

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

ITA NO. 5796/MUM/2016 : (A.Y : 2012-13)

DCIT-1(1)(2),
Mumbai (Appellant)

Vs. M/s. Gala Trading Pvt. Ltd. (now
known as Allgrow Finance and
Investment Pvt. Ltd.)
Shop no. 118, Tikona Park, NIT
Faridabad, Haryana 121 001.
PAN : AAACA4941P (Respondent)

Appellant by : Ms. Aarju Garodia

Respondent by : Shri Tarun Rohatgi

Date of Hearing : 12/04/2018

Date of Pronouncement : 30/05/2018

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the Revenue is directed against the order of CIT(A)-2, Mumbai dated 30.06.2016 pertaining to the Assessment Year 2012-13, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 13.02.2015 u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, although the Revenue has raised multiple Grounds of appeal, but the primary issue is with regard to the decision of CIT(A) in

setting-aside the disallowance of Rs.2,08,45,683/- made by the Assessing Officer out of interest expenditure.

3. Briefly put, the relevant facts are that the assessee is a company incorporated under the provisions of the Companies Act, 1956 and is, *inter-alia*, engaged in the business of trading in shares, brokerage, etc. In the course of assessment proceedings, the Assessing Officer noted that assessee had debited interest expenditure of Rs.2,08,45,683/- on loans raised. The Assessing Officer noted that assessee was only engaged in the business of trading and broking and that the activity of taking and giving loans was not appropriate and neither authorised by its Memorandum of Association. The Assessing Officer further noted that the borrowed funds were not used for the purpose of business and that the income earned from advancing of loans and advances was, in any case, declared by the assessee as 'other income'. It was also noted by the Assessing Officer that the assessee had earned interest of Rs.60,55,138/- only whereas the interest expenditure was to the tune of Rs.2,08,45,683/-. For all the said reasons, the Assessing Officer disallowed the interest expenditure of Rs.2,08,45,683/-.

4. Before the CIT(A), assessee made varied submissions. Firstly, assessee contended that it was not only engaged in the business of trading in shares and brokerage, but also in the activity of giving of loans and advances. In support, assessee referred to its Balance-sheet to show that out of the total assets employed as on the year ending in question, almost 50% of the assets were deployed under the head 'loans and advances'. Assessee also furnished an analysis of its earnings which showed that the interest income constituted almost 80% of its total revenues. On this basis, assessee sought

to canvass that both on the basis of asset deployment and the income generation, the activity of loans and advances constituted a major area of business. Assessee also pointed out that merely because the interest income was credited in the Profit & Loss Account as 'other income' could not be used to say that earning of interest was not a business activity. So far as the Memorandum of Association was concerned, assessee referred to the relevant portion thereof, and which has been reproduced by the CIT(A), to point out that receiving money on deposit on interest and lending thereof was also an activity which was permissible. With regard to utilisation of the borrowed funds, assessee pointed out that same have been used in the business of trading in shares as well as for advancing loans. It was also pointed out that in the past years, assessee had incurred losses and the borrowed funds have also been used to finance such losses. In support of such proposition, assessee also referred to the cash flow statement before the CIT(A). In sum and substance, the claim of the assessee was that the interest was paid for monies borrowed for the purpose of business and that merely because the quantum of interest income generated was lower than the interest expenditure, it would not lead to the conclusion that the borrowings were not for the purpose of business.

5. The CIT(A) considered each and every submission put forth by the assessee and has deleted the disallowance and, in particular, the following discussion is relevant :-

“Regarding Disallowance of interest of Rs.2,08,45,683/-, I am in agreement with the submissions of the Ld. A.R.

The appellant company is carrying on multiple business activities. It is carrying on the business of shares, Loans & Advances. I have pursued the MOA of the company and the accounts and it is evident therefrom that the objective of the company to give Loans and Advances is mentioned in MOA. Therefore the company could validly and legally carry out this activity. The contention of the Assessing officer in this regard is rejected.

The facts on record show that the Loans and Advances constitute a major part of the business activity of the appellant company and are a major revenue earner for the company. Under these circumstances it is fair to hold that the company was indeed carrying on the business activity of giving loans and advances.

Therefore in my view in case of the appellant company the granting of Loans and Advances constitute the business of the appellant company.

Having held so and also the interest paid on Loans is fully utilized for the business of the appellant company. In this connection the appellant company has placed on record the details of utilization of funds. It is clear from records that the funds have been used for the purposes of business which include advancing of loans and advances. The quantum of interest paid and received cannot be the basis of allowing the interest paid. If the funds are used for the purposes of business which have been in this case then the interest needs to be allowed in full in terms of section 36(1)(iii) of the Act.

Therefore in this case there cannot be any disallowance out of interest expenses claimed. The interest paid has to be allowed u/s 36(1)(iii) of the Act.

After considering the facts on record and having the appellant company already offered interest income from the inter-corporate deposit as Business income and also considering the section 36(1)(iii) of the I.T. Act, I am of the considered opinion that the disallowance of interest of Rs.2,08,45,683/- made by the AO is not a justifiable one and accordingly, I direct the AO to delete the above addition. This ground of appeal is allowed.”

Against the aforesaid, Revenue is in appeal before us.

6. Before us, the Id. DR appearing for the Revenue has primarily reiterated the stand of the Assessing Officer, which we have already noted in the earlier paras and is not being repeated for the sake of brevity. In contrast, the learned representative for the assessee defended the decision of the CIT(A) by pointing out that the same was based on proper appreciation of facts of the instant case.

7. We have carefully considered the rival submissions. Notably, the first and the foremost ground prevailing with the Assessing Officer to disallow the interest expenditure was that advancing of loans and advances by the assessee was not an activity of business. On this aspect, the CIT(A) has recorded a finding that such activity was contained in one of the objects of the Memorandum of Association. Secondly, CIT(A) has recorded a finding that the loans and advances constituted a major area of business activity and, therefore, he has concluded that assessee was indeed carrying on business activity of giving loans and advances. This is a fact-situation arrived at by CIT(A) by taking into consideration all the relevant factors, including the utilisation of borrowed funds; and, he has also noted that such funds have been used for the purpose of business including giving of loans and advances. The CIT(A), in our view, has correctly held that the quantum of interest earned cannot be the sole basis to disallow the interest expenditure. In our view, so long as the borrowed funds are used for the purpose of business, the interest expenditure deserves to be allowed in terms of Sec. 36(1)(iii) of the Act. In the instant, in view of the findings of the CIT(A) that borrowed funds have been used for the purpose of business, the

disallowance u/s 36(1)(iii) of the Act as made by the Assessing Officer is not maintainable. Accordingly, on this aspect, we approve the order of CIT(A) and Revenue fails in its appeal.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 30th May, 2018.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 30th May, 2018

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "J" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai