

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I. T. A. Nos. 90 & 91/(Asr)/2018
Assessment Years: 2012-13 & 2013-14

Surya Motors,
Hanumangarh Road,
Abohar-152116

vs. Deputy Commissioner of Income
Tax, Circle-II, Bathinda

[PAN: AADFS 2727B]

(Appellant)

(Respondent)

Appellant by : Sh. P. N. Arora (Adv.)

Respondent by: Sh. Charan Dass (D.R.)

Date of Hearing: 07.03.2019

Date of Pronouncement: 04.06.2019

ORDER

Per Sanjay Arora, AM:

This is a set of two Appeals by the Assessee for two consecutive years, being assessment years (AYs.) 2012-12 and 2013-14, arising out of the common Order by the Commissioner of Income Tax (Appeals), Bathinda ('CIT (A)' for short) dated 13.12.2017, partly allowing the assessee's appeals contesting its' assessments u/s. 143(3) for the relevant years. The appeals raising common issue/s, were posted for hearing and, accordingly, heard together, which we shall take up in seriatim.

2. The first issue is with regard to the disallowance u/s. 14A, effected in the sum of Rs.22,386 (for AY 2012-13), of which Rs.19,036 is toward indirect interest expenditure (estimated under rule 8D(2)(ii)), and the balance Rs.3350 toward

indirect administrative expenditure. The assessee's case *qua* interest expenditure is of sufficient interest-free capital, i.e., to finance the investment in shares (Rs.7.70 lacs), of which Rs.5.70 lacs is stated as invested since the year 1997. The investment in shares during the relevant year is at Rs.2 lacs, which is negligible considering the firm's net worth, at Rs. 297.41 lacs as at the year-end; the profit for the year itself being at Rs.63.03 lacs (PB pgs. 26-29); the assessee returning an income of Rs.53.59 lacs. *Qua* administrative expenditure, it is claimed that no expenditure stands incurred as the investment is for strategic reasons, monitored by the Board of Directors (BoD). There is no fresh investment during the previous year relevant to AY 2013-14, so that the assessee's case for AY 2012-13 would apply in equal measure for this year as well.

3. We have heard the parties, and perused the material on record.

Without doubt, the investment in shares, though fetching dividend income, is minimal in comparison to the firm's capital base. Besides, investments, in shares or otherwise, would normally be funded by the firms' own capital. We, accordingly, have no hesitation in directing the deletion of disallowance of interest expenditure u/s. 14A r/w r. 8D(2)(ii). Reference in this regard may be made to the decision in *CIT v. Syntax Industries Ltd.* [2017] 82 taxmann.com 171 (Guj), as well as by the Tribunal, as in, *inter alia*, *The Indian Smelting and Refining Company Ltd. v. Asst. CIT* (in ITA Nos. 2941 & 2942/Mum/2012, dated 27/2/2015). As regards the indirect administrative expenditure, the purpose of holding shares, strategic or otherwise, which though is not shown, is irrelevant, as explained in several decisions by the tribunal, as in *Voltech Engineering Pvt. Ltd. v. Dy. CIT* [2017] 163 ITD 469 (Chen); *ITO v. Daga Capital Management (P.) Ltd.* [2009] 117 ITD 169 (Mum)(SB); *Dy. CIT v. Damani Estates & Finance (P.) Ltd.* [2013] 25 ITR (Trib) 683 (Mum), to cite some. Further, the fact that the investment decision-making is

vested with and monitored by the BoD, is, rather, an admission of some expenditure having been incurred toward the same which, in the absence of separate activity-wise accounts, stands accordingly estimated u/r. 8D(2)(iii) at Rs.3350. Reference in this regard may be made to the decision in *P.D. Sekhsaria Trading Co. (P.) Ltd. v. Dy. CIT* (in ITA No. 145/Asr/2016, dated 18/3/2019). The same is accordingly upheld.

For the same reasons the disallowance u/s. 14A for AY 2013-14, the second year, is deleted in respect of interest expenditure (PB pgs. 23-28), while being confirmed for the administrative component, i.e., Rs.3850.

We decide accordingly.

4. The second and the only other issue arising in these appeals is *qua* disallowance of interest expenditure u/s. 36(1)(iii) at Rs.3,87,410 and Rs.5,10,240 for AY 2012-13 and AY 2013-14 respectively. For the first year, the Assessing Officer (AO) found the assessee to have advanced a considerable sum, to one M/s. Sardari Lal Munshi Ram, without any ostensible business purpose. The assessee had contracted heavy borrowings, paying interest at Rs.19,56,678. He, accordingly, disallowed interest on the said capital, applying a rate of 12.5% per annum, to the amount outstanding, which is stated as under: (page 3 of the assessment order)

Sr. No.	Name of the advance	Period from	Amount
1.	M/s. Sardari Lal Munshi Ram (Karta Prithvi Raj Saneja)	01.04.2011 to 30.09.2011	36,49,286/-
2.	M/s. Sardari Lal Munshi Ram (- do -)	01.10.2011 to 31.03.2012	25,49,286/-

The assessee's case is that the disallowance is not maintainable as the advances were made in the past. The loans/advances in fact served a business purpose in-as-

much as the loanee had allowed the assessee to use its' land for locating its' business premises.

These claims being found not valid by the Revenue, resulting in the impugned disallowance/s; aggrieved, the assessee is in second appeal.

5. We have heard the parties, and perused the material on record.

5.1 The amount advanced, which is without interest, is variable in-as-much as it keeps changing with time. It could not therefore be in lieu of rent-free use of land, which arrangement is for the past several years now and, as stated in their orders by the Revenue authorities, settled in 2004. In fact, the assessee has actually paid rent (at Rs.5.40 lacs) to the said concern for fy 2012-13, i.e., relevant to AY 2013-14 (PB pg. 58). Further, if interest were to be imputed on the advance, i.e., as a consideration toward the rent-free user of land, the same would rather stand to be assessed in the hands of the loanee/advancee as income from other sources, u/s. 56. The assessee has not able to show any business purpose of the said advance. The said argument is thus without basis on facts or in law.

5.2 The second argument, i.e., of the advance having been made in the past, again, does not stand to reason. The reason is simple. Interest on borrowing/s, even if made in the past, would stand to be allowed as a deduction u/s. 36(1)(iii) where the borrowing is or continues to be utilized by the assessee for the purpose of his business for the relevant year. Per contra, where used for a non-business purpose, the same shall stand to be disallowed (to the proportionate extent). The question therefore is not whether the borrowing, interest on which is allowed and being claimed as deduction, was contracted during the current year or prior thereto, but the purpose for which the same is applied during the current year/s. If it is applied, i.e., shown to be so, for business purposes, the interest is to be allowed, else not.

Reference toward this may be made to the decision in *Sunil Grover v. Asst. CIT* (in ITA No. 97/Asr/2017, dated 20/3/2019), wherein reference is further made to the decisions by the tribunal advocating the same. The onus to exhibit the said application, where claimed for business purpose, though, is on the assessee in-as-much as the burden to prove his return and the claims preferred thereby is only on him (*CIT v. Calcutta Agency Ltd.* [1951] 19 ITR 191 (SC); *CIT v. R. Venkata Swamy Naidu* [1956] 29 ITR 529 (SC)).

5.3 This brings us to the last limb of the assessee's case, i.e., that it has sufficient interest-free capital, so that no disallowance, in the facts and circumstances of the case, shall arise. The same is clearly a matter of fact. The manner in which the adequacy or otherwise of a concerns' equity capital is, in the facts and circumstances of the case, to be reckoned, stands explained in detail by the tribunal per its several decision, as recently in *Sunil Grover* (supra) and *P.D. Sekhsaria Trading Co. (P.) Ltd.* (supra). The presumption, consistent with the fact that a borrowing is normally assumed for business, would be that the borrowings are applied for business purposes. Two, the fixed as well as the non-current assets, under which latter category the impugned advance falls, would, except where and to the extent financed through dedicated borrowing/s, stand to be, on same footing, financed by the firm out of own capital, i.e., forms part of the net-worth of the firm. Proceedings on this basis, we find the firm to have adequate equity capital as on 31.03.2012: (Amt. in Rs. lacs)

Fixed Assets	178.52	
Less: Term Finance	<u>(45.68)</u>	132.84
Net Current Assets	324.07	
Less: Borrowed Capital	<u>200.86</u>	123.21

Non-Current Assets

41.36 (*)297.41

[(*) being shares, Advance-tax, securities, and the impugned advance]

The normative margin (i.e., for availing bank/institutional finance) on trading assets varies between 25% (as, on stock), to 40% (on debtors). The margin of Rs. 123.21 lacs as on 31.03.2012 works to 38% (of the net current assets), which accordingly is regarded adequate. We say so as where in deficit, i.e., below the normative, contracted margin, it would be indicative of diversion of borrowed capital for non-current assets. True, the amount outstanding as at the beginning of the year (01.04.2011) is at Rs.36.49 lacs, i.e., much higher than that as at the year-end (Rs.13.77 lacs) (and not Rs. 25.49 lacs, as stated by the AO). The final accounts for the year ending 31.03.2011 are, however, not available for us to peruse the same and comment on the adequacy of capital as at the beginning of the year, inasmuch as it is only on its basis that the adequacy of the opening capital would like-wise stand to be ascertained. Further, we are conscious that the capital as at the year-end (31.03.2012), found adequate, is upon including the profit for the year (Rs.63.03 lacs), so that same is not available at the beginning of the year. However, besides profit, there are other variables in the equation, viz., the addition to fixed assets, the financing thereof as well as of the trading assets – the firm also having contracted bill discounting facility, so that a final statement as regards the adequacy or otherwise of capital as at the beginning of the year, cannot be stated. We, in the absence of the balance sheet as on 31/3/2011, proceed by regarding the same as also adequate/sufficient.

Coming to the second year (AY 2013-14), the advance stands swelled to Rs.33.10 lacs, with in fact Rs.20 lacs paid on 05.04.2012, i.e., at the beginning of the year, so that the average balance during the year, which is relevant for interest

purposes, would in the same range, and which we observe to be at Rs.28+ lacs, up by Rs.14.50 lacs from that as on 31.03.2012. Further, surely, the profit for this year would arise only with time. The net transfer of Rs.14.50 lacs in the first week of April, 2012, accordingly, is to be regarded as out of the firms' own funds, reducing the net working capital (NWC) by that amount, i.e., to Rs.108.72 lacs. The same, on a working capital of Rs.324 lacs, which cannot witness a sudden spurt, particularly considering that the sales for the two years are comparable, works to a margin of 33.6% i.e., on global basis (including all current assets, all which may not be bank financed). This percentage would stand to increase with time. This is as the increase (net) in fixed assets (Rs.15 lacs), coupled with the repayment of term finance (Rs.16.71 lacs), during the year, i.e., about Rs.32 lacs, is much below the profit (Rs.59.89 lacs), which though is to be reckoned on the basis of the cash profit for the year (Rs.82.58 lacs) (refer balance-sheet as on 31.03.2013/PB pgs.23-28).

5.4 No disallowance of interest u/s. 36(1)(iii) for any of the two years under reference is, accordingly, called for. True, the matter, strictly speaking, to consider the adequacy of the assessee-firm's net working capital as at 01/4/2011, the beginning of the first year, should travel back to the file of the AO. The same is however obviated considering the marginal tax impact it may have, as well as the tedium involved. We decide accordingly.

6. In the result, the assessee's appeals are partly allowed.

Order pronounced in the open court on June 04, 2019

(N. K. Choudhry)
Judicial Member

Sd/-
(Sanjay Arora) 24.05.2019
Accountant Member

PER N.K.CHOUDHRY

6A. I have perused the order dated 24/05/2019 passed by the Hon'ble Accountant Member wherein the Hon'ble Accountant Member, though directed the deletion of disallowances of interest expenditure u/s 14A for the amount of Rs.22,386/- and 27,088/- for the Asst. Years: 2012-13 and 2013-14 respectively, however affirmed the disallowances of Rs.3,350/- and Rs.3,850/- for Asst. Years:2012-13 2013-14 respectively by giving the reason that the investment decision-making is vested with and monitored by the BOD, is rather, an admission of some expenditure having been incurred towards the same which, in the absence of separate activity-wise accounts, stands accordingly estimated u/r. 8D (2)(iii) of the I.T.Rules,1962.

6B. As per my considered view, as the assessee has earned exempt income therefore the disallowances of Rs.3,350/- and 3,850/- for the Asst. Year:2012-13 and 2013-14 are sustainable.

6C. While non-sustaining the disallowance of interest u/s 36(l)(iii) for the relevant Asst. Years involved, the Ld. Accountant Member also made certain observation at para No.5.4 of its order which is as under:

"5.4 No disallowance of interest u/s. 36(l)(iii) for any of the two years under reference is, accordingly, called for. True, the matter, strictly speaking, to consider the adequacy of the assessee-firm's net working capital as at 01/04/2011, the beginning of the first year, should travel back to the file of the AO. The same is however obviated considering the marginal tax impact it may have, as well as the tedium involved. We decide accordingly."

6D. In my view, once we un-sustained the disallowances of interest u/s. 36(l)(iii), then there is no need of any further observation, therefore, though I am in agreement with the conclusion that no disallowance of interest u/s 36(1)(iii) for any of two years involved, is sustainable, however I do not approve the further observations made by the Hon'ble A.M. (as highlighted above).

7. In the Result, Assessee's Appeals are partly allowed.

Order pronounced in the open Court on 4th Day of June 2019.

Sd/-
(N.K. Choudhry)
Judicial Member

Date: 04.06.2019

/GP/Sr/ Ps.

Copy of the order forwarded to:

- (1) The Appellant: Surya Motors, Hanumangarh Road, Abohar-152116
- (2) The Respondent: Deputy Commissioner of Income Tax, Circle-II, Bathinda
- (3) The CIT(Appeals), Bathinda
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

True Copy

By Order