

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD 'D' BENCH, AHMEDABAD**

[Coram: Justice P P Bhatt, President and Pramod Kumar, Vice President]

ITA No. 3475/Ahd/2016
Assessment Year: 2010-11

Inox Leisure Limited **Appellant**
*2nd Floor, ABS Towers,
Old Padra Road, Baroda-390007
[PAN : AAACI 6063 J]*

Vs.

Dy. Commissioner of Income-tax **Respondent**
Circle 1 (1)(2), Baroda

ITA No. 142/Ahd/2017
Assessment Year: 2010-11

Asstt. Commissioner of Income-tax **Appellant**
Circle 1(1)(2), Baroda

Vs.

Inox Leisure Limited **Respondent**
*2nd Floor, ABS Towers,
Old Padra Road, Baroda-390007
[PAN : AAACI 6063 J]*

Appearances by:

***S N Soparkar & Parin Shah, for the assessee
Vinod Talwani, for the Revenue***

Date of concluding the hearing : 31.10.2018
Date of pronouncing the order : 16.11.2018

O R D E R

1. These cross-appeals are directed against the order dated 31st October 2016 passed by the learned CIT(A)-1, Vadodara in the matter of assessment under section 143 (3) r.w.s. 263 of the Income-tax Act, 1961, for the assessment year 2010-11.
2. We will first take up the appeal filed by the assessee. In ground no.1, the assessee has raised the following grievances:-

"In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals)-I, Baroda, erred in confirming disallowances and additions and the observations made by the assessing officer in the assessment order in respect of the following points. He erred in:

1. *In respect of disallowance u/s 14A:*

- a) *In confirming the additional disallowance of 20,62,097/- u/s 14A read with Rule 3D by computing administrative expenses as per clause (iii) of Rule 8D is as per direction given by the Pr. CIT. He ought to have deleted the disallowance made by the assessing officer.*
- b) *In not appreciating that the company has not earned dividend on this investment and also the said company is subsequently amalgamated with the appellant company and hence no disallowance is required u/s 14A. He ought to have appreciated that in view of the aforesaid facts, no disallowance u/s 14A is required."*

3. On this issue, learned Counsel for the assessee submits that the matter is now covered by Hon'ble jurisdictional High Court's judgment in the case of CIT Vs Corrtch Energy Pvt Ltd [(2015) 372 ITR 97 (Guj)] inasmuch as the assessee did not have any exempt income in the present assessment year and that in a situation in which the assessee does not have any income exempt from tax, the question of disallowance under Section 14A does not arise. Learned Departmental Representative dutifully relies upon the stand of the authorities below.

4. Respectfully following the esteemed views of the Hon'ble jurisdictional High Court in the case of Corrtch Energy Pvt Ltd (supra) and in view of the undisputed factual position that there was no exempt income in the hands of the assessee in the relevant previous year, we uphold the plea of the assessee and delete the impugned disallowance of Rs.20,62,097/- u/s. 14A. The assessee gets the relief accordingly.

5. Ground no.1 is thus allowed.

6. In ground no.2, the assessee has raised following grievance:-

"In the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals)-I, Baroda, erred in confirming disallowances and additions and the observations made by the assessing officer in the assessment order in respect of the following points. He erred.....

2. *In confirming disallowance of interest expenditure of Rs 63,52,554/- as capital expenditure on part of loan which was utilised for the purpose of the running business of the company."*

7. So far as this grievance of the assessee is concerned, the relevant material facts are like this. During the course of impugned assessment proceedings, as a result of revision order passed by the Pr.CIT, the Assessing Officer noted that the assessee had

borrowed Rs.20 crores from Citi Bank and that there is no evidence that it has not been utilized for making capital expenses. It was in this backdrop that the Assessing Officer proceeded to disallow the interest as a capital expenditure by observing as follows:-

“Regarding capitalization of interest, the contentions raised by the assessee vide its written submissions are not acceptable in view of the detailed reasons as given in the foregoing paras and also the assessee has not furnished any details nor evidences in support of its claim that the money borrowed was utilized for financing its long term requirements including refundable long term security deposit to the mall owners. In view of the above, interest payment of Rs. 63,63,355/- as debited in the Profit & Loss account is disallowed out as revenue expenditure and the same is treated as capital expenditure. As the assessee has not given evidence of put to use of the relevant assets, the depreciation is not being allowed in the year under consideration.”

8. Aggrieved, the assessee carried the matter in appeal before the CIT(A). In the proceedings before the learned CIT(A), it was pointed out that the assessee had already capitalized the interest of Rs.9,37,926/- which pertained to the capital work. As regards the borrowing from the Citi Bank, it was for the specific purpose of meeting long term requirements including “*refundable long term security deposits to be given to mall borrowers and pre-operative expenses*” in respect of multiplexes at Madurai, Coimbatore, Bubli, Jalgaon, Thane (Koram – Kalpataru), Pune (G Crop) and Jaipur (Central-Kshitij). It was thus clear, according to the assessee, the loan was not taken to the new properties but for existing properties which were already completed. The CIT(A), however, rejected the said submissions and decided the issue against the assessee by observing that the loan was for the purpose of acquisition of multiplexes in different malls and, therefore, no part of interest can be allowed as deduction in computation of income.

9. Assessee is aggrieved and is in further appeal before us.

10. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

11. As learned Counsel has categorically pointed out, the borrowing is specifically in respect of requirements of the existing projects and it is not in dispute, as evident from the material placed before us, that there is any diversion from such end use of borrowings. In any event, the investment in the new projects is far in excess of the non-interest bearing funds available to the assessee, and, therefore, a presumption, in the absence of any specific details to the contrary, to be taken is that the investment in the

new projects is out of the interest bearing funds. This approach has been duly recognized in the Co-ordinate Bench decision in the case of CIL Nova Petrochemicals Ltd Vs. DCIT (ITA Nos. 2875 & 2876/Ahd/2014, vide order dated 10.07.2018). One more Co-ordinate Bench of this Tribunal, in the subsequent year, in the case of same assessee (ITA No.388/Ahd/2016, order dated 13.08.2018) has also adopted the same approach and observed as follows:-

“With the assistance of the Id. representatives, we have gone through the record carefully. The assessee has placed on record annual report containing the balance sheet and other details. The assessee has reserves and surplus of more than Rs.48 crores. It has internal accrual during the year which can take care of such investments. The Id. counsel for the assessee took us through net cash flow from operations available on page no.20 of the annual report which suggest that the assessee has net cash flow Rs.16,55,474/-. Thus, considering interest free funds available with the assessee in the shape of share capital, reserves and surplus, as well as net revenue from operations, we are of the view that alleged investment in WIP could be assumed as carried from these surplus funds. No notional interest ought to be calculated for capitalization. In order to fortify ourselves, we would like to refer to the decision of Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities & Power Ltd., 313 ITR 340 (Bom). In view of the above, this ground of appeal is allowed.”

12. The factual position about interest free funds being far from excess of the funds deployed in the new projects and absence of any factual findings about the diversion of funds is not even disputed by the learned Departmental Representative. In these circumstances, in our considered view, the disallowance of interest on the borrowings from the Citi Bank, which is solely based on the assumption that the borrowings from the Citi Bank have been used in the new projects – something which is not burnout from the material on record, is devoid of legally sustainable basis. Learned CIT(A)'s conclusions are based on surmises and conjectures. In the light of these discussions, and bearing in mind entirety of the case, we direct the Assessing Officer to delete the impugned disallowance of Rs.63,52,554/-. Assessee gets the relief accordingly.

13. Ground no.2 is thus allowed.

14. In the result, the appeal of the assessee is allowed.

15. We now take up the appeal filed by the Revenue. Grievance raised by the Assessing Officer is as follows:-

“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the additions made on account of disallowance

u/s 14A of the Act in computation of Book Profit u/s 115JB of the Act is not as per law without appreciating that the amount disallowable under section 14A is covered under clause (f) of Explanation 1 to section 115JB(2) and, thus, said amount has to be added back while computing amount of book profits."

16. In view of the fact that the disallowance under Section 14A itself has been deleted vide our order in assessee's case vide appeal ITA No.3475/Ahd/2016 (supra), this issue is now wholly academic and infructuous. The conclusions arrived at by the learned CIT(A) is in anyway correct because the disallowance under section 14A itself stands deleted and, for this reason, we are not required to interfere in the matter. Learned representatives do not dispute the position that in the event of disallowance under Section 14A being deleted, the above grievance will be academic, but the relief granted by the CIT(A) will nevertheless be justified for the reason that the very foundation of impugned adjustment ceases to hold good in law. We, therefore, decline to interfere in the matter.

17. In the result, the appeal filed by the Assessing Officer is dismissed.

18. To sum-up, while the appeal of the assessee is allowed, the appeal of the Assessing Officer is dismissed. Pronounced in the open court today on the 16th November, 2018

Sd/-

Justice P P Bhatt
(President)

Ahmedabad, the 16th day of November, 2018

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Copies to: (1) The appellant
(2) The respondent
(3) Commissioner
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

Sd/-

Pramod Kumar
(Vice President)

By order

TRUE COPY

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad