

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : "C" : NEW DELHI  
BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SMT. BEENA A. PILLAI, JUDICIAL MEMBER

ITA No.5115/Del/2015  
Assessment Year : 2006-07

DCIT,  
Circle-26(2),  
CR Building,  
New Delhi.

Vs. Vipul Ltd.,  
9-A, 3<sup>rd</sup> Floor, Vasant Square Mall,  
Sector-B, Pocket-5,  
Vasant Kunj,  
New Delhi.

PAN: AAACA5396C

CO No.185/Del/2017  
(ITA No.5115/Del/2015)  
Assessment Year : 2006-07

Vipul Ltd.,  
9-A, 3<sup>rd</sup> Floor,  
Vasant Square Mall,  
Sector-B, Pocket-5,  
Vasant Kunj,  
New Delhi.

Vs. DCIT,  
Circle-26(2),  
CR Building,  
New Delhi.

PAN: AAACA5396C

(Appellant)

(Respondent)

Assessee By : Shri Rajesh Arora, CA  
Department By : Shri S.L. Anuragi, Sr. DR

Date of Hearing : 30.05.2018  
Date of Pronouncement : 31.05.2018

ORDER

PER R.S. SYAL, VP:

This appeal filed by the Revenue and the Cross Objection filed by the assessee arise out of the order passed by the CIT(A) on 25.03.2015 in relation to the assessment year 2006-07.

2. The only ground raised by the Revenue in its appeal is against the deletion of addition of Rs.44,38,231/- (sic Rs.38,66,143/-) made by the Assessing Officer on account of interest paid on borrowed funds.

3. Briefly stated, the facts of the case are that the assessee filed original return declaring income of Rs.15.73 crore, which was subsequently revised to an income of Rs.27.00 crore. The assessment was completed u/s 143(3) at an income of Rs.38.00 crore. Pursuant to the order passed by the Tribunal, the Assessing Officer again completed assessment at Rs.27.00 crore. Thereafter, notice was issued u/s 148. The assessment got completed u/s 143(3) read with section 147 on 31.03.2014 in which the Assessing Officer made an addition of Rs.44,38,231/- by disallowing interest to this extent. Such disallowance of interest was made by observing that the assessee availed borrowed funds of Rs.36.36 crore on which interest of Rs.44.38 lac was paid

and, at the same time, the assessee made investments in its related companies to the tune of Rs.8,63,04,063/- on which no interest income was earned. The Id. CIT(A), apart from upholding the initiation of re-assessment, deleted the addition by observing that the investments were made by the assessee for business purpose. The Revenue has come up in appeal against the deletion of addition.

4. We have heard the rival submissions and perused the relevant material on record. A copy of the assessee's balance sheet is available in the paper book from which it can be seen that its share capital as at the end of the year, is Rs.5.10 crore and Reserves & surplus are to the tune of Rs.11.53 crore. This shows that the assessee's shareholder fund stands at Rs.16.64 crore. As against that, the Assessing Officer has noticed that the assessee made investment in its related companies to the tune of Rs.8.63 crore. Without going into the business purpose or otherwise of the assessee in making investments in its companies, we find that the amount in the assessee's shareholder fund is almost double the amount given to related companies.

5. At this juncture, it is relevant to note that section 36(1)(iii) provides for deduction of interest of the amount of interest paid in respect of capital borrowed for the purpose of business or profession. The essence of this provision is that the interest should be allowed so long as the capital borrowed, on which such interest is paid, is used for the purpose of business or profession. If, however, an assessee is having its own interest free surplus funds and such funds are utilised as interest free advances even for a non-business purpose, there cannot be any disallowance of interest paid on interest bearing loans. The Hon'ble Bombay High Court in *CIT vs. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom)*, has held that where an assessee possessed sufficient interest free funds of its own which were generated in the course of relevant financial year, apart from substantial shareholders' funds, presumption stands established that the investments in sister concerns were made by the assessee out of interest free funds and, therefore, no part of interest on borrowings can be disallowed on the basis that the investments were made out of interest bearing funds. In that case, the AO recorded a finding that a sum of Rs.213 crore was invested by the assessee out of its own funds and Rs.1.74 crore out of borrowed funds.

Accordingly, disallowance of interest was made to the tune of Rs.2.40 crore.

The assessee argued that no part of interest bearing funds had gone into investment in those two companies in respect of which the AO made disallowance of interest. It was also argued that income from operations of the company was Rs.418.04 crore and the assessee had also raised capital of Rs.7.90 crore, apart from receiving interest free deposit of Rs.10.03 crore.

The assessee submitted before the first appellate authority that the balance-sheet of the assessee adequately depicted that there were enough interest free funds at its disposal for making investment. The ld. CIT(A) got convinced with the assessee's submissions and deleted the addition. Before the Tribunal, it was contended on behalf of the Revenue that the shareholders' funds were utilized for the purchase of its assets and hence the assessee was left with no reserve or own funds for making investment in the sister concern. Thus, it was argued that the borrowed funds had been utilized for the purpose of making investment in the sister concern and the disallowance of interest was rightly called for. The Tribunal, on appreciation of facts, recorded a finding that the assessee had sufficient funds of its own for making investment without using the interest bearing funds. Accordingly, the order of CIT(A)

was upheld. When the matter came up before the Hon'ble High Court, it was contended by the Department that the shareholders' funds stood utilized in the purchase of fixed assets and hence could not be construed as available for investment in sister concern. Repelling this contention, the Hon'ble High Court observed that : *“In our opinion, the very basis on which the Revenue had sought to contend or argue their case that the shareholders' fund to the tune of over Rs.172 crore was utilized for the purpose of fixed assets in terms of the balance-sheet as on March 31, 1999, is fallacious.”* In upholding the order of the Tribunal, the Hon'ble High Court held that: *“If there be interest free funds available to an assessee sufficient to meet its investment and at the same time the assessee had raised a loan, it can be presumed that the investments were from the interest free funds available”*. Thereafter, the judgment of the Hon'ble Supreme Court in the case of *East India Pharmaceutical Works Ltd. Vs. CIT (1997) 224 ITR 627 (SC)* and also the judgment of the Hon'ble Calcutta High Court in *Woolcombers of India Ltd. Vs. CIT (1981) 134 ITR 219 (Cal)* were considered. It was finally concluded that: *“The principle, therefore, would be that if there are funds available both interest free and overdraft and/or loans taken, then a*

*presumption would arise that the investments would be out of interest free funds generated or available with the company, if the interest free funds were sufficient to meet the investment*". Consequently the interest was held to be deductible in full. From the above judgment, it is manifest that there can be no presumption that the shareholders' fund of a company was utilized for the purchase of fixed assets. If an assessee has interest free funds as well as interest bearing funds at its disposal, then the presumption would be that investments were made from interest free funds at the disposal of the assessee. Similar view has been taken by the Hon'ble Dehi High Court in *CIT vs. Tin Box Company (2003) 260 ITR 637 (Del)*, holding that when the capital and interest free unsecured loan with the assessee far exceeded the interest free loan advanced to the sister concern, disallowance of part of interest out of total interest paid by the assessee to the bank was not justified.

6. In view of the foregoing discussion, we are satisfied that the order of the CIT(A) does not require any interference since the amount of assessee's shareholder funds is much more than the amount of interest free loans advanced to sister concern. We, therefore, uphold the impugned order on this score.

7. The Id. AR did not press the Cross Objection and the same is, therefore, dismissed as not pressed.

8. In the result, the appeal of the Revenue and the cross objection of the assessee are dismissed.

The order pronounced in the open court on 31<sup>st</sup> May, 2018.

Sd/-

[BEENA A. PILLAI]  
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]  
VICE PRESIDENT

Dated, 31<sup>st</sup> May, 2018.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.