

**IN THE INCOME TAX APPELLATE TRIBUNAL “H”
BENCH, MUMBAI**

**BEFORE SH. R. C. SHARMA, AM &
SH. SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 3925/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2011-12)

ACIT -8 (1) (1) Room No. 134, Aayakar Bhavan, M. K. Road, Mumbai-400020	बनाम/ Vs.	Reliance Natural Resources Ltd. H Block, 1 st floor, Dhirubhai Ambani Knowledge City, Thane Belapur Rd, Koparkhirane, Navi Mumbai-400710.
स्थायीलेखासं./जीआइआरसं./PAN No. AADPG1861G		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri B. Srinivas
प्रत्यर्थीकीओरसे/Respondentby	:	Shri Jitendra B. Sanghavi

सुनवाईकीतारीख/ Date of Hearing	:	08.02.18
घोषणाकीतारीख / Date of Pronouncement	:	28/02/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the revenue is against the order of Ld. CIT (Appeal) – 14, Mumbai dated 31.03.16 for AY 2011-12on the grounds mentioned herein below:-

*1. GROUNDS OF APPEAL BEFORE THE HON'BLE
APPELLATE TRIBUNAL*

(i) The Ld CIT(A) has erred in allowing the issue expenses and interest expenses to the extent such funds were deployed for business purpose without properly appreciating the factual and legal matrix as clearly brought out by the Assessing Officer in the assessment order.

(ii) The Ld CIT(A) has erred in allowing the issue expenses and interest expenses to the extent such funds were deployed for business purpose without appreciating the fact that entire expenses warrant to be disallowed in light of failure to establish the genuineness of FCCB funds in the first place.

2. The CIT (A)'s order is contrary to law and on facts and deserves to be set aside.

3. The appellant craves leave to amend or alter any ground or add a newground that may be necessary.

4. The appellant prays that the order of the CIT (A) on the above grounds to be set aside and that of the AO be restored.

2. The brief facts of the case are that the assessee is engaged in the business of providing fuel and facilitation services to power plants of Reliance Infrastructure Ltd. The assessee filed return of income on 29.09.11 declaring total income of Rs. 7,69,97,595/- which was revised on 10.12.11 on income at Rs. 7,14,49,601. Thereafter, the case was selected for scrutiny and after serving statutory notices, order of assessment u/s 143(3) was completed by the Ld. AO on 27.03.14 thereby making additions in the normal computation of income on account of FCCB issue expenses and interest on FCCB.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties dismissed the appeal of the assessee.

Now before us, the revenue has preferred the present appeal by raising the above grounds.

Ground No. 1 (i) & (ii).

3. These ground raised by the revenue are inter-connected and inter-related and relates to challenging the order of Ld. CIT(A) in allowing the issue of expenses and interest expenses to

the extent such funds were deployed for business purpose without properly appreciating the factual and legal matrix as clearly brought out by the Assessing Officer in the assessment order and this entire expenses warrants to be disallowed. Therefore we thought it fit to dispose of the same by this common order.

4. We have heard counsels for both the parties at length and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that Ld. CIT(A) in its concluding para 5 while dismissing the appeal filed by the assessee has categorically held as under :-

5. As regards ground number A and B , the facts of the case as per assessment order and submission of appellant is that the appellant had issued Foreign Currency Convertible Bonds (FCCB) vide Offer Document dated 12.10.2006. The Assessing Officer did not accept the submission/arguments of the appellant and made addition of FCCB proceeds as unexplained cash credit u/s 68 of The Act and passed order u/s 148 of the Income Tax Act, 1961 on 27th March 2014 for

AY 2007-08. Accordingly, the FCCB expenses and interest on FCCB for the year under appeal has been disallowed as the same is linked with the FCCB proceeds which has been treated as an unexplained cash credit.

5.1 It is noted that identical issue was involved in the AN 2008-09 in the case of the appellant wherein the issues are discussed in details. The appellant has made detailed submissions during the appellate proceeding in line with the submissions made in the appellate proceeding for AN 2008-09. On the identical issue involved in the appeal proceeding for AN 2008-09 it is held that:

'I have considered the submissions. The issue regarding addition having been made u/s 68 is no more relevant as the same stands deleted now. Coming to the other points raised by the A. O/appellant, it is noted from the assessment order that the FCCB fund was deposited with Barclays Bank in deposit account as under:-

<i>Date of deposit</i>	<i>Amount of deposit</i>	<i>Date of maturity</i>	<i>Amount on maturity</i>	<i>Surplus</i>
16.10.2006	150,328,125	31.10.2006	150,000,000	328,125
16.10.2006	50,000,000	31.10.2006	50,208,333	208,333
16.10.2006	90,000,000	1.11.2006	90,801,777	801,777
31.10.2006	50,536,458	16.11.2006	50,653,702	117,244
31.10.2006	90,801,777	16.11.2006	90,999,271	197,494
31.10.2006	150,000,000	16.11.2006	150,666,667	666,667

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On the maturity date of 15.11.2006 the maturity amounts were transferred to UBS AG London Branch, Account NO.417162.

