

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.158/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Assistant Commissioner of Income Tax,
Circle-4, Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Prasanna Purple Mobility Solutions
Pvt. Ltd.
396, Shukrawar Peth, Near A D
School, S.P. College,
Pune-411 030.
PAN : AAACO9763H

.....प्रत्यर्थी / Respondent

Revenue by : Shri Pankaj Garg

Assessee by : Shri Nikhil Mutha

सुनवाई की तारीख / Date of Hearing : 22.01.2019

घोषणा की तारीख / Date of Pronouncement : 23.01.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the Revenue emanates from the order of Ld. CIT(Appeals)-3, Pune dated 05.09.2016 for the assessment year 2012-13 as per following grounds of appeal on record:

"1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the entire addition of Rs.91,60,470/- made on account of disallowance of interest expenses u/s.36(1)(iii) of the IT Act, ignoring the facts that the assessee has not submitted any documentary evidence to prove that interest free funds were available with it at the time(date) when the amounts were advanced to its sister concerns.

2. On the facts and circumstances of the case, the Ld.CIT(A) has erred in not appreciating the fact that the assessee had already made investments in fixed assets, other loans and advances and certain other investments as evidenced from the balance sheet and thus, the assessee was not having any owned/interest free funds to be given as loan to its 3 subsidiaries and to a partnership firm, 'Ramjyoti Travels' to the extent of Rs.4,78,96,456/- and Rs.1,78,35,466/- respectively.

3. The appellant craves leave to add, alter or amend any or all the grounds of appeal."

2. The brief facts in this case are that the assessee is a private limited company engaged in the business of Transportation. The company filed its return of income for the year under consideration on 30.09.2012 declaring total income at Rs. Nil. The said return was processed u/s.143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). Thereafter, the Assessing Officer passed scrutiny order u/s.143(3) dated 20.03.2015 determining total income at Rs.1,10,79,163/-. In the assessment completed, the Assessing Officer disallowed interest expenses amounting to Rs.9,16,470/- u/s.36(1)(iii) and certain expenditure u/s.37 of the Act @2% of the said expenses on ad-hoc basis.

2.1 That the Revenue has raised two grounds and both the grounds relate to the deletion of addition on account of interest expenses amounting to Rs.91,60,470/- u/s.36(1)(iii) of the Act.

3. During First Appellate proceedings, the Ld.CIT(Appeals) after considering the assessment order, facts of the case and submissions of the assessee observed that on factual parameters, the assessee was having adequate interest free funds and therefore, placing reliance on the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utility and Power Ltd. reported as 313 ITR 340 (Bom.) has provided relief to the assessee. The relevant portion of the Ld. CIT(Appeals)'s order is as follows:

“5.10. **Decision :-** I have perused the assessment order, submissions made by the appellant and the material on record. I find merit in the submission of the appellant. It is seen that AO in the assessment order disallowed the interest expenses of Rs.91,60,470/- u/s.36(1)(iii) of the Act by making a sweeping comments without even examining the notes given by the appellant with the accounts. The AO, in Para 4.2 of the assessment order, while disallowing the interest on interest free loans/advances given to the sister concerns held as under:

“In response to the above, assessee submitted ledgers of these subsidiary in the books of company. The submission of the assessee duly considered. It can be seen from submission that the assessee company has not justified the business purpose of expediency of the amount advance. The loan is given to its related parties. As stated above, the assessee company has huge interest burden. Since the assessee has failed to establish that the fund were utilized for the purpose of the business of the assessee, this same calls disallowances of proportionate amount of interest. Interest on borrowed money is allowed as a deduction from business, only if it satisfies the condition that it is for the purpose of business or profession. Where the money borrowed was diverted for giving interest free loans to subsidiaries, the proportionate interest attributable to such loans could be legitimately disallowed by the Assessing Officer. It was so held to in S A Builders Ltd. Vs. CIT [2004] 269 ITR 535 (P & H). The assessee in the present case has not be able to bring any material on record to indicate the purpose or the commercial expediency for advancing the aforesaid amount and the benefits accruing out of said advances is apparently not shown to have served any business purpose of the assessee. Thus when the assessee borrows money for purposes of advancing interest would not be eligible deduction u/s. 36(1)(iii) of the Act. Interest on borrowed capital if given as interest free advances without any justifiable reason is liable for disallowances.”

5.11 I find that the AO had neither looked into the appellant's account and also the notes and comments given along with the accounts for advances to group companies, as furnished before him during assessment proceedings and also subsequently before the undersigned vide page No. 83 of the paper book filed on 26.08.2016. It would be worthwhile to reproduce the same for the sake of convenience.....

“Notes on Advances to Group Companies

Prasanna Purple Mobility Solutions Pvt. Ltd. (PPMSPL) carries on business of operating city bus service under its own legal entity and through its subsidiaries as under:

- a) Operation of City bus service (under brand name Hop on Hop off) under Delhi Tourism through its subsidiary Purple UMTC Transit Pvt. Ltd. holding 74% equity holding.
- b) It also has 100% controlling stake in Dayajit Nimay Bus Logistics Pvt. Ltd. and in Ramajyoti Travels, a Partnership firm in which 99% equity is owned by PPMSL and 1% by its Director Mr. Prasanna Patwardhan. These companies operate city bus services in Indore.

- c) *PPMSPL owns 90% equity in Shree Mahakaleswar Travel Pvt. Ltd., Ujjain which operates City bus services in Ujjain.*

PPMSPL has advanced monies for the purpose of business operations to support and ensure continuity of operations and fulfill its contractual obligations with the authorities as under:

- 1) To Purple UMTC Transit Pvt. Ltd. : Net advances during the financial year 2011-12: Rs.33882.62/-.*
- 2) To Dayajit Nimay Pvt. Ltd. : Net advances during FY 2011-12: Rs.97,02,950/-*
- 3) To RJT : Net advances during FY 2011-12 : Rs.1,66,18,456/-*
- 4) To SMPTPL Ujjain : Net advances during FY 2011-12 : Rs.21,66,574/-*

All the above monies advanced are out of the Capital and not out of any borrowings/debt carrying interest charge.”

5.2 It is seen from the assessment order that the AO did not consider the aforesaid submission of the appellant and also did not examine the accounts vis-a-vis the contention of the appellant that there was sufficient interest free surplus balance with the assessee to the extent of Rs.34,03,68,623/- and also there was business expediency for advancing interest free unsecured loans to its sister concerns as well besides the fact that the loans availed from various banks were all for the purpose of vehicle purchase with funds being directly disbursed to the vendors. The appellant has given various charts calculating and establishing the fact that the loans were advanced by the appellant out of its own funds and not borrowed funds. It has specifically given the details regarding Reserve and Surplus available with it vis-a-vis the interest free advances given to the subsidiaries/sister-concerns establishing the fact that it had sufficient funds of its own from 'which the loans and advances were given to them. The appellant also by furnishing a chart of borrowing from the banks and utilization of the same directly for vehicle purchases had established the fact that the borrowed funds were utilized directly for the disbursement to the vendors. It, therefore, cannot be said that the appellant had on both the above scores failed to satisfy the conditions for invoking the provisions of section 36(1)(iii) of the Act for disallowances of proportionate interest on the interest free loans and advances given to the subsidiaries/ sister concerns. Nonetheless, the appellant could also establish its contention that there "was commercial expediency. On all the above pointed 3 categories contended by the appellant in its submission apparently have neither been looked into by the AO, least to say examined.

5.13 I find that the AO merely relied on the decision of the Punjab and Haryana High court in the case of S A Builder ltd. (supra) while disallowing proportionate interest simply stating that the appellant could not bring any material on record to indicate the purpose or the commercial expediency for advancing the interest free loans and the benefits accrued out of said advances was apparently not shown to have served any business purpose for the assessee. It appears that the AO himself made the observation as 'advances is apparently not shown to have served business purpose for the assessee', without even calling for any such details from the appellant or without any investigation resulting into such apparent decision on his part, bereft

of any factual analysis of the case of the appellant, in fact the Hon'ble Supreme Court decision in the case of S A Builder Ltd. Vs. CIT (Appeal 2007) 288 ITR 1 (SC) while deciding the issue relating to disallowances u/s.36(1)(iii) of the Act. In this said case the disallowances of interest to the extent of Rs.16,39,010/- made by the AO was set-aside by the CIT(A) holding that the interest paid by the assessee of which deduction was claimed was for business purposes and, therefore, the entire interest paid by the assessee should have been allowed as business expenditure. On appeal by the Department, the Appellate Tribunal upheld the view of the CIT(A), but the High Court allowed further appeal of the Department. On special leave petition (SLP), the Hon'ble Supreme Court held-

"i) It is manifest that the advance to the subsidiary became imperative as a business expediency in view of the undertaking given to the financial institution by the assessee to the effect that it would provide additional margin to the subsidiary to meet the working capital for meeting any losses. Subsequently, the assessee company had off-loaded its shareholding in the subsidiary to various company and at that time the assessee company not only refunded back the entire loan given to the subsidiary by the assessee but which was refunded with interest. In the year in which the interest was received, the same was shown as income and offered for tax.

ii) So far as the loans to the Directors are concerned, the assessee had a credit balance in the bank account when the said advance of Rs.34,00,000/- was given. The company had reserve/surplus to the tune of almost Rs.15,00,00,000/- and therefore, the assessee company could in any case utilize those funds for giving advances to its Directors."

On the basis of the aforesaid discussion, the Supreme Court allowed the appeal thereby setting aside order of the High Court and restoring order of the Appellate Tribunal wherein the appellate Tribunal had upheld the deletion order of the interest by the CIT(A).

5.14 I also find that the appellant has cited the decision of the Bombay High Court in the case of CIT Vs. Reliance utility and Power ltd. (supra) contending that it had sufficient funds available with it from which investments in loan were given to the sister concerns. S A Builder Ltd.'s case (supra) has also been referred to by the appellant distinguishing the same from the findings of the AO. On the other hand the same case has been cited referring to Supreme Court decision contending the commercial expediency of giving such loans to the sister concerns for running of there business for promoting the interest of appellants business for the purpose of hop-on and hop-off tourist buses in Delhi to promote tourism beside business in Indore, Ujjain for the intra-city transport services as per contract entered into various Municipal Corporation of the respective cities. I find the appellants contention of giving interest free advances to sister concerns as based on cogent reasoning. In this connection, it would be pertinent to refer some of the decision wherein the Hon'ble Courts held that provisions of section 36(1)(iii) for disallowances of interest on interest free advances given could not be invoked. The same are given as below -

- 1) CIT Vs. Neelkanth Synthetics and Chemicals P. Ltd. [2011] 330 ITR 463 (Bom.)*

In this case the Hon'ble Bombay High Court held that where the loan was taken to repay the liability of the sister concerns, interest of the same is to be allowed on ground of commercial expediency.

- 2) *CIT Vs. GOM Industry Ltd.*[2008] 299 ITR 0042 (MP)
- 3) *Jt. CIT Vs. ITC Ltd.* [2008] 299 ITR (AT) 341 (Kolkata) [SB]
- 4) *ACIT Vs. Bipin Sheetgrah (P) Ltd.* 33 DDH 006 Agra (Trib.)

In these cases , the Hon'ble Courts held that where amount borrowed was utilized to make interest free advance and where the transaction was genuine and for business purposes interest was allowable.

- 5) *CIT Vs. Prem Heavy Engineering Works P. Ltd.* [2006] 285 ITR 554 (All)
- 6) *D & H Sechron Electrodes Pvt. Ltd. Vs. CIT* [1983] 142 ITR 528 (MP)
- 7) *CIT Vs. Reliance Utilities and Power Ltd.* [2009] 313 ITR 340 (Bom.)

In these cases, it was held that where the assessee had adequate interest free funds by way of proprietary capital or by way of interest free deposit for customers, there is an inference that borrowed funds are not diverted for non business purposes. In such circumstances there can be no disallowances.

5.15 In view of the discussion in the foregoing paragraphs and also the facts of the appellant's case under consideration, and further the various judicial pronouncements on the issue of allow ability and the disallow ability of the interest u/s.36(1)(iii) of the Act, on account of interest free advances given to subsidiaries / sister concerns, which apparently are in favour of the appellant and as the AO could not obtain the details and analyze the same while deciding the issue against the appellant, I hold that the disallowance made u/s.36(1)(iii), being proportionate interest on the interest attributable to such advances, was not justified as per law. I therefore, delete the entire addition made of interest amount of Rs.91,60,470/-. Ground no.1 raised by the appellant is accordingly allowed.”

4. We have perused the case records and analyzed the facts and circumstances of the case. We find that the Ld. CIT(Appeals) has passed his decision on both factual matrix as well as judicial pronouncement in the case of CIT Vs. Reliance Utilities and Power Ltd. (supra.). The Hon'ble Bombay High Court has held that where the assessee had adequate interest free funds by way of proprietary capital or by way of interest free deposit for customers, there is an inference that borrowed funds are not diverted for non business purposes. In such circumstances there can be no disallowances.

5. Further, in the case of CIT Vs. Neelkanth Synthetics and Chemicals P. Ltd. reported as 330 ITR 463 (Bom.), the Hon'ble Bombay High Court has held that where the loan was taken to repay the liability of the sister

concerns, interest of the same is to be allowed on ground of commercial expediency. Furthermore, it is observed that the Assessing Officer could not obtain any details and analyze the same while deciding the issue against the assessee. Accordingly, we do not find any infirmity in the findings of the Ld. CIT(Appeals) and relief provided to the assessee is, therefore, sustained. Hence, grounds raised by the Revenue are dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced on 23rd day of January, 2019.

Sd/-
R.S. SYAL
VICE-PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 23rd January, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-3, Pune.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	22.01.2019	Sr.PS/PS
2	Draft placed before author	23.01.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		