

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI R.S. SYAL, HON'BLE VICE PRESIDENT
&
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No. 5681/Del/2015
(Assessment Year: 2010-11)**

Matrix Cellular International Services Ltd. 7-Khullar Farms, Mandi Raod, Mehrauli, New Delhi. AAECM5169M	vs	DCIT Circle 16(2) C.R. Building, New Delhi.
APPELLANT		RESPONDENT

Assessee by	Sh. A.K. Khanna, CA
Revenue by	Ms. Shefali Swaroop, CIT (DR)

Date of Hearing	01.10.2018
Date of Pronouncement	03.10.2018

ORDER

PER SMT. BEENA A. PILLAI, J.M.

Present appeal has been filed by assessee against final assessment order passed by Ld. DCIT, Circle 16 (2), New Delhi for assessment year 2010-11 on the following grounds of appeal:

- 1. "In the Assessment Proceeding, the assessee had contended that no disallowance u/s 36(1)(iii) can be made for interest of Rs. 36,55,636/- on advance of Rs. 1,16,83,080/- to Mrs. Urvashi Kaur on the ground that this amount has been paid out of Interest free Debentures of Rs. 50 crores issued by the Company, which can be verified from the financials of the company. The AO didn't consider the submission of the assessee.*

2. *Mrs. Urvashi Kaur is in the business of Fashion Designing and the Advance was paid to her for Designing, making and supplying of uniform for the employees of the company. But due to high financial losses by the company and due to down term of the Indian and Global Economy, it was decided to save on the expenses of uniform. Therefore, the idea of uniform was set aside. If the advance was for business purpose, then Section 36(1)(iii) of Income Tax Act, 1961 does not empowers the AO to disallow interest paid by the company.*
3. *The Assessing Officer disallowed interest of Rs. 36,55,636/- on the wrong ground that DRP vide order dated 16.12.2014 had quantified the disallowance of Rs. 36,55,636/-, which is against the fact of the case. The DRP had directed the Assessing Officer to compute disallowance on proportionate basis and had not quantified any disallowance in its order.*
4. *The Assessing Officer in order u/s 143(3) of I.T. Act wrongly calculated disallowance of interest of Rs. 36,55,636/- on advance of Rs. 1,16,83,080/- taking secured loan of Rs. 11,45,27,582/- instead of correct loan of Rs. 25,72,25,496/- which consist of secured loan of Rs. 23,84,01,829/- and unsecured loan from bank & NBFC of Rs. 1,88,23,667/-. As appearing in schedule C & D of the financials.*

So amount disallowed as interest by Ld. Dy. CIT is bad in law and we, therefore, pray your honour to delete the disallowance made of Rs. 36,55,636/-.”

2. Brief facts of the case are as under:

Assessee is a company engaged in the business of telecommunication and other related services. Return for year under consideration was filed on 27/09/10, declaring total income of Rs.1,31,944/-. The case was selected for scrutiny and notice under section 143 (2) was issued on assessee. In response to

notices issued, assessee filed required documents as called for by Ld. AO. Ld. AO observed that assessee had entered into international transaction, because of which reference was made to Transfer Pricing Officer. Apart from making adjustment in Transfer Pricing issues, Ld.AO observed that assessee has incurred financial expenses of Rs.3,58,33,289/- in the form of interest payment to bank, during financial year relevant to assessment year under consideration. Ld. AO observed that assessee has extended interest free advances of Rs.1,16,83,080/- to Mrs. Urvashi Kaur, wife of Director of assessee. Ld. AO further observed that Mrs. Urvashi Kaur was a shareholder with assessee, holding 15, 00, 000 shares during assessment year 2010-11 and, therefore, Ld. AO termed it to be related party transaction, under section 40A(2)(b) of the Act. Ld. AO, accordingly, show-caused assessee to explain details of advances given in subsequent assessment year. In reply to show cause, assessee vide letter dated 24/02/14 submitted that Mrs. Urvashi Kaur was a fashion designer and advance was given to her since assessee was planning for a common uniform for all staff. Later on, as assessee was in losses, idea of common uniform was dropped and money paid to Mrs. Urvashi Kaur was recovered in subsequent assessment year. Ld. AO disagreeing with explanation offered by assessee, made disallowance of Rs.1,16,83,080/-.

3. Aggrieved by order of Ld. AO, assessee raised objections before DRP. DRP decided the issue, by observing as under:

“15.0. Finding:

DRP has duly considered arguments of the assessee. The panel has noted that the AO in his draft assessment order has sought to disallow proportionate interest under section 36 (1) (iii) of the Act but has disallowed the entire advance given by assessee to Mrs. Urvashi Kaur. The panel, therefore, direct the AO to compute disallowance of interest on proportionate basis. The objection is accordingly disposed of.”

4. Ld. AO then while passing final assessment order computed proportionate disallowance on advance at Rs.36, 55, 636/-.

5. Aggrieved by final assessment order, assessee filed appeal before us.

6. The only issue raised by assessee is in respect of the disallowance made by Ld. AO under section 36 (1) (iii) of the Act. We are, therefore, disposing of all the grounds of appeal together as under:

Ld.AR submitted that assessee was having substantial funds which can be seen from audited balance sheet. Referring to page 63 of appeal set, Ld.AR submitted that assessee had surplus interest free funds in the form of share premium, received during the year, on conversion of 3,50,00,000 debenture equity shares at premium of Rs.139.70 per share. Ld. AR thereafter referred to schedule B and D at page 65 of appeal set wherein the details of interest rate debentures and total interest-free funds as on 31/03/09 and 31/03/10 has been mentioned. Ld. AR submitted that assessee had taken interest-bearing loan of Rs.23,84,01,829/- as per schedule C of balance sheet and had given interest-free advance of

Rs.1,16,83,083/- to Mrs. Urvashi Kaur. He submitted that at all point of time assessee had adequate non-interest-bearing funds by way of share capital and reserves.

On the contrary Ld. DR relied upon the decision of authorities below. She submitted that section 36(1) (iii) relates to the amount of interest paid on capital borrowed for the purpose of business, profession and not for advancing interest-free amounts to related parties.

7. We have perused the submissions advanced by both the sides and the light of the records placed before us.

8. Admittedly interest-free funds have been advanced to related party by assessee. However, on perusal of balance sheet and schedule to balance sheet, it is observed that assessee had adequate non-interest-bearing funds by way of share capital and reserve, which was more than Advance paid to Mrs. Urvashi Kaur, amounting to Rs.1,16,83,070/-. No doubt assessee was maintaining bank account with mixed common funds, in which all deposits and withdrawals were made, Ld. AO has not made any specific instance in respect of direct nexus between borrowed funds and the advances made by assessee to Mrs. Urvashi Kaur. It is observed that Assessing Officer has made general observation without verifying the source established by assessee. Before us assessee explained the source of advance made to Mrs. Urvashi Kaur which could not be linked to borrowed funds, since assessee had sufficient capital at the relevant period of time. Thus, in our

considered opinion at the relevant period of time assessee was having adequate non-interest-bearing fund by way of share capital and reserve which is reflected from the balance sheet as well as the notes to audited account. We are, therefore, of the considered opinion that the entire addition made by Ld. AO deserves to be deleted. Accordingly grounds raised by assessee stands allowed.

9. In the result appeal filed by assessee stands allowed.

Order pronounced in the open court on 03/10/2018

Sd/-
(R.S. SYAL)
VICE PRESIDENT

Dated: 03.10.2018

*Kavita Arora

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	03.10.2018
Date on which the typed draft is placed before the dictating Member	03.10.2018
Date on which the typed draft is placed before the Other Member	03.10.2018
Date on which the approved draft comes to the Sr. PS/PS	03.10.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	03.10.2018
Date on which the fair order comes back to the Sr. PS/PS	03.10.2018
Date on which the final order is uploaded on the website of ITAT	04.10.2018
Date on which the file goes to the Bench Clerk	04.10.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	