

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'A', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No. 161/Hyd/2017
Assessment Year: 2012-13

Dy. Commissioner of Income-tax, Circle – 3(2), Hyd. vs. Soma Infrastructure Pvt. Ltd., Hyderabad.

PAN – AAMCS0598Q

Appellant

Respondent

ITA No. 262/Hyd/2017
Assessment Year: 2012-13

Soma Infrastructure Pvt. Ltd., Hyderabad. vs. Dy. Commissioner of Income-tax, Circle – 3(2), Hyd.

PAN – AAMCS0598Q

Appellant

Respondent

Revenue by: Smt. Nivedita Biswas
Assessee by: Shri V. Raghavendra Rao

Date of hearing: 30/01/2019
Date of pronouncement: 27/03/2019

ORDER

PER S. RIFAUR RAHMAN, AM:

These are cross appeals directed against the order of CIT(A) – 3, Hyderabad, dated, 07/11/2016 for AY 2012-13.

2. Brief facts of the case are that the assessee, engaged in the business of engineering consultancy services, filed its return of loss of Rs. 6,78,62,660/- for the AY 2012-13 on 30/09/2012. In scrutiny assessment u/s 143(3), dated 30/01/2015, the AO made the following disallowances:

1. Disallowance of interest u/s 36(i)(iii)
– Rs. 7,38,83,333/-
2. Disallowance u/s 14A
Rs. 5,08,86,768/-

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) deleted the disallowance u/s 14A and confirmed the disallowance of interest u/s 36(1)(iii) of the Act.

4. Aggrieved by the order of CIT(A), both the assessee and revenue are in appeal before us against the order of the CIT(A).

5. As regards disallowance of interest u/s 36(1)(iii), the ground of which is raised by the assessee in its appeal, the AO observed that on perusal of balance sheet of the assessee company as at 31/03/2012, it was noticed that the assessee had availed interest bearing funds/loans and paid interest of Rs. 14,94,47,101/- on such loans for the AY under consideration. He further observed that the company had advanced interest-free funds of Rs. 65.00 crore to M/s Beta Infratech Pvt. Ltd., the subsidiary company and Rs. 100 crore to M/s Soma Jabalpur Rewa Tollway Pvt. Ltd., the associate company of the assessee.

5.1 When the assessee was asked to explain why the interest on the loans/advances made to subsidiary company should not be disallowed out of interest expenditure as the same is not wholly and exclusively incurred for the purpose of business, the assessee submitted its explanation vide its letter dated 29/01/2015, which was extracted by the AO in his order at pages 2 & 3. The AO rejected the explanation of the by observing that the assessee has raised loans amounting to Rs. 200.00 crores and had debited financial charges of Rs. 14,94,47,101/- in the profit and loss account which leaves no

doubt that the loans/advances to subsidiary company has been made out of 'borrowed' funds. He opined that the deduction of interest on borrowing can be allowed only if the assessee fulfils the provisions of section 36(1)(iii) of the Act. In view of the above observations and also following few case law, the AO held that the interest claim of the assessee to the extent of interest attributable to investments is to be disallowed. The assessee submitted that the interest charged by banks on its loans was at 13% per annum and, therefore, the interest at the rate of 13% on the funds diverted for investment in loans which worked out to Rs. 7,38,83,333/- and the same was disallowed.

5.2 When the assessee preferred an appeal before the CIT(A), the CIT(A) confirmed the disallowance by observing as under:

"The appellant took interest bearing loan from ICICI bank, in turn passed on substantial amount to sister concerns interest free, these sister concerns interest free, these sister concerns did not carry out any work, again passed on the amounts to soma enterprises. In any case beta infra and SJRTPL did not carryout any activity, therefore the test of commercial expediency fails and therefore proportionate disallowance of interest made by AO is confirmed."

5.3. Before us, the Id. AR submitted that the bank loan is guaranteed by the parent company and its promoters. Loan was granted for the purpose of providing funds by way of debt and or through other modes to other project companies listed in the loan sanction letter which include Beta Infra Tech and M/s soma Jabalpur Rewa Toll Ways Pvt Ltd.

5.4 The Id. DR filed written submissions, in which, inter-alia, it was stated that borrower shall maintain direct/indirect shareholding of at least 26% in the project companies during the entire duration of the facility. As per the share holding

pattern of the group companies, the assessee company is having 15.11% of shares of Soma Toll Ways P. Ltd., to which Soma Jabalpur Rewa Tollway Ltd. is 100% subsidiary.

