

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 5699/DEL/2016
[A.Y 2011-12]**

The Dy. C.I.T
Circle - 16(1)
New Delhi

Vs.

Shri Amit Kumar Jain
C - 215, Vivek Vihar
Delhi

PAN No: AAEPJ 3636 J

**ITA No. 2426/DEL/2016
[A.Y 2011-12]**

Shri Amit Kumar Jain
C - 215, Vivek Vihar
Delhi

Vs.

The Dy. C.I.T
Circle - 16(1)
New Delhi

PAN No: AAEPJ 3636 J

[Appellant]

[Respondent]

Date of Hearing : 04.06.2019

Date of Pronouncement : 14.06.2019

Assessee by : Shri Saubhagya Agarwal, Adv
Smt. Suman Jain, CA

Revenue by : Ms. Ashima Neb, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

The above two cross appeals by the Revenue and assessee are preferred against the order of the Commissioner of Income Tax [Appeals], Meerut dated 26.02.2016 pertaining to assessment year 2011-12. Since both these appeals pertain to same assessee and were heard together, we are disposing them off by this common order for the sake of convenience and brevity.

ITA No. 5699/DEL/2016 [Revenue's Appeal]

2. Grounds Nos. 1 to 3 relate to the addition of Rs. 3.68 crores made u/s 2(22)(e) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'].

3. While scrutinizing the return of income, the Assessing Officer noticed that the assessee has received Rs. 3.68 crores from M/s Mahagun India Pvt Ltd [MIPL]. The Assessing Officer found that the assessee is holding more than 10% shares in the said company and was convinced that the provisions of section 2(22)(e) of the Act squarely

apply and invoking the same, asked to the assessee to explain as to why the loan of Rs. 3.68 crores be not treated as deemed dividend.

4. The assessee filed detailed reply alongwith confirmation from MIPL and pointed out that it is the assessee who has given loan to MIPL and not vice versa.

5. Reply of the assessee did not find any favour with the Assessing Officer who was of the opinion that the claim of the assessee does not restrict applicability of section 2(22)(e) of the Act. After relying on certain judicial decisions, the Assessing Officer added the sum of Rs. 3,68,33,114/- u/s 2(22)(e) of the Act.

6. The assessee strongly agitated the matter before the CIT(A) and once again it was brought to the notice of the CIT(A) that the assessee has given loan to MIPL and not vice versa.

7. After considering the facts and detailed submissions and examining the ledger account, the CIT(A) was convinced that it is the assessee who had given the loan to MIPL and came to the conclusion

that on such facts, deeming provisions of section 2(22)(e) of the Act are clearly not applicable and deleted the addition.

8. Before us, the Id. DR strongly supported the findings of the Assessing Officer and requested for setting aside the issue to the Assessing Officer for verification.

9. Per contra, the Id. AR reiterated what has been stated before the lower authorities.

10. We have given a thoughtful consideration to the orders of the authorities below. We have also gone through the ledger extract of loan given to MIPL. A perusal of the said account reveals that the assessee had given loan to MIPL and the opening balance as on 1.4.2010 was Rs. 40.55 crores. Thereafter, during the year, the assessee has further given loans of Rs. 2 crores on various dates totalling to Rs. 6.33 crores. The said company MIPL has refunded the loans to the extent of Rs. 3.68 crores and closing debit balance was Rs. 2.61 crores. The said ledger account is self-explanatory and clearly shows that the loan was given by the assessee to MIPL and not vice versa. Since this ledger account was before the Assessing Officer who

had examined the same before making the addition, we do not find it necessary to restore this issue to the file of the Assessing Officer for verification of the same facts. We, accordingly, confirm the finding of the CIT(A). Grounds Nos. 1 to 3 are dismissed.

11. The underlying facts in the grievance raised vide Ground Nos. 4 and 5 by the Revenue are identical to the facts in issue raised by the assessee in its cross appeal in ITA No. 2426/DEL/2016.

12. Facts on record show that during the course of scrutiny assessment proceedings the Assessing Officer found that the assessee has claimed loss of Rs. 37.71 under the head 'Income from other sources'. The Assessing Officer found that the assessee has shown total income of Rs. 55.92 lakhs and claimed expenses against the same at Rs. 93.63 lakhs. The assessee was asked to show cause as to why the amount claimed u/s 57 of the Act should not be disallowed since the assessee had failed to prove the nexus between the income earned u/s 56 and expenses claimed u/s 57 of the Act.

13. In its reply, the assessee explained that it has raised various secured loans and the loan amount has been invested immediately in the company MIPL as interest bearing loan and, therefore, there is direct nexus between the interest earned from the loan and interest paid on the borrowings.

14. Reply of the assessee did not find any favour with the Assessing Officer who was of the opinion that the assessee has earned only Rs. 55.92 lakhs whereas has claimed expenditure of Rs. 93.63 lakhs. The Assessing Officer, therefore, disallowed the entire claim of interest and made addition of Rs. 93,63,773/-.

15. The assessee strongly agitated the matter before the CIT(A) and reiterated its claim of interest expenditure.

16. After considering the facts and submissions, the ld. CIT(A) held as under:

"The facts of the matter have been perused the contentions of the AO in the assessment order and the rival submissions of the AR have been considered. There is no dispute in the fact that the amount of loan raised

has been parked with the Mahagun India Pvt Ltd. There is direct nexus between amount taken on loan and amount given on loan. The appellant, if he is not earning anything over and above the interest which he is paying to HDFC Bank Ltd, BHW Home Finance and Religare Finvest Ltd. The appellant has received a sum of Rs 55,09,015/- as interest from Mahagun India Pvt Ltd and has paid interest of Rs 93,14,857/- on loan taken. The appellant cannot be allowed interest expense over and above the interest which he has received from transferring the loan amount to Mahagun India Pvt Ltd. The disallowance of interest will be restricted to the difference of two i.e Rs 38,05,852/-.The A.O is directed to restrict the disallowance to Rs 38,05,852/-."

17. In revenue's appeal, the ld. DR strongly supported the findings of the Assessing Officer.

18. The ld. AR reiterated what has been stated before the lower authorities and in assessee's appeal, the ld. AR vehemently stated that the entire loan amount has been utilised for giving loans to the company MIPL. It is the say of the ld. AR that there is a direct nexus

between the interest income earned and interest expenditure and, therefore, no disallowance is called for.

19. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that the assessee has raised secured loans from HDFC Ltd, BHW Home Finance and Religare Finvest Ltd. It is also not in dispute that the assessee has transferred these borrowings as loan to MIPL. It is also not in dispute that the loans have been raised in F.Ys 2007-08, 2008-09 and 2009-10. The assessee has charged interest from MIPL @ 15% whereas the assessee is paying interest on borrowed funds ranging from 12.94% to 18.5%. We have also examined the bank statement of Canara bank exhibited at pages 28 to 31 of the paper. A perusal of the same shows that as soon as the assessee received the funds from HDFC Ltd, BHW Home Finance and Religare Finvest Ltd., the same were transferred to MIPL, thus clearly establishing the direct link/nexus between the borrowings and lending. On these facts, we do not find any reason for any disallowance on this count. We, accordingly, direct the Assessing Officer to delete the entire disallowance of Rs. 93,63,773/-. Accordingly, Ground Nos. 4 and 5 of the Revenue are dismissed and the solitary grievance raised by the assessee is allowed.

20. Ground No. 6 in Revenue's appeal relates to the deletion of addition of Rs. 1 lakh made by the Assessing Officer.

21. While perusing the computation of income, the Assessing Officer noticed that the assessee has claimed Rs. 1 lakhs donation as deduction u/s 80G of the Act. No documentary evidence to substantiate the claim was filed. The Assessing Officer, accordingly, made addition of Rs. 1 lakh.

22. Before the CIT(A), the assessee claimed that it has never claimed any deduction u/s 80G of the Act and referred to its computation of income.

23. The CIT(A) found truthfulness in the submissions of the assessee and deleted the addition.

24. Before us, the ld. DR once again requested for setting aside the issue for verification.

25. The ld. AR drew our attention to the computation of income which is exhibited at page 13 of the paper book and pointed out that the assessee has only claimed deduction u/s 80C of the Act and not u/s 80G of the Act

26. We have given a thoughtful consideration to the orders of the authorities below. We have carefully perused the computation of taxable income which is exhibited at page 13 of the paper book. We find force in the contention of the ld. AR. In the inner column, deduction u/s 80C has been shown at Rs. 25,08,938/- and in the outer column, only eligible deduction of Rs. 1 lakh has been shown. Though there is a mention of deduction u/s 80G of the Act, but nothing has been claimed under this section. It appears that the Assessing Officer has wrongly taken the claim of deduction u/s 80C as claim of deduction u/s 80G of the Act. Facts are in favour of the assessee and, therefore, no interference is called for.

27. In the result, the appeal filed by the Revenue in ITA No. 5699/DEL/2016 is dismissed whereas the appeal of the assessee in ITA No. 2426/DEL/2016 is allowed.

The order is pronounced in the open court on 14.06.2019.

Sd/-

**[SUDHANSHU SRIVASTAVA,]
JUDICIAL MEMBER**

Sd/-

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

Dated: 14th June, 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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	