

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI**

**BEFORE SH. G.D. AGRAWAL, PRESIDENT
AND
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.1998/Del/2016
(A.Y.: 2011-12)**

DLF Utilities Ltd. 9 th Floor, DLF Centre, Sansad Marg New Delhi	Vs.	DCIT Circle-7(1) New Delhi
PAN : AAACN3199A		
(Appellant)		(Respondent)

**ITA No. 2566/Del/2016
(A.Y. : 2011-12)**

JCIT (OSD) Circle-7(1), 403, C.R.Building I.P.Estate New Delhi	Vs.	DLF Utilities Ltd. 9 th Floor, DLF Centre, Sansad Marg New Delhi
(Appellant)		(Respondent)

Assessee by : Sh. R.S.Singhvi, Sr. DR
Revenue by : Ms. Ashima Neb, Sr. DR
Date of hearing : 27.06.2018
Date of pronouncement : 28.06.2018

ORDER

PER BENCH :

ITA No. 1998/Del/2016 is the assessee's appeal against order dated 26.02.2016 passed by the Ld. CIT (Appeals)-3, New Delhi for

assessment year 2011-12 whereas ITA No. 2566/Del/2016 is the department's cross appeal for the year.

2. The brief facts of the case are that the assessee company was engaged in the business of generation of power through gas turbines and gas engines, running of multiplex theatres, distribution of natural gas, providing facility management services and real estate development. The return was filed declaring a loss of Rs. 4,11,60,55,330/-. The case was selected for scrutiny under CASS. During the course of assessment proceedings, the AO noted that during the year the assessee had taken secured and unsecured loans aggregating to Rs. 16,13,53,80,970/- on which interest of Rs. 43,04,42,633/- had been paid. The AO also noted that there were investments and interest free loans and advances and capital work in progress which were financed from the borrowed funds whereas the assessee's fund, including share capital and reserve & surplus, was Rs. 2,59,78,94,150/-. The AO was of the view that since the assessee had used borrowed funds for investments, capital work-in-progress and other loans and advances, the provisions of section 36(1)(iii) were to be invoked. The AO proceeded to make a disallowance of Rs. 2,75,11,416/- u/s 36(1)(iii) of the Act. Further,

the AO also made a disallowance of Rs. 9,65,734/- u/s 14A of the Act.

2.1 The assessee approached the Ld. CIT (A) against these disallowances. The Ld. CIT (A) deleted the disallowance made u/s 36(1)(iii) of the Act but partly upheld the disallowance u/s 14A of the Act. Now, the department is in appeal challenging the deletion of disallowance of Rs. 2,75,11,416/- made by the AO u/s 36(1)(iii) of the Act whereas the assessee is in appeal against the disallowance of Rs. 1,84,996/- sustained u/s 14A of the Act.

3. The Ld. Authorised Representative submitted that as far as the department's appeal challenging the deletion of disallowance u/s 36(1)(iii) of the Act was concerned, the issue is covered in favour of the assessee by order of ITAT Delhi Bench in assessee's own case for assessment year 2008-09 in ITA no. 4348/Del/2012.

3.1 With respect to the assessee's appeal challenging the upholding of disallowance u/s 14A of the Act, the Ld. Authorised Representative submitted that the assessee wished to withdraw the appeal in view of the smallness of amount with liberty to agitate this issue in other assessment years if the issue so arose.

4. The Ld. Sr. Departmental Representative, with respect to the department's appeal, read out extensively from the assessment order and supported the findings of the AO with respect to the disallowance u/s 36(1)(iii) of the Act. The Ld. Sr. Departmental Representative vehemently argued that the issue was not covered by the order of the ITAT in assessment year 2008-09 as facts have to be examined for each assessment year on a stand-alone basis.

4.1 With respect to the assessee's prayer for withdrawal of its appeal, she had no objection.

5. We have heard the rival submissions and have also perused the material on record. As far as the issue of disallowance of interest u/s 36(1)(iii) of the Act is concerned, we find that the Ld. CIT (A) has discussed the issue at length in paragraph 3.2 of the impugned order wherein he has given a categorical finding that the loans and advances include investment in immovable property which was part of the business activity of the assessee. It has been further recorded by the Ld. CIT (A) that the investment in the partnership firm was made exclusively for the purpose of the business. It has also been noted by the Ld. CIT (A) that the advances recoverable and forward-cover receivable included in the

advances are business advances and have been given to suppliers with whom regular business transactions are under taken. Similarly with respect to the advance given to DLF Ltd., the Ld. CIT (A) has noted that the same has also been given for the purpose of business. The Ld. CIT (A) has also noted that apart from these advances, there were other advances also but on which interest has duly been charged by the assessee. The Ld. CIT (A) has also placed reliance on the judgment of the Hon'ble Apex Court in the case of S.A. Builders Ltd. reported in 288 ITR 1 wherein the Hon'ble Apex Court had held that an expenditure may not have been incurred under any legal objection but yet it is allowable as a business expenditure if it was incurred on the grounds of commercial expediency. We note that the Hon'ble Apex Court has also observed that 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 Ld. CIT (A) has also referred to the judgment of Hon'ble Delhi High Court in the case of CIT vs. Dalmia Cement (Pvt.) Ltd. reported in 254 ITR 377 wherein it had been held by the Hon'ble High Court that once it was established that there was a nexus between the expenditure and

the purpose of business, the revenue cannot justifiably claim to put itself in the armchair of the businessman and take up the role to decide as to how much is reasonable expenditure having regard to the circumstances of the case. Thereafter, the Ld. CIT (A) has given a categorical finding that in the instant case the loans and advances have been given on account of commercial expediency. The Ld. Sr. Departmental Representative could not point out any factual inaccuracy in the findings of the Ld. CIT (A) nor could she point out how the impugned order was not legally sustainable. Accordingly, we find no reason to interfere with the findings of the Ld. CIT (A) on this issue and we dismiss the grounds raised by the department.

5.1 Thus, the appeal of the department stands dismissed.

6. As the Ld. AR has submitted that he wishes to withdraw the assessee's appeal due to smallness of amount, we accede to his request and give permission for the withdrawal of the appeal. We also grant liberty to the assessee to raise identical ground in other assessment years, should the need so arise. Accordingly, the appeal of the assessee stands dismissed as withdrawn.

7. In the final result the appeal of the department as well as the assessee stand dismissed.

(Order pronounced in the open court on 28th June, 2018).

Sd/-

(G.D.AGARWAL)
PRESIDENT

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Date: 28.06.2018

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Copy of order to: -

- 1) The Appellant;
 - 2) The Respondent;
 - 3) The CIT;
 - 4) The CIT(A)-, New Delhi;
 - 5) The DR, I.T.A.T., New Delhi;
- True Copy

By Order

ITAT, New Delhi

