

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1084 to 1087/PUN/18
निर्धारण वर्ष / Assessment Years : 2003-04 to 2006-07

Hem Kiran Diesels,
1227, E, Rajaram Road,
Kolhapur – 416 008

Vs. ACIT, Central Circle,
Kolhapur

PAN : AABFH6497B

(Appellant)

(Respondent)

Appellant by
Respondent by

Shri M.K.Kulkarni
Shri M.K. Verma

Date of hearing 08-01-2019
Date of pronouncement 09-01-2019

आदेश / ORDER

PER R.S.SYAL, VP :

These four appeals by the assessee relating to the assessment years 2003-04 to 2006-07 involve a common issue.

For the sake of convenience, we have clubbed such appeals for disposal by this consolidated order.

2. The only issue pressed by the ld. AR in respect of these appeals is against the confirmation of disallowance of interest,

which was claimed by the assessee as deductible u/s. 36(1)(iii) of the Income-tax Act, 1961 (hereinafter also referred to as 'the Act').

A.Y. 2003-04 :

3. Briefly stated, the facts for the assessment year 2003-04 are that the original assessment in this case was completed u/s.143(3) of the Act, in which the disallowance of interest was made, which was claimed by the assessee as deductible u/s.36(1)(iii). The matter finally travelled to the Tribunal, which remitted the matter to the AO for *de novo* adjudication. In the fresh proceedings, the AO noted that the assessee advanced various sums to its two related concerns, namely M/s. Jaykumar Patil Transports Pvt. Ltd. – Rs.46,35,793/- and M/s. Ghatge Patil & Sons – Rs.11,14,495/-. He noted that the assessee did not charge any interest on these advances whereas it was paying interest on certain loans obtained by it. On being called upon to explain as to why interest should not be disallowed, the assessee tendered an explanation which has been reproduced on page 4 onwards of the assessment order. The assessee mainly contended that the loans were advanced

to the above sister concerns during the period 1994 to 1997 when cash profits were much more than the amount of loans advanced. The AO made disallowance of interest @ 16% of advances made to sister concerns by noticing that during the years in question the amount of partners' capital was less than the amount of advances given to the sister concerns. The Id. CIT(A) sustained the disallowance, against which the assessee has approached the Tribunal.

4. We have heard both the sides and gone through the relevant material on record. It is seen that the loans were advanced to the sister concerns during the period 1994 to 1997. The assessee stated in writing before the AO, which has been reproduced in the assessment order, that cash profits during the above years were much more than the amount of advances given to the sister concerns. In the year 1996-97, the assessee paid Rs.20.11 lakhs to M/s. Jaykumar Patil Transports Pvt. Ltd. and Rs.3,08,168/- to M/s. Ghatge Patil & Sons as against the cumulative cash profits of Rs.61.25 lakhs and the total advances pending on 31-03-1998 at Rs.28.47 lakhs. During the year ending 31-03-1999, cash profits was Rs.11.02 lakhs and the total advances paid amounted to

Rs.30.35 lakhs against the cumulative cash profit up to 31-03-1999 at Rs.72.28 lakhs and the total advances amounting to Rs.58.82 lakhs. This shows that at the time of making advances to the sister concerns, the assessee was having sufficient cash profits/interest free funds available at its disposal. If in later years, capital account balance of the assessee has reduced *vis-à-vis* the amount of advances, no adverse inference can be drawn against the advances given when admittedly the amount of interest free funds in the shape of capital etc. were more than the advances, meaning thereby, that such advances were funded out of interest free funds. It is further relevant to mention, as stated by the Id. AR which has not been controverted, that the advances to the sister concerns were also in the course of business in as much as M/s. Jaykumar Patil Transports Pvt. Ltd. were transporting the goods sold by the assessee.

5. Section 36(1)(iii) provides for deduction of interest paid in respect of capital borrowed for the purpose of business or profession. The essence of this provision is that the interest should be allowed so long as the capital borrowed, on which such interest is paid, is used for the purpose of business or

profession. If, however, an assessee is having its own interest free surplus funds and such funds are utilised as interest free advances even for a non-business purpose, there cannot be any disallowance of interest paid on interest bearing loans. The Hon'ble Bombay High Court in *CIT vs. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom)*, has held that where an assessee possessed sufficient interest free funds of its own which were generated in the course of relevant financial year, apart from substantial shareholders' funds, presumption stands established that the investments in sister concerns were made by the assessee out of interest free funds and, therefore, no part of interest on borrowings can be disallowed on the basis that the investments were made out of interest bearing funds. The judgment of the Hon'ble Supreme Court in the case of *East India Pharmaceutical Works Ltd. Vs. CIT (1997) 224 ITR 627 (SC)* and also the judgment of the Hon'ble Calcutta High Court in *Woolcombers of India Ltd. Vs. CIT (1981) 134 ITR 219 (Cal)* also fortify this view. In view of the foregoing discussion, we are satisfied that the disallowance made by the AO has been wrongly sustained in the first appeal. We, therefore, order to delete the same.

A.Y. 2004-05 to 2006-07 :

6. Facts for the subsequent three assessment years under consideration, namely, 2004-05 to 2006-07 are admittedly *mutatis mutandis* similar to those for the assessment year 2003-04. Following the view taken hereinabove, we order to delete the sustenance of disallowance of interest.

7. In the result, all the appeals are allowed to this extent.

Order pronounced in the Open Court on 09th January, 2019.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 09th January, 2019
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals),-11, Pune
4. The Pr. CIT Central, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC" /
DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	08-01-2019	Sr.PS
2.	Draft placed before author	08-01-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
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11.	Date of dispatch of Order.		

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