

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

BEFORE SHRI ANIL CHATURVEDI, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.1539/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

M/s. Garuda Plant Product Ltd.  
B-26, Additional MIDC Area,  
Ambad, Nashik-422 010.  
PAN : AAACG0563H

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-1, Nashik.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 2966/PUN/2016

निर्धारण वर्ष / Assessment Year : 2013-14

M/s. Garuda Plant Product Ltd.  
B-26, Additional MIDC Area,  
Ambad, Nashik-422 010.  
PAN : AAACG0563H

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Assistant Commissioner of Income Tax,  
Circle-1, Nashik.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nishit Gandhi

Revenue by : Shri Rajesh Gawali

सुनवाई की तारीख / Date of Hearing : 25.06.2019

घोषणा की तारीख / Date of Pronouncement : 27.06.2019

**आदेश / ORDER****PER PARTHA SARATHI CHAUDHURY, JM :**

These two appeals preferred by the assessee emanates from the orders of the Ld. Commissioner of Income Tax (Appeal)-1 Nashik dated 25.05.2016 for assessment year 2012-13 and dated 20.10.2016 for assessment year 2013-14 as per the grounds of appeal on record.

These cases were heard together. Since the facts are similar, issues common, they are being disposed of vide this consolidated order.

2. At the time of hearing, the Ld. AR of the assessee apprised the Bench that for both the assessment years i.e. 2012-13 and 2013-14, he is not pressing the ground Nos.1, 1.1 and 1.2 which relates to natural justice. Therefore, in view of the submissions of Ld. AR of the assessee, **ground Nos. 1, 1.1 and 1.2 for both the assessment years are dismissed as 'Not pressed'.**

3. Ground Nos.2, 2.1, 2.2, 2.3 and 2.4 for both the assessment years are similar in nature. In order to adjudicate the issues, we refer to the facts as appearing in ITA No.1539/PUN/2016 for assessment year 2012-13.

**ITA No.1539/PUN/2019**  
**A.Y.2012-13**

4. The facts in respect of these similar issues as appearing in ITA No.1539/PUN/2016 are that the assessee has declared income from house property, income under the head income from business and profession. The assessee has derived income from house property being rental income. The

assessee has derived income from business and profession as the assessee is primarily engaged in the profession of providing technical consultancy and manufacturing of plastic fittings in the name and style of M/s. Garuda Plant Products Ltd. During the course of assessment proceedings, it was observed that the assessee had made investment of Rs.1,75,00,000/- in equity shares of M/s. Kimplas Piping Systems Ltd. It was also observed that the investment was made out of borrowed funds from Bajaj Finance Ltd. The assessee was asked to explain why proportionate interest paid to Bajaj Finance Ltd. should not be disallowed as the borrowed funds were not utilized for the purpose of business. The assessee submitted the detailed working of interest paid on various loans borrowed. On verification it was observed that the assessee has paid interest of Rs.2,91,267/- to Bajaj Finance Ltd. on loans which were actually utilized for the investment in the equity shares of M/s. Kimplas Piping Systems Ltd. As the assessee has not incurred expenditure of interest paid to Bajaj Finance Ltd. for the purpose of business therefore, the interest amounting to Rs.2,91,267/- was disallowed u/s.36(1)(iii) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and added to the total income of assessee.

5. That thereafter, the matter travelled before the Ld. Commissioner of Income Tax (Appeals) and he analyzed as per his reasoning as appearing in his order that the rigours of Section 36(1)(iii) of the Act is attracted since the assessee has not borrowed the funds for any business purpose. The assessee has also not explained how this investment in shares in associate company is going to serve its business interest. The argument of the assessee also did not find favour with the Ld. Commissioner of Income Tax (Appeal) that when shares are sold it will be taxable as capital gain. However, this was not backed up by any evidence. In the totality of facts and circumstances, the Ld.

Commissioner of Income Tax (Appeal) held that the assessee has not been able to establish that interest paid on capital borrowed was utilized for the purposes of its business and therefore, he upheld the addition made by the Assessing Officer u/s.36(1)(iii) of the Act.

6. At the time of hearing, the Ld. AR of the assessee vehemently argued that the Assessing Officer by referring to the fact that the assessee has borrowed funds from Bajaj Finance Ltd. and has invested in the equity shares of M/s. Kimplas Piping Systems Ltd. which is an associate company of the assessee, in itself is an admission by the Assessing Officer that funds borrowed were utilized for the purposes of business. The Ld. AR further submitted the detailed working of the funds borrowed and interest paid to Bajaj Finance Ltd. before the Department stating that on sale of the shares capital gain would be attracted and in any way, it is for the business expediency that the said investments were made in the equity shares of M/s. Kimplas Piping Systems Ltd.

6.1 The Ld. AR of the assessee further submitted that the expression 'for the purpose of the business' is wider in scope than the expression 'for the purpose of earning profits'. So long as the expenditure is incurred for the purpose of business, it is irrelevant whether it results in income. The phrase used in section 36(1)(iii) of the Act is '**for the purpose of business**'. The Assessing Officer as well as the Ld. Commissioner of Income Tax (Appeal) grossly erred in interpreting the same as '**for the purpose of earning profits**'. An expenditure in the form of interest is allowable so long as it is for the purpose of business and it is not relevant that the said expenditure should actually result in income or increase in profits. With regard to this

contention, the Ld. AR of the assessee has placed reliance on the following decisions:

- i) CIT Vs. Malayalam Plantations Ltd. (1964) 53 ITR 140 (SC)
- ii) Sree Meenakshi Mills Ltd. Vs. CIT (1967) 63 ITR 207 (SC)

6.2 That further, the Ld. AR of the assessee has placed reliance on the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Reliance Communications Infrastructure Ltd. (2013) 260 CTR (Bom.) 159 wherein it has been held that no disallowance u/s.36(1)(iii) could be made in respect of investments made for strategic business purpose/investments made in group concerns or for acquiring controlling stake in certain companies for the purpose of business.

7. Per contra, the Ld. DR has placed strong reliance on the orders of the Sub-ordinate Authorities.

8. We have perused the case records, heard the rival contentions and also considered the judicial pronouncements placed before us. The undisputed facts in this case are that certain amount were borrowed from Bajaj Finance Ltd. by assessee and was invested in shares of a company which is an associate of the assessee company. The Assessing Officer as well as the Ld. Commissioner of Income Tax(Appeal) acknowledged this fact that investments in shares were made. The assessee also provided detailed working of the entire amount borrowed and interest paid before the Department. It is also not the case of the Department that funds were borrowed and were kept idle or not used for any business purpose. The Department is basically questioning about the evidences from where it can be found out that such investments out of borrowed funds has or will generate this much of income.

But this is not the criteria to be fulfilled regarding Section 36(1)(iii) of the Act. Section 36(1)(iii) of the Act refers to borrowing of funds and that funds to be used only for the purpose of business. It does not say anything about earning of profits or income. When we read the order of the Ld. Commissioner of Income Tax(Appeal), we find that the observation of the Ld. Commissioner of Income Tax(Appeal) for disallowing is that no evidences were placed in front of him in order to highlight how these investments in an associate company from funds borrowed will serve business interest of the assessee which basically means that the Ld. Commissioner of Income Tax(Appeal) is harping upon providing evidences as to how the assessee will generate income from this transaction.

9. In our considered view, when all the details of investments of shares and working of interest paid has been provided to the Department, asking for any other evidences relating to what income will generate to the assessee, at this stage, first of all, it is not the requirement of Section 36(1)(iii) of the Act and secondly, at this stage, it is just asking for some hypothetical evidences. The very fact that funds borrowed were invested in shares of an associate company itself demonstrates the business strategy of the assessee company. We find the Hon'ble Apex Court in the case of **Hero Cycles P. Ltd. Vs. CIT, 379 ITR 347 (SC)** has held that where loans were advanced by the assessee to its various associate concerns as a part of business strategy, interest on such loans was allowable deduction u/s.36(1)(iii) of the Act.

Extending this proposition to the facts of the present case, investments in shares of the associate concerns by the assessee is part of business strategy and therefore, interest on such loans are allowable deduction u/s.36(1)(iii) of the Act.

10. Furthermore, what is business strategy and what is commercial expediency has to be seen from a business man's point of view. The Revenue cannot put itself in the armchair of a businessman to decide the same. In this respect, we have taken guidance from the following judgments:

**i) S.A. Builders Ltd. Vs. CIT, (2007) 288 ITR 1(SC)**

**ii) Hero Cycles P. Ltd. Vs. CIT, (2015) 379 ITR 347 (SC)**

**iii) DCIT Vs. EIH Ltd., (2016) 177 TTJ 25 ( Kolkata)**

11. That further, in the submissions before us, the assessee has submitted that it had sufficient own funds in order to advance the same to its associate concerns. This is evident from page 9 and 14 of the paper book. We further observe that all the judgments relied on by the Ld. Commissioner of Income Tax (Appeals) in his order are not on interpretation of Section 36(1)(iii) of the Act but on the interpretation of Section 57(iii) of the Act which evidently is different in language to that used in Section 36(1)(iii) of the Act.

12. In view of the above examination of facts and legal propositions, we hold that the investments made by the assessee in M/s. Kimplas Piping Systems Ltd. were wholly and exclusively for the purpose of business and therefore, no disallowance u/s.36(1)(iii) of the Act could be made in the present case. Hence, we set aside the order of the Ld. Commissioner of Income Tax (Appeals) on this issue and direct the Assessing Officer to delete the addition from the hands of the assessee. **Thus, grounds Nos. 2 to 2.4 for assessment year 2012-13 are allowed.**

13. In the result, appeal of the assessee in ITA No.1539/PUN/2016 is partly allowed.

**ITA No.2966/PUN/2016**  
**A.Y. 2013-14**

14. The facts and circumstances of the case are identical except the amounts. Since all other facts, arguments of the parties are same and similar, the same ruling as in ITA No.1539/PUN/2016 shall **apply mutatis-mutandis** to ITA No.2966/PUN/2016. Therefore, in this case also, we set aside the order of the Ld. Commissioner of Income Tax (Appeals) on this issue and direct the Assessing Officer to delete the addition from the hands of the assessee. **Thus, grounds Nos. 2 to 2.4 for assessment year 2013-14 are allowed.**

15. For assessment year 2013-14, the assessee has raised an additional ground which reads as under:

*“1. In the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals)-1, Nashik [“ the CIT(A)” for short] erred in partly confirming the action of the learned Assistant Commissioner of Income Tax-1, Nashik [“ the AO” for short] in disallowing an amount of Rs.1,92,844.28 u/s.14A of the Act without appreciating the fact that no exempt income was earned by the appellant during the year and hence, the provisions of section 14A were not applicable in the present case.*

*2. The appellant craves leave to add, amend, alter, delete and modify all or any of the above grounds of appeal.”*

The additional ground relates to the disallowance made by the Assessing Officer u/s.14A of the Act of Rs.12,37,413/-.

16. When the matter travelled before the Ld. Commissioner of Income Tax(Appeal), he gave part relief and confirmed part of the disallowance to the extent of Rs.1,92,844.28/-.

17. The Ld. AR of the assessee reiterated the submissions as made before the Sub-ordinate Authorities and contended that they have not earned any

exempt income and therefore, disallowance u/s.14A is not warranted. The Ld. AR further submitted that in the order of the Ld. Commissioