditors	Rs. 12,54,82,041
Interest free advances from Subsidiaries	Rs. 52,38,77,228
Sundry deposits	Rs. 47,05,78,069
	<u>Rs.385,12,33,319</u>

We note that the assessee has given advance for purchase of shares amounting to Rs.114,72,29,480/- and has invested in share application money pending allotment amounting to Rs. 190,86,83,785/-. The total of both the investments comes to the tune of Rs. 305,59,13,265/- (Rs.114,72,29,480 + Rs. 190,86,83,785) which is less than the share capital and reserves of the company at Rs.385,12,33,319/- (as stated above).

Therefore, we are of the view that the investment of the sum of Rs.114,72,29,480/- and investment in share application money pending allotment amounting to 190,86,83,785/- are not made out of the interest bearing loan funds. That is, the total of both the investments tune of Rs. 305,59,13,265/- (Rs.114,72,29,480 + Rs. 190,86,83,785), is less than the share capital and reserves of the company at Rs.385,12,33,319/-. In such circumstances, it would be presumed that no borrowed funds were used for the purposes of aforesaid investments and therefore the Assessing Officer was incorrect. Therefore, in disallowing the amount of interest of Rs.10,17,29,013/- on the alleged ground that borrowed funds were used for investments, are not based on the facts narrated above.

From the above discussion, we note that the advance was made for gaining the control on subsidiary companies and therefore it is for purpose of business within the meaning of s. 36(1)(iii). Such advances

were made in course of business for commercial expedience and for the purpose of business and the entire investments/loans & Advances were made from the mixed account; therefore, there would be a presumption that the amount was made out of the own fund of the assessee and not from the borrowed capital; as there were sufficient own fund.

We find that the Learned AO had disallowed the interest payments only on the sole ground that interest free funds were advanced to subsidiary company by the assessee. He had not brought on record the nexus between the borrowed funds and the amounts advanced to subsidiary company which is one of the main pre-requisite before resorting to disallowance of interest.

19. We note that the Id. CIT(A) has confirmed the interest to the extent of Rs.3,71,91,110/- after netting off the interest received and interest paid. However, the Id. counsel for the assessee submitted before us that these advances and loans given to subsidiaries companies and associate companies are for the purpose of gaining control and to expand the business base. Therefore, business point of view holding company provides these loans and advances to these subsidiary companies for commercial expediency and wherein that the additions sustained by the Id. CIT(A) needs to be deleted.

We note that the expression “for the purpose of business” under the provisions of section 36(1)(iii) is wider in scope than the expression “for the purpose of earning income”. Therefore, expression “for the purpose of business” includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby. For commercial expediency it is enough to show that the money is expended, not of necessity and with a view to direct and immediate benefit, but voluntarily and on grounds of commercial expediency and in order to indirectly facilitate the carrying on of the business. Therefore, whether the interest free loan was given to the sister concern or invested in a sister concern, which is a

subsidiary company of an assessee company as a matter of commercial expediency and if it was, it should be allowed. For that we rely of the judgment of Hon`ble Supreme Court in the case of S.A. Builders Ltd. vs. CIT [2007] 158 Taxmann 74(SC) wherein it was held as follows:

“The expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency.[Para 25]

The High Court and other authorities should have examined the purpose for which the assessee advanced the money to its sister concern, and what the sister concern did with the money, in order to decide whether it was for commercial expediency, but that had not been done. [Para 30]

It is not in every case that interest on borrowed loan has to be allowed if the assessee advances it to a sister concern. It all depends on the facts and circumstances of the respective case. For instance, if the directors of the transfer concern utilize the amount advanced to it by the assessee for their personal benefit, obviously it cannot be said thatsuch money was advanced as a measure of commercial expediency. However, money can be said to be advanced to a sister concern for commercial expediency in many othercircumstances. Where holding company, has a deep interest in its subsidiary, and theholding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the holding company would ordinarily be entitled todeduction of interest on its borrowed loans. [Para 35]”

20. We also rely on the judgment of Coordinate Bench, Kolkata, on the same identical facts, in the case of M/s Singha Singh Roy, in ITA No.1747/Kol/2012, for Assessment Year 2007-08, order dated 20.01.2016, wherein it was held as follows:

“2.4. We have heard the rival submissions and perused the materials available on record including the paper book filed by the assessee. The facts stated hereinabove remain undisputed are not reiterated for the sake of brevity. We find that the Learned AO had disallowed the interest payments to banks only on the sole ground that interest free funds were advanced to subsidiary company by the assessee. He had not brought on record the nexus between the borrowed funds and the amounts advanced to subsidiary company which is one of the main pre-requisite before resorting to disallowance of interest. We also find from the facts that the assessee is having both interest bearing and interest free funds at its disposal and had advanced the monies to subsidiary company from the bank account where own and borrowed funds are inextricably mixed. We also find that the advances made to wholly owned subsidiary company through which huge businesses were obtained by the assessee in subsequent years cannot be swept under the carpet as they remain undisputed. We also find that the assessee had deputed its employees in TSI who are working as Chief Operating Officer and Senior Manager Marketing to take care of the new business opportunities and develop the business. These efforts have yielded fruits to the assessee in the

form of new businesses and expanded global presence in USA. This itself goes to prove that the business interests of the assessee beyond doubt. With regard to the arguments of the Learned DR that the subsidiary company is accessible to cheap cost of funding in USA is of no relevance as it is well settled that once it is established that there is nexus between expenditure and purpose of business, revenue cannot justifiably claim to put itself in arm-chair of businessman or in position of Board of Directors and assume role to decide how much is reasonable expenditure having regard to circumstances of case.

2.4.1. We also find that the issue before us is squarely covered by the recent decision of the Hon'ble Apex Court in the case of [Hero Cycles \(P\) Ltd vs CIT](#) reported in (2015) 63 taxmann.com 308 (SC) vide order dated 5.11.2015, it was held :

12. In so far as loans to the sister concern/subsidiary company are concerned, law in this behalf is recapitulated by this Court in the case of [S.A. Builders Ltd. v. CIT](#) reported in (2007) 288 ITR 1 (SC). After taking note of and discussing on the scope of commercial expediency, the Court summed up the legal position in the following manner:--

'26. The expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency.

27. No doubt, as held in [Madhav Prasad Jatia v. CIT](#) [1979 (118) ITR 200 (SC)], if the borrowed amount was donated for some sentimental or personal reasons and not on the ground of commercial expediency, the interest thereon could not have been allowed under section 36(1)(iii) of the Act. In Madhav Prasad's case [1979 (118) ITR 200 (SC)], the borrowed amount was donated to a college with a view to commemorate the memory of the assessee's deceased husband after whom the college was to be named, it was held by this court that the interest on the borrowed fund in such a case could not be allowed, as it could not be said that it was for commercial expediency.

28. Thus, the ratio of Madhav Prasad Jatia's case [1979 (118) ITR 200 (SC)] is that the borrowed fund advanced to a third party should be for commercial expediency if it is sought to be allowed under section 36(1)(iii) of the Act.

29. In the present case, neither the High Court nor the Tribunal nor other authorities have examined whether the amount advanced to the sister concern was by way of commercial expediency.

30. It has been repeatedly held by this court that the expression "for the purpose of business" is wider in scope than the expression "for the purpose of earning profits" vide [CIT v. Malayalam Plantations Ltd.](#) [1964 53 ITR 140 (SC), [CIT v. Birla Cotton Spinning and Weaving Mills Ltd.](#) [1971 82 ITR 166 (SC)], etc.'

13. In the process, the Court also agreed that the view taken by the Delhi High Court in [CIT v. Dalmia Cement \(P.\) Ltd.](#) [2002] 254 ITR 377/121 Taxman 706 wherein the High Court had held that once it is established that there is nexus between the expenditure and the purpose of business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the Board of Directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. It further held that no businessman can be compelled to maximize his profit and that the income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would

act. The authorities must not look at the matter from their own view point but that of a prudent businessman.

14. Applying the aforesaid ratio to the facts of this case as already noted above, it is manifest that the advance to M/s. Hero Fibres Limited became imperative as a business expediency in view of the undertaking given to the financial institutions by the assessee to the effect that it would provide additional margin to M/s. Hero Fibres Limited to meet the working capital for meeting any cash losses.

15. It would also be significant to mention at this stage that, subsequently, the assessee company had off-loaded its share holding in the said M/s. Hero Fibres Limited to various companies of Oswal Group and at that time, the assessee company not only refunded back the entire loan given to M/s. Hero Fibres Limited by the assessee but this was refunded with interest. In the year in which the aforesaid interest was received, same was shown as income and offered for tax.

16. In so far as the loans to Directors are concerned, it could not be disputed by the Revenue that the assessee had a credit balance in the Bank account when the said advance of Rs. 34 lakhs was given. Remarkably, as observed by the CIT (Appeal) in his order, the company had reserve/surplus to the tune of almost 15 crores and, therefore, the assessee company could in any case, utilise those funds for giving advance to its Directors.

17. On the basis of aforesaid discussion, the present appeal is allowed, thereby setting aside the order of the High Court and restoring that of the Income Tax Appellate Tribunal.

In view of the aforesaid facts and circumstances and the judicial precedents on the impugned issue, we hold that the advances were made by the assessee to its wholly owned subsidiary company during the course of its business and is a strategic investment and as a measure of commercial expediency to protect its business interests. Accordingly we don't find any infirmity in the order of the Learned CIT(A). Accordingly, the ground no. 1 raised by the revenue is dismissed."

In the view of the facts and circumstances and judicial precedents on the impugned issues, and considering the judgment of the Coordinate Bench on the identical facts (supra), we hold that the advances were made by the assessee to its holding/subsidiary companies on account of strategic investments and as a measure of commercial expediency to protect its business interest, that being so, we delete the addition sustained by the Id. CIT(A) to the tune of Rs.3,71,91,110/-. Therefore, on this issue, the appeal of the assessee(in ITA No.1622/Kol/2016, Containing ground No. 1 and 2) is allowed and appeal of the Revenue (in ITA No.1649/Kol/2016) is dismissed.

21. The third issue raised by the Revenue is in relation to addition u/s 2(22)(e) of Rs.57,36,65,505/-.

22. The brief facts qua the issue are that during the assessment proceedings, the assessing officer, on examination of the details furnished by the assessee, the following information was found to be disclosed as part of related party disclosure in the audited balance sheet of the assessee:

Name of Company	Nature	Amount of loan taken during the financial year under consideration (2010-2011) (Rs.)
Bengal Intelligent Parks Pvt. Ltd.	Subsidiary	2,41,00,000/-
BIP Developers Private Ltd.	Subsidiary	3,20,00,000/-
Boulevard Services Pvt. Ltd.	Subsidiary	3,80,00,000/-
TCG Software Parks Private Limited	Subsidiary	11,17,21,750/-
International Biotech Park Limited	Subsidiary	21,89,00,000/-
TCG Software Parks Private Limited	Subsidiary	9,95,00,000/-
Altius Management Advisors Private	Subsidiary	6,83,26,000/-
Energetic Construction Private Limited	Subsidiary	14,80,00,000/-
	Total	74,05,47,750/-

The assessing officer noted that the assessee has taken a cumulative, loan amounting to Rs.74,05,47,750/-, as noted in the above table, from its various subsidiary companies. Therefore, he observed that it attracted the provisions of deemed dividend as mentioned u/s 2(22)(e) of the Act. Since it is in receipt of loans from companies in which it is a beneficial owner of shares having more than 10% of voting power by virtue of being the holding company. Therefore an amount of Rs.75,05,47,750/- received from various subsidiaries as loan received is deemed to be dividend in the hands of the assessee. However, on perusal of the computation of the assessee, it was noticed that the assessee has suo moto added back and offered to tax an amount of Rs.2,93,82,245/- on account of deemed dividend under the head income from other sources. Accordingly, the differential amount of Rs.71,11,65,505/- (Rs.75,05,47,750 - Rs.2,93,82,245) was added to the income of the assessee as deemed dividend u/s 2(22)(e) of the Act.

23. On appeal by the assessee, the Id. CIT(A) deleted the addition. Before the Id CIT(A), the assessee filed written submission to defend his case, and in turn the Id CIT(A), sent these written submissions to the Assessing officer

for his verification and comments. The Assessing Officer having verified the submissions of the assessee, sent his remand report dated 10.12.2015. The contents of the remand report are as follows:

“Deemed dividend u/s 2(22)(e) of the Act:

C.1 In the year under consideration, the assessee is found to have received loans/advances amounting to Rs.74,05,47,750/- from its subsidiary concerns and it was treated as deemed dividend u/s 2(22)(e) in the hands of the assessee. The assessee in its computation of income suo moto offered to tax an amount of Rs.2,93,82,245/- on account of deemed dividend. Accordingly, in course of assessment the difference amount of Rs.71,11,65,505/- was added on account of deemed dividend u/s 2(22)(e).

C.2 The assessee before the Id. CIT(A) has submitted that the observation made by the Assessing Officer was not correct, as the assessee had already entered into loan transactions with the subsidiary concerns and during the year those amounts were refunded to the assessee. Therefore, these transactions should be considered from the angle of totality. In support of its claim loan confirmation and ledger copy of the parties in the books of the assessee were filed.

C.3 The details submitted by the assessee in course of appellate proceedings have been looked into and no adverse findings have been noted.”

The Id CIT(A) noted that since the Assessing Officer in his remand report stated that *“the details submitted by the assessee in course of appellate proceedings have been looked into and no adverse findings have been noted”* , and based on the said comments in remand report, the Id CIT(A) deleted the addition.

24. Aggrieved by the order of Id CIT(A), the Revenue is in appeal before us. The Learned Departmental Representative did not have much to say but he nevertheless relied upon the order of the Id Assessing Officer. On the other hand, the Id Counsel for the assessee defended the order passed by the Id CIT(A).

25. We have heard both the parties and perused the materials available on record, we note that Id Assessing officer made addition under section 2(22) (e) of the Act, to the tune of Rs.74,05,47,750/-, the detail of the said addition is mentioned in para 21 of our order. Out of Rs.74,05,47,750/-, the Ld. Assessing officer, on an application moved by the Assessee company under section 154 of the Act, reduced the assessment made u/s 143(3) of the Act by reducing the aforesaid amount by Rs.13,75,00,000/-, in respect of the following parties, since the Appellant company had itself added the said sums in its return of income as deemed dividend to the extent of their Reserves and Surplus.

(i) Boulevard Services Pvt. Ltd.	Rs. 3,80,00,000
(ii) TCG Software Parks Pvt. Ltd	<u>Rs. 9,95,00,000</u>
Total	<u>Rs.13,75,00,000</u>

Apart from this, the assessee has suo moto disallowed a sum of Rs.2,93,82,245/- under section 2(22) (e) of the Act. Therefore, the disputed amount before us is to the tune of Rs.57,36,65,505/- (that is, Rs.74,05,47,750 - Rs.13,75,00,000- Rs.2,93,82,245), for which the Revenue is in appeal before us.

26. After the said order passed under section 154 of the Act, as mentioned in para 24 of our order, the following additions, other than TCG Facilities Management services Pvt. Ltd. made u/s 2(22)(e) of the Act remained:

(i) Bengal Intelligent Parks Pvt. Ltd.	Rs.2,41,00,000
(ii) BIP Developers Pvt. Ltd.	Rs.3,20,00,000
(iii) International Biotech Park Ltd.	Rs.21,89,00,000
(iv) Altius Management Advisors Pvt. Ltd.	Rs.6,83,26,000
(v) Energetic Construction Pvt. Ltd	<u>Rs.14,80,00,000</u>
Total	<u>Rs.49,13,26,000</u>

The aforesaid amounts received by the Appellant Company from the aforesaid parties are the amounts of refunds of Loans/Advances given to them by the Appellant Company earlier. The ledger accounts of each of the above party are showing balances after each transactions relating to receipt and payment of loan/advance. The confirmation letters from the said five parties, mentioned above, are also filed by the assessee. On perusal of the ledger account as well as the confirmation letters it would be found that on all the days in the previous year relevant to the assessment year under appeal the aforesaid parties would be found to be a debtor to the Appellant Company all along.

27. We note that with regard to the addition of the sum of Rs.11,17,21,750/- in respect of TCG Facilities Management Services Pvt. Ltd, it is submitted by the counsel that the Appellant Company did not receive any amount from the aforesaid party during the relevant previous year. However, on perusal of the Ledger account and confirmation letter in respect of loan from the said party it would be found that the Appellant Company made payments of the said amount against the loans borrowed by it in earlier years. The amounts of Rs.11,17,21,750/- repaid by the Appellant Company against the opening balance of Rs.36,68,09,627/- from TCG Facilities Management Services Pvt. Ltd. The Counsel pointed out before us that these facts could be verified from the Tax Audit report submitted to the assessing officer, wherein in Annexure B, of the report the details of loans taken or accepted are clearly reflected and the loans repaid to TCG Facilities Management Services Pvt. Ltd is clearly shown as repaid in the said annexure.

We note that it is an admitted fact that the ledger accounts of each of the above party are showing balances after each transactions relating to receipt and payment of loan/advance. The confirmation letters from the parties are also showing that these transactions are on account of loans and advances.

We note that on perusal of the ledger account as well as the confirmation letters submitted by the respective parties, it is evident that these parties would be found to be a debtor to the assessee company all along. These facts of the assessee could be verified from the Tax Audit report submitted to the assessing officer. We also note that during the appellant proceedings, the Id. CIT(A) sent the remand report and Assessing Officer replied in the remand report stating that the details submitted by the assessee in the course of appellate proceedings have been looked into and no adverse findings have been noted. Thus the appellant Company could not be said to have received any loan or advance of deposit of the nature prescribed under section 2(22)(e) of the Act.

Therefore, based on the factual position discussed above, we note that the transactions between the assessee company and the subsidiary companies were on account of loans and advances and not on account of deemed dividend u/s 2(22)(e) of the Act and that being so, we decline to interfere in the order passed by the Id CIT(A), his order on this issue is hereby upheld and ground raised by the Revenue is dismissed.

28. In the result, the appeal filed by the Revenue (in ITA No.1649/Kol/2016) is dismissed and the appeal filed by the assessee (in ITA No.1622/Kol/2016) is allowed.

Order is pronounced in the open court on 25.05.2018.

Sd/-
(A. T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक Date: 25/05/2018

(RS, SPS)

Sd/-
(A. L. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee -M/s. TCG Urban Infrastructure Holding (P) Ltd.
2. प्रत्यर्थी/ The Revenue -ACIT, Cir-2(2), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.