

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI K.N. CHARY, JUDICIAL MEMBER

ITA No. 2335/DEL/2015
[Assessment Year: 2009-10]

Trans Air
118, Ansal Bhawan
Kasturba Gandhi Marg,
New Delhi

Vs.

The D.C.I.T
Central Circle - 14
New Delhi

PAN : AAATS 2744 C

[Appellant]

[Respondent]

Date of Hearing : 20.03.2019
Date of Pronouncement : 29.03.2019

Assessee by : Shri Ashwani Kumar, CA.

Revenue by : Shri Amit Katoch, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
Commissioner of Income Tax [Appeals] - 24, New Delhi dated
19.02.2015 pertaining to assessment year 2009-10.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the disallowance of Rs. 94,89,098/- being interest disallowed by the Assessing Officer u/s 36(1)(iii) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'].

3. Briefly stated, the facts of the case are that during the year under consideration, the assessee has made the following advances on which no interest has been charged:

SNo.	Particulars	Amount (in Rs.)
1.	Cost Plus Resorts	1,68,600
2.	Fair Forex Dealer Pvt Ltd	3,00,000
3.	G.T. Pvt Ltd	64,500
4.	Golden Tea Company	5,00,000
5.	Indo Arab Air Services	3,22,44,089
6.	Om Prakash Garg	20,00,000
7.	Path Aviation	2,00,000
8.	R.L. Travels Pvt Ltd	2,30,53,477
9.	RS Gill	28,325
10.	Rajesh Jindal	50,00,000
11.	Rahul Bhan	46,947
12.	S.K. Bhalla	20,00,000
13.	S.D Jewellers	12,00,000
14.	Sahil Narang	10,00,000
15.	Salochna Goyal	64,21,370
16.	Service Tax BAS	14,995

17.	Service Tax Recoverable	5,69,130
18.	Surya Kiron Textile Pvt Ltd	6,53,10,684
19.	Sunshine Technology	34,43,677
20.	Traveltech	4,40,000
21.	Trimurti financial	4,50,000
22.	Upasana Taneja	19,00,000
23.	Vijendra Nath Gupta	10,00,000
24.	Advance Lease Rent Security	13,06,355
	Total	14,86,62,149

4. The Assessing Officer noticed that the assessee has claimed Rs. 1,94,94,346/- as expenses on account of interest paid on borrowings. The Assessing Officer further noticed that the assessee has also shown interest amounting to Rs. 83,50,360/- received on the loans liability outstanding in the balance sheet. The assessee was asked to explain why interest should not be disallowed on interest free advances made out of interest bearing funds. On receiving no plausible reply, the Assessing Officer netted off the interest paid and received by the assessee and made disallowance of Rs. 94,89,098/- u/s 36(1)(iii) of the Act.

5. Before the CIT(A), the assessee claimed that it has interest free funds available with it from which it has made interest free advances and question of any disallowance u/s

36(1)(iii) of the Act would arise when there is a direct one to one correspondence/evidence of diversion/linkage of interest bearing funds for non business purposes.

6. After considering the facts and detailed submissions, the Id. CIT(A) held as under:-

"6. It is observed that even according to the AR himself, the interest free funds available with the firm was only Rs. 3.49 crores. I however do not subscribe fully to this averment. The partner's capital account has a credit balance of Rs. 80 lakhs. However, the partners current account has a negative balance of Rs. 1,06,84,929/-. Thus it cannot be said that the firm had funds belonging the partners at all. The partners have over drawn. Further, the balances under the head 'current liability and provisions' cannot be treated as interest free funds available for making advances. These are business funds which are rotated in the course of the trading activity. The balances in these funds keep fluctuating and the same cannot be held to be available for making advances to parties for non-business purposes that too interest free. It is also noted that the appellant has not been able to establish any business connection in respect of advances made to so many parties. The appellant has not

pleaded nor shown any commercial expediency or business purpose in making such interest free advances. It is also not known how the funds have ultimately been used by some of the entities who happen to be the sister concerns. Whether the same have been used in their business or they have been again used for making interest free advances or otherwise has not been submitted. In view of this, I am of the view that in the given circumstances, there can be no prima facie presumption that the advances made to several parties without charging interest was for the purpose of appellant's business. The interest paid on such funds cannot be held to be for the purpose of business or profession of the assessee. In view of this, I do not find any merit in the AR's submission and the same is rejected.

4.7 A.O. is however, directed to re-compute the interest disallowance after excluding the interest on funds advanced to the following 3 parties in whose case A.O. has himself agreed that they are being made for the purpose of business.

S NO	Particulars	Amount (in Rs.)
1	Advance Lease Rent Security	13,06,355
2	Service Tax BAS	14,995
3	Service Tax Recoverable	5,69,130
	Total	18,90,48

4.7 In respect of the following three parties, the AR has claimed that appellant had in fact charged interest @ 12%:

Sl. N	Particulars	Amount (in Rs.)
(i)	Salochna Goyal	64,21,370
(ii)	Surya Kiran Textiles Pvt Ltd	6,53,10,684
(iii)	Sunshine Technology	34,43,677
	Total	7,51,75,731

4.7 The appellant shall submit necessary evidences before the A.O. to establish that interest @12% has been charged on the said advances. A.O. is directed to recompute the disallowance after excluding the advances made to these parties, in case it is found that the appellant has charged interest @ 12% on such amounts."

7. Before us, the ld. DR strongly supported the findings of the AO.

8. The ld. AR could not bring any factual error in the aforementioned findings of the CIT(A).

9. The availability of funds with the assessee can be summarised as below:

S No.	Particulars	Amount (in Rs.)
	SOURCES OF FUNDS	
(1)	Partners' Capital Account	80,00,000.00
(2)	Partners' Current Account	(1,06,84,929.24)
(3)	Secured Loans	9,88,87,338.65
(4)	Unsecured Loans	5,17,25,708.50
(5)	Current Liabilities & Provisions	3,76,41,804.78
	TOTAL	18,55,69,922.69
	APPLICATION OF FUNDS	
(1)	Fixed Assets	1,39,36,541.56
(2)	Current Assets, Loans & Advances	17,16,33,381.13
	TOTAL	18,55,69,922.69

(9) A review of the above summary would reveal that the Appellant Firm had available to it interest free funds to the tune of Rs. 3,49,56,875.54 as summarized below: -

Particular	Amount (in Rs.)
Partners' Capital Account	80,00,000.00
Partners' Current Account	(1,06,84,929.24)
Current Liabilities and Provisions	3,76,41,804.78
TOTAL	3,49,56,875.54

10. Thus, it can be seen that the partner's capital is also in negative and current liability and provisions cannot be considered as own funds of the appellant. On these facts, we do not find any merits in the case of the assessee and, therefore, decline to interfere with the findings of the CIT(A).

11. In the result, the appeal filed by the assessee is dismissed.

The order is pronounced in the open court on 29.03.2019.

Sd/-

**[K.N. CHARY]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 29th March, 2019.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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