

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

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

आयकरअपीलसं./ITA No.1629/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2010-11)

ACIT, Cir-2(1), Kolkata	Vs.	M/s. Infinity Infotech Parks Ltd.
Aaykar Bhawan, P-7, 7 th Floor, Chowringhee Sq., Kolkata – 700 069.		Plot-A3, Block-GP, Sector-V, Salt Lake, Kolkata – 700 091.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AABCI 0692 J		
(Appellant)	..	(Respondent)

Appellant by : Shri A. Bhattacharjee, Addl. CIT(DR)

Respondent by : Shri D. S. Damle, FCA

सुनवाईकीतारीख/ **Date of Hearing** : **16/04/2018**

घोषणाकीतारीख/**Date of Pronouncement** : **30/05/2018**

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the Revenue, pertaining to Assessment Year 2010-11, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-1, Kolkata in appeal No.55/CIT(A)-1/C-2/2013-14, dated 24.05.2016, 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 23.03.2013.

2. The grievances raised by the Revenue are as follows:

"1. That on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of interest expenditure of Rs.45,71,054/- ignoring the fact that interest-bearing loans were diverted into non-business purpose by way of granting interest free advances to subsidiaries and without rendering any independent finding as to existence of commercial expediency even though the Assessing Officer held so in relation to assessment year 2010-11.

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs.1,00,000/- held by the Assessing Officer to be capital in nature being the legal & professional fee incurred for effecting long-term leases for which the Ld. CIT(A) has not rendered any independent finding of fact in relation to assessment year 2010-11.

3. That the revenue craves leave to adduce additional ground(s) and/ or rescind, alter or modify any of the foregoing ground(s) before or at the time of hearing of this appeal.

3. First we shall take Ground No.1 raised by the Revenue which relates to disallowance of interest expenditure of Rs.45,71,054/- by the Assessing Officer on account of interest bearing loan diverted into non-business purposes.

4. The facts of the case which can be stated quite shortly are as follows: The assessee company has provided interest free advances to its subsidiaries amounting to Rs. 5,89,36,008/- as per the Balance sheet as on 31.03.2010, out of loan taken by it. The net assets of the company for the year ended on 31.03.2010 is Rs.175,37,81,388/- (Previous year Rs.186,18,30,942/-). During the financial year, the assessee company has debited a sum of Rs.14,02,12,757/- towards Interest on Term Loan in its Profit and Loss account. In this regard, the assessee company was asked to furnish details of interest free loans / advances given and the purpose of the same and an explanation as to why proportionate disallowance of interest on advances as claimed should not be made. In response, the assessee company has submitted details of projects, etc. to whom advances were made. It further submitted that interest free advances were given to its subsidiaries for project execution and that the assessee company has deep commercial interest in its subsidiaries.

However, the Id Assessing Officer rejected the contention of the assessee and held that the assessee company has not proved the commercial expediency during the course of the proceedings and as the

advances were capital in nature, and interest on loan from which advances were given, was computed by AO proportionately as follows:

Amount of Advances Rs, 5,89,36,008/-

Interest claimed in P&L a/c Rs. 14,02,72,757/-

Average Assets (Rs.175,37,81,388 +186,18,30,942 / 2)Rs.180,78,06,165/-

Amount of disallowance = $5,89,36,000 \times 14,02,72,757 \div 180,78,06,165/- = \text{Rs.}45,71,054/-$

5. Aggrieved by the stand taken by the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), with success. The Revenue is not satisfied and is in further appeal before this Tribunal.

Learned Departmental Representative did not have much to say but he nevertheless relied upon the order of Id Assessing Officer. On the other hand, the Id. counsel for the assessee has defended the order passed by the Id. CIT(A).

6. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that assessing officer disallowed the interest to the extent of Rs.45,71,054/-, out of interest paid on the ground that interest bearing loan taken during the year was used for advancing interest free loan to subsidiaries. The Assessing Officer also alleged that these advances were capital in nature and, therefore, interest on loan attributable to such advances were proportionately disallowed to the tune of Rs.45,71,054/-. We note that assessee is engaged in the business of development of software technology parks and infrastructure development. The assessee undertakes these projects through wholly owned subsidiaries companies having regard to the complex statutory requirements and state laws governing use of land for infrastructure

projects. The principal purpose behind promoting such wholly owned subsidiaries is to achieve the business objective of undertaking infrastructure development. In the course of carrying on its business of infrastructure development through the subsidiaries, the assessee granted advances to such subsidiaries formed for project execution. The advances were granted in the course of business and with a view to carry on assessee's core business of infrastructure development. The advances are made without any stipulation of charging interest but there are however commercial reasons and considerations for such arrangements. The Assessing Officer without appreciating these facts and the business expediency involved in monies advanced to the subsidiaries alleged that the advances are capital in nature and, therefore, interest paid was required to be capitalized. At the cost of repetition, we would like to reiterate the facts that the assessee company is engaged in the business of developing, constructing and operating of Information technology Parks, and development of ITPs requires acquisition of plots of suitable lands and advances were made to subsidiary companies, which are engaged in similar nature and line of business, which were part of the business of the assessee company and on grounds of commercial expediency. We note that considering these facts, the assessee company is entitled for deduction of interest on loans to the subsidiary companies u/s 36(1)(iii) of the I.T. Act, since these were advanced to the subsidiary companies wholly and exclusively for business purposes. The A.O was not justified in treating the interest of Rs.45,71,054/- as being of capital nature without any finding of fact to substantiate the same.

7. Now it appears and it is quite plainly proved by the assessee that these advances were given by the assessee for commercial expediency and that being so, it is obvious that the issue of the assessee under consideration is fully supported, based on the identical facts, by the judgment of Hon'ble Supreme Court in the case of S.A. Builders Ltd vs. CIT, 288 ITR 1 wherein the Hon'ble Apex Court held as follows:

"The High Court in the impugned judgment, as well as the Tribunal and the IT authorities have approached the matter from an erroneous angle. The assessee borrowed the fund from the bank and lent some of it to its sister-concern (a subsidiary) on interest-free loan. The test in such a case is really whether this was done as a measure of commercial expediency. The decisions relating to s. 37 will also be applicable to s. 36(1)(iii) because in s. 37 also the expression used is "for the purpose of business". It has been consistently held in decisions relating to s. 37 that the expression "for the purpose of business" includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby. The High Court as well as the Tribunal and other IT authorities should have approached the question of allowability of interest on the borrowed funds from the above angle. In other words, the High Court and other authorities should have enquired as to whether the interest-free loan was given to the sister company (which is a subsidiary of the assessee) as a measure of commercial expediency, and if it was, it should have been allowed. 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. 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. The High Court and the 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 this money, in order to decide whether it was for commercial expediency, but that has not been done. The impugned judgments of the High Court, the Tribunal and other authorities are set aside and the matter is remanded to the Tribunal for a fresh decision in accordance with law and in the light of the observations made above. It is made clear that it is not that in every case 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 sister-concern utilize the amount advanced to it by the assessee for their personal benefit, obviously it cannot be said that such 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 other circumstances (which need not be enumerated here). However, where it is obvious that a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would, in our opinion, ordinarily be entitled to deduction of interest on its borrowed loans."

We note that this view, in the case of S.A. Builders Ltd (supra) has been recently reiterated by the Hon'ble Supreme Court in the case of Hero Cycles (P) Ltd. vs. CIT (379 ITR 347).

Considering the facts of the assessee's case and law position explained above, it seems to us that we can not disturb the findings of the Id Commissioner of Income Tax (Appeals), hence the Revenue's appeal on this issue must be dismissed.

8. The next Ground No.2 of Revenue, relates to disallowance of Rs.1,00,000/- to be capital in nature being the legal & professional fee paid by the assessee.

9. The brief facts qua the issue are that the assessee company has claimed Rs.98,95,594/- (last year Rs.50,13,152/-), as legal and professional fees in its Profit and Loss account. During the assessment proceedings, the assessee company was asked to furnish reasons for increase in expenditure, books of accounts/ledgers and bills. The assessing officer, on perusal of records, found that the assessee company has paid legal fees for long term lease. The company in its computation added only Rs.8,75,888/- and left Rs.1,00,000/- fees paid for long term lease. Since the same was related to long term lease, therefore, the AO disallowed Rs.1,00,000/-.

10. Aggrieved by the stand taken by the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has deleted the addition. The Revenue is not satisfied and is in further appeal before this Tribunal. Learned Departmental Representative did not have much to say but he nevertheless relied upon the order of Id Assessing Officer. On the other hand, the Id. counsel for the assessee has defended the order passed by the Id. CIT(A).

11. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that the legal fees of Rs.8,75,888/- was incurred by the assessee, in connection with long term leases. The assessee was unable to comprehend the logic behind the figure of Rs.9,75,888/- arrived by the assessing officer thereby disallowing a further sum of Rs.1,00,000/- while computing the taxable income of the assessee. We note that the disallowance of Rs.1,00,000/- is not based on any relevant material or cogent facts and deserves to be deleted in full.

We note that the assessing officer found that the assessee company had paid legal fee for long term lease amounting 9,75,888/- which was included in "legal and professional fee" debited to Profit and Loss account. The A.O. observed that the assessee had added back Rs.8,75,888/- in the computation of income and held that the balance Rs.1 lakh to be disallowed. In view of the above discussion, it is observed that the Assessing Officer has made the disallowance of Rs.1 lakh without finding out any specific defect or examining the nature of the said expense which was included under the head "Legal and Professional Fee" of Rs.98,95,594/-. 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 on this issue is dismissed.

12. In the result, the appeal filed by the Revenue is dismissed.

Order is pronounced in the open court on 30.05.2018.

Sd/-
(A. T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 30/05/2018

(RS, SPS)

Sd/-
(A. L. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant- ACIT, Cir-2(1), Kolkata
2. प्रत्यर्थी/ The Respondent- M/s. Infinity Infotech Parks Ltd.
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.