

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “D” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and  
**Dr. A.L. Saini, Accountant Member**

**ITA No.1677/Kol/2016**  
Assessment Year :2010-11

Sri Tara Chand Daptry, 107, Maniktala Road, Kolkata-700 054 <b>[PAN No.ADQPD 6025 R]</b>	<b>V/s.</b>	ACIT, Circle-40, 3, Govt. Place West, Kolkata-700 001
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Soumitra Choudhury, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri R. Choudhury, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	13-08-2018
घोषणा की तारीख/Date of Pronouncement	12-11-2018

**आदेश /ORDER**

**PER S.S.Godara, Judicial Member:-**

This assessee's appeal for assessment year 2010-11 challenges correctness of Commissioner of Income Tax (Appeals)-13, Kolkata's order dated 31.05.2016, passed in case No.305/CIT(A)-13/Cir-45/Kol/2014-15, in proceedings u/s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's sole substantive ground seeks to challenge correctness of both the lower authorities' action disallowing its interest claim of ₹12,16,614/- u/s 36(1)(iii) of the Act. The CIT(A)'s detailed discussion *qua* the instant issue reads as under:-

"6. I have gone through the contention of the assessee, the order passed by the AO and the submissions made by the Appellant. The decision of this appeal is given as under:-

In this case the AO disallowed interest of Rs.12,16,6144/- on the ground that unsecured loan amounting to Rs.1,33,67,163/- was not used for business purpose. The appellant deployed the same in various investment which are as under:-

*'Interest of Rs.12,16,614/- on unsecured loans amounting to Rs.1,33,67,163/- not allowable being not for the purpose of business or profession.*

*Assessee has paid interest as above and has made investments as under as per audited balance sheet of the concern M/s TTD industries of which assessee is the proprietor.*

<i>Investment</i>	<i>Amount</i>
<i>Real estate</i>	<i>13652627</i>
<i>Ruchi reality holdings Pvt Ltd</i>	<i>2156009</i>
<i>HDFC AMC Ltd</i>	<i>1750000</i>
<i>Shares in companies</i>	<i>200172</i>
<i>PPF Account</i>	<i>631846</i>
<i>ASLN &amp; AKALIMATA</i>	<i>500000</i>
<i>Total</i>	<i>18890654</i>

*The appellant has replied that there was no alleged investment of Rs.1,88,90,654/- and due to capital adjustment those asset has been shown in asset and two asset purchased and advance of Rs.1,33,52,627/- with a motive to make profit by hence ultimately it was sold in the next financial year and eared profit.*

*The AO found that the explanation was not satisfactory hence disallowance was made.*

*During the course of appellate proceeding the appellant submitted balance sheet and his submission. As per his submission during the course of assessment proceeding on 29-03-2003 it was stated that all the investment were not made from borrowed capital. The investments were made in the past years. He further submitted that the appellant wanted to earn profit therefore investment was made in two real estate property to the tune of Rs.1,58,08,636/- with motive to earn profit. Therefore, the said interest should be allowed as a business expenditure.*

*In this regard the balance sheet of the appellant was perused. The perusal of the balance sheet of the appellant shows that the appellant has shown cash in bank to the tune of Rs.2,02,10,038/- in the Royal Bank of Scotland and investment as per schedule-I has been shown to the extent of Rs.1,88,90,0654/-. The appellant did not submit any cash flow statement which can through any light that the investment were made out of his surplus fund. It cannot be investment from his surplus fund too because capital in the balance sheet is shown to the tune of Rs.1,35,17,700/- only, whereas in the case of asset side closing stock was to the tune of Rs.2.6crore and sundry creditor was shown to the tune of Rs.2.4 crore and cash at bank is more than 2.5 crore has been*

*shown. This clearly shows that the appellant has not used his surplus fund for investment. It was borrowed fund which has been used for investment purpose. The appellant has submitted that the asset has been sold in subsequent year on account of which he has earned profit. It was gathered from him during the appellate proceeding that subsequent sale has been shown as long term capital gain. The appellant was asked as how he can claim business expenses once he shown capital gain on sale of those investment against which interest has been claimed. No argument or suitable explanation was given. Considering the fact that the appellant has not submitted any cash flow statement which can through any light that the investment was made out of surplus fund. Perusal of balance sheet shows that assessee has parked his found in cash at bank and also in closing stock & fixed asset at multifold in comparison to his surplus fund which is shown as a capital. Once it is concluded that the appellant failed to clarify and substantiated its claim that investment were not made out of borrowed fund, the interest on investment cannot be allowed. Similarly the appellant own action of showing long term capital gain on sale of these investment, subsequently makes it clear that it cannot be allowed as a business expenditure. considering the above fact the disallowance is hereby upheld and the ground of the appeal is dismissed.”*

3. We have heard rival contentions against and in support of the impugned disallowance. Paper book comprising of assessee's balance-sheet as on 31.03.2009 statement of unsecured loan, trading and profit and loss account as well as balance-sheet as on 31.03.2008 of proprietorship business concern M/s TTD Industries, the very documents as on 31.03.2009 for the said concern, general ledger account from 01.04.2009 to 31.03.2010 and audited accounts as on 31.03.2010 stand perused. It has come on record that assessee had shown cash amount in his bank to the tune of ₹2,02,10,038/- as against investment of ₹18,90,654/- only meaning thereby that the assessee's non-interest bearing fund exceed non-business investments. It has further come on record that said investments have been made / accepted in assessment year 2008-09 as against in the impugned assessment year. All these clinching aspects have gone unrebutted during the course of hearing. We quote hon'ble Bombay high court's landmark decision in *CIT vs. Reliance Utilities & Power Ltd.* (2009) 313 ITR 340 (Bom) to conclude that necessary

presumption in such case is that of investment from non-interest bearing funds only. This taxpayer's sole substantive ground is allowed therefore.

4. This assessee's appeal is allowed.

Order pronounced in the open court 12/11/2018

Sd/-  
(लेखा सदस्य)  
(Dr. A.L. Saini)  
(Accountant Member)  
Kolkata,  
\*Dkp, Sr.P.S

Sd/-  
(न्यायिक सदस्य)  
(S.S.Godara)  
(Judicial Member)

दिनांक:- 12/11/2018 कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Sri Tara Chand Daptry, 107, Maniktala Rd. Kolkata-54
2. प्रत्यर्थी/Respondent-ACIT, Cir-40, 3, Govt. Place West, Kolkata-700001
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।