

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"G" Bench, Mumbai**

**Before Shri B.R. Baskaran, Accountant Member  
and Shri Amarjit Singh, Judicial Member**

**ITA No. 250/Mum/2017**  
(Assessment Year: 2013-14)

D C I T - 1(1)(2)  
Room No. 579, 5th Floor  
Aayakar Bhavan, M.K. Road  
Mumbai 400020

M/s. Gala Trading P. Ltd.  
(Now Allgrow Finance and  
Investment P. Ltd.)  
Vs. Wing-A, Unit-2, Times Square  
Marol, Andheri (E)  
Mumbai 400059

PAN – AAACG8667N

**Appellant**

**Respondent**

Appellant by: Shri Suman Kumar  
Respondent by: Shri Tarun Rohtagi

Date of Hearing: 18.06.2018  
Date of Pronouncement: 18.06.2018

**ORDER**

**Per B.R. Baskaran, AM**

This appeal filed by Revenue is directed against the order of the learned CIT(A)-2, Mumbai dated 08.09.2016 and it relates to A.Y. 2013-14.

2. Revenue is aggrieved by the decision of the learned CIT(A) in deleting the disallowance of interest expenditure made by the AO and also in restricting the disallowance made under Section 14A of the Income Tax Act (hereinafter “the Act”) on exempt income.

3. We have heard the parties and perused the record. During the year under consideration the assessee company received income from brokerage and commission, profit on sale of investments and also interest income. During the course of assessment proceedings, the AO noticed that the assessee has received interest income and dividend income of ₹41.26 lakhs, while the assessee has paid interest expenditure of ₹199.70 lakhs. The assessee submitted before the AO that it was carrying on financing

business also, but the AO did not accept the same by observing that the assessee is not engaged in the business of giving loans and advances as per the Memorandum of Association and further the tax audit report given in Form No. 3CD also does not state that the assessee is carrying on money lending activity. Accordingly the AO took the view that the interest expenditure booked by the assessee is more than the interest income. Accordingly he disallowed the interest expenditure of ₹199.70 lakhs. The AO also noticed that the assessee has earned dividend income but did not make any disallowance under Section 14A of the Act. Since the AO has already disallowed interest expenditure, the AO computed the disallowance under Rule 8D(2)(iii) of the I.T. Rules out of the administrative expenses to the extent of 0.5% of the average value of investment, which worked out to ₹3,07,456/-.

4. In the appellate proceedings the learned CIT(A) noticed that the AO had made identical disallowance out of interest expenditure in A.Y. 2012-13 also and the learned CIT(A) deleted the same. Following the decision rendered by him in A.Y. 2012-13, the learned CIT(A) deleted the interest expenditure. With regard to the disallowance made under Section 14A of the Act, the learned CIT(A) sustained disallowance of expenditure to the extent of dividend income earned by the assessee. Aggrieved, Revenue has filed this appeal before us.

5. At the time of hearing the learned A.R. submitted that the order passed by the learned CIT(A) in A.Y. 2012-13 was challenged by the Revenue before the Tribunal and the Tribunal has passed its order confirming the order of the learned CIT(A). The learned A.R. also furnished a copy of the order of the Tribunal dated 30.05.2018 passed in the case of the assessee in ITA No. 5796/Mum/2016 relating to A.Y. 2012-13. A perusal of the same reveals that the Coordinate Bench has confirmed the order of the learned CIT(A) in deleting the disallowance of interest expenditure by observing as under: -

*“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.”*

We have earlier noticed that the Ld CIT(A) has followed his order passed in the earlier year for deciding the issue of disallowance of interest expenditure. The order passed by him in the earlier year has since been upheld by the Tribunal. The co-ordinate bench has noted that the Ld CIT(A) has recorded a finding that the financing activity constitutes major area of business activity. Further, a perusal of the Balance Sheet of the assessee for the year under consideration would show that the assessee has deployed its borrowed funds not only for advancing loans and advances, but also in other activities. Under these set of facts, consistent with the view taken by the Coordinate Bench in the earlier year, we confirm the order passed by the learned CIT(A) on this issue.

6. The next issue relates to disallowance made under Section 14A of the Act. We noticed that the learned CIT(A) has restricted the disallowance under Section 14A to the amount of exempt income by following the decision rendered by the Hon'ble Delhi High Court in the case of Holcim India Pvt. Ltd. and also in the case of Joint Investments Pvt. Ltd. Before us the Revenue did not file any decision to contradict the view taken by the

learned CIT(A). Accordingly we uphold the order passed by the learned CIT(A) on this issue also.

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

Order pronounced in the open court on 18<sup>th</sup> June, 2018.

Sd/-  
**(Amarjit Singh)**  
**Judicial Member**

Sd/-  
**(B.R. Baskaran)**  
**Accountant Member**

Mumbai, Dated: 18<sup>th</sup> June, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -2, Mumbai*
4. *The CIT - 1, Mumbai*
5. *The DR, "G" Bench, ITAT, Mumbai*

*By Order*

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*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.