5.5 Considered the rival submissions and perused the material on record. We notice that the parent company is Soma Enterprises Ltd. and the holding company. It has following subsidiary companies:

1. M/s Soma Infrastructure Pvt. Ltd.,
2. M/s Soma Tollways Pvt. Ltd.
3. M/s Soma Highways Pvt. Ltd.
4. M/s Chennai Elevated Tollway Ltd.
5. M/s Adilabad Expressway Pvt. Ltd.
6. M/s Soma Hyderabad City Centre Pvt. Ltd.
7. M/s Soma Raipur City Centre Pvt. Ltd.
8. M/s Soma Andaman Resorts Pvt. Ltd.

and step-down subsidiaries are:

1. M/s Soma Energy Ltd.
2. Beta Infratech P. Ltd.
3. Soma Jabalpur Rewa Tollway Pvt. Ltd.(SPV).

From the above, it is clear that assessee is a subsidiary company and assessee has diverted the funds sanctioned by ICICI Bank to the step down subsidiaries i.e. Beta Infratech P. Ltd. and Soma Jabalpur Rewa Tollway Pvt. Ltd.(SPV).

5.6 We further notice that assessee is a company incorporated and active in providing consultancy services to its parent company i.e. Soma Enterprise Ltd. Assessee has no other business connection with the step down subsidiaries except related concern. The assessee was utilised by the parent company to source the funds from the bank after giving the required bank guarantee. The funds were utilized by the step down companies and we notice that assessee has advanced to M/s Beta Infratech as long term unsecured loan. The funds were utilized in the business for the purpose of making payment for fixed assets and capital work-in-progress.

At the same time, M/s Soma Jabalpur Rewa Tollway Pvt. Ltd. received the loan from the assessee and diverted the same to the holding company.

5.7. We further notice that the object of step down subsidiaries was to set up a continued cycle gas based power plant in Uttarakhand and the other step down subsidiary is SPV in which holding company holds 100% and set up for developing infrastructure on behalf of the holding company. It is clear from the above, the object of these step down subsidiaries are completely different to assessee and only connecting point is the holding company. Therefore, the funds sanctioned by the bank were utilized in other group companies on the direction of the holding company. These funds were not utilized for any purpose of the object of the assessee company. Hence, the exclusive utilisation of these funds were not for the purpose of the assessee's business and the expenditure of interest is not for the purpose of assessee's business and clearly for the purpose of other group companies.

5.8 Coming to the question of business expediency in this transaction, any act carried out for the purpose of its own business or carried out for the benefit of the subsidiary as a share holder can be referred to as business expediency. In the given case, the assessee is in the business of consultancy and no business commitment to fund other sister concern and the action of the assessee to fund step down subsidiary will not fit into representing any share holder commitment. The actual share holders are the holding company, any holding company diverting its own funds to the subsidiaries will fit into business expediency as held in the case of SA Builders (supra). The assessee company was used as a source for funding the step down subsidiaries and the cost should also

be transferred to the subsidiary who has utilized the funds and the burden of cost of funds on the assessee is unwarranted, may be beneficial to the overall group but not on the assessee. It clearly indicates that the transaction of funding the sister companies are not exclusively for the purpose of assessee's business. Therefore, the ground raised by the assessee is dismissed.

6. As Regards the disallowance u/s 14A, the ground of which is raised by the revenue in its appeal, the assessee made the investments of Rs. 292,08,59,790/- in its group companies. During the course of assessment proceedings, the assessee submitted that it did not receive any exempt income and, therefore, the provisions of section 14A are not applicable. However, the AO rejecting the submissions of the assessee, relying on the Board's Circular No. 05/14, dated 11/02/2014, held that disallowance u/s 14A read with rule 8D can be made even if there is no exempt income. Accordingly, he computed the disallowance u/s 14A.

6.1 The CIT(A) deleted the disallowance on the ground that no interest was incurred on the share capital invested and also assessee did not receive any dividend income.

6.2 Considered the rival submissions and perused the material on record. The Hon'ble Delhi High Court in the case of Cheminvest Ltd., reported in (2015) 378 ITR 33 (Del.) has held that section 14A will not apply where no exempt income is received or receivable during the relevant assessment year. Following the said decision, we find no infirmity in the order of CIT(A) in deleting the disallowance made by the AO u/s 14A of the Act. Accordingly, the ground raised by the revenue on this issue is dismissed.

7. In the result, both the appeals of the assessee and revenue are dismissed.

Pronounced in the open court on 27th March, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, dated 27th March, 2019.

kv

Copy forwarded to:

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2. *DCIT, Circle – 3(2), 7th Floor, Signature Towers, Kondapur, Hyderabad.*
3. *CIT(A) - 3, Hyderabad*
4. *Pr. CIT – 3, Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*