During the financial year 2006-07, interest income in respect of investments with Barclays Bank and UBS AG as under:-

<i>Barclays Bank —</i>	<i>Rs. 8,65,08,632</i>
<i>UBS AG Bank —</i>	<i><u>Rs.15,11,35,724</u></i>
<i>Total</i>	<i><u>Rs.23,76,44,356</u></i>

The interest earned in different years are as under considered as business income by the A.O:

<i>Name of the Bank</i>	<i>Interest earned on FCCB proceeds (R. in lacs)</i>		
	<i>F.Y.2006-07</i>	<i>F.Y.2007-08</i>	<i>F.Y.2008-09</i>
<i>Barclays Bank Plc.</i>	<i>865.08</i>	<i>Nil</i>	<i>Nil</i>
<i>UBS Bank AG London</i>	<i>1480.83</i>	<i>1292.27</i>	<i>51.11</i>
<i>RBS Bank Singapore</i>	<i>Nil</i>	<i>Nil</i>	<i>109.92</i>
<i>Total interest earned from abroad</i>	<i>2,395.91</i>	<i>1,292.34</i>	<i>161.03</i>

The company has stated that the above income is shown under Schedule 9 - "Other Income - Interest on Deposits with Banks" in the financial statements for A. Y. 2008-09 and A. Y2009-10 and offered the same in the return of income.

However part of the fund so raised has been used for investment in shares of group company directly or indirectly through an entity "Pluri cell E" or through YMCs details of which appear in the assessment order and is reproduced hereunder again for sake of convenience:

'Investment in YMC'

During the said period, RNRL has made an investment exposure in YMCs issued by Society General as under:-

<i>YMC issuer</i>	<i>Ref</i>	<i>Transaction Date</i>	<i>Bought/Sale</i>	<i>Face Value</i>	<i>Amount</i>
<i>Soc. Gen</i>	<i>E1</i>	<i>04.12.06</i>	<i>Bought</i>	<i>20,00,000</i>	<i>20,00,40,000</i>
	<i>E2</i>	<i>23.10.18</i>	<i>Sold</i>	<i>2,00,00,000</i>	<i>90,00,000</i>

RNRL purchased YMCs issued by Societe Generale for US \$ 20 million which were not redeemed by it and instead on 23.10.2008 REGPL transferred US\$ 20 million, US\$ 9 million represented value of YMCs and US\$ 11 million represented an Inter-Corporate Loan, to RNRL. These YMCS were redeemed by REGPL in March 2009 for approximately US\$ 7.3 million. Income earned on these investments is directly linked to the value of the underlying shares of RCL. On

11.12.2007, 1.6 million has been credited to the account of RNRL as "interest based on your holding of USD 20 million Societe Generale YMCs".

Direct transactions of RNRL with 'Pluri Cell E'

Apart from subscription to YMC, RNRL had invested US\$ 50 million on 13.12.2006 in 'Pluri Cell E' which was redeemed back from 'Pluri Cell E' and credited to the account of RNRL on 30.01.2007. Further, RNRL invested US\$ 32.5 million into 'Pluri Cell E' (US\$ 32 million on 08.02.2007 and US\$ 0.5 million on 16.02.2007), which was redeemed in full on 26.02.2007. 'Pluri Cell E' in turn had further invested the funds in shares of RCL in India.

Indirect transactions with 'Pluri Cell E'

RNRL transferred US\$ 68 million to Dephine Zurich (US\$ 18 million on 03.01.2007 and US\$ 50 million on 11.01.2007), which was further invested in 'Pluri Cell E'. The said investment was redeemed by Dephine Zurich on 29.01.2007 and transferred to RNRL on 30.01.2007. Further, it was found that Dephine Zurich had transferred US\$ 1,348,607 to 'Pluri Cell E' on 30.04.2007. On 04.05.2007 US\$ 1,348,567 was transferred from RNRL to Dephine Zurich and on

31.05.2007 US\$ 1,348,567 was transferred from REGPL to RNRL."

In view of these findings it is apparent that the FCCB funds raised by RNRL were earning interest income and also were used directly/indirectly to invest in 'Pluri Cell E' and other related entities and YMCs, which in turn subscribed to PN/ODI with RCL shares as the underlying assets, Therefore interest and issue expense needs to be disallowed as there is evidence of use of the proceeds for non businesses purpose i. e via YMCs and directly and indirectly through the investment vehicle "Pluri Cell E". The same is widely discussed in the earlier paras.

However the facts and circumstances of the case and admitted position as per assessment order is that the funds utilized for non business purpose are not for the entire period but for demarcated periods noted in the assessment order and reproduced as above and also by the appellant as per para 5 in page 44 of this order subject to verification of A.0 . Therefore to the extent such funds are utilized for non business purpose for such period of the year as discussed/ demarcated and recorded by A. 0 himself, the disallowance in this context and under such facts is liable to be limited to

the periods of the year during which such funds are utilised for non business purpose. It will also be fair to make the disallowance of interest 4.928% i.e the interest rate of FCCB. Accordingly A. 0 is directed to restrict the disallowance for the period of utilization of such fund for non business purpose. The appellant also in this connection referred to the assessment order in a similar case of Reliance Infrastructure Ltd A. Y 2007-08 wherein disallowance is made accordingly. However since assessee has raised the ground against disallowance of such amounts for the whole year therefore same is liable to be dismissed under the facts and circumstances as discussed above.

As regards the issue expense. It is relevant to point out that as submitted and argued by the appellant , my predecessor in the appellate order number appeal no,CIT(A)-13/Addl CIT 7(2)/185/09-10 dated 26/10/2010 has given a fact finding in following manner

.....Thus, it is clear that these bonds are not mandatorily convertible into shares. As such the nature of these FCCB bonds is in the nature of debentures / borrowed funds and not share capital. Accordingly the A.0 's contention that the same is capital expenditure is not maintainable." Thus , from above it is clear that the

nature of expense is revenue. However the facts and circumstances as discussed above in context of interest expense is equally applicable in this case also ,Therefore in my considered opinion, part of the issue expense also needs to be disallowed in ratio of interest disallowed to interest claimed. The A.O is to take action accordingly. This ground of appeal is also accordingly dismissed with direction as above. As regards the contention that the deduction may be allowed u/s 57(iii) the same is irrelevant as the income is assessed as business income. Further regarding the contention of the appellant that the documents etc were not confronted to him, this ground is already adjudicated against B of the appeal and are not found tenable.. The grounds of appeal are accordingly dismissed with the direction as above."

Since the facts in this year are exactly same as in earlier year therefore the grounds of appeal are dismissed in line with the discussion and decision given in the appellate order for A.Y 2008-09 in the case of the appellant in appeal number CIT(A)/146/14-15 dated 28/12/2015.The A.O is to work out the disallowance ,if any accordingly.

From the above order of Ld. CIT(A), we notice that the findings of Ld. CIT(A) is totally based on the decision given in the appellate order passed by Ld. CIT(A) for AY 2008-09.

On confronting the said factual position, Ld. AR denied this fact and submitted that the orders passed by Ld. CIT(A) in the present case are not actually based on the facts contained in the order in assessee's own case for AY 2008-09 in Appeal No. CIT(A)/146/14-15. In order to support his arguments, Ld. AR relied upon the orders passed by the Coordinate Bench of Hon'ble ITAT in ITA No. 1000/Mum/16 and 1076/Mum/16 passed on 12.05.17 in assessee's own case for AY 2007-08.

From the perusal of the orders passed by the Coordinate Bench of Hon'ble ITAT in assessee's own case as well as material placed on record, we find that these orders were not available before the AO or Ld. CIT(A). Moreover the order giving effect to CIT(A)'s order dated 25.05.16 were also not available before Ld. CIT(A). This fact has also been admitted by Ld. AR during the course of arguments.

Be that as it may, since there are factual errors in the orders passed by Ld. CIT(A) and moreover the orders of the Coordinate Bench of Hon'ble ITAT in assessee's own case were also not available before the AO or the Ld. CIT(A) while passing the impugned orders.

Therefore, considering the interest of justice, we set aside the order of Ld. CIT(A) and remit the matter back to the file of AO with a direction to pass afresh order of assessment after taking into consideration the orders passed by the Coordinate Bench of Hon'ble ITAT in ITA No. 1000/Mum/16 & 1076/M/16 in assessee's own case for AY 2007-08 or any other documents which may be produced or called for.

Before parting, we may make it clear that our decision to restore the matter back to the file of AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the AO independently in accordance with law. Resultantly these grounds raised by the revenue **are allowed for statistical purposes.**

Ground No. 2 to 4

5. These grounds raised by the revenue are general in nature, thus requires no specific adjudication.

6. In the net result, the appeal filed by the revenue stands **allowed for statistical purposes.**

Order pronounced in the open court on 28th Feb, 2018.

Sd/-

(R. C. Sharma)

Sd/-

(Sandeep Gosain)

लेखासदस्य / Accountant Member न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.02.2018

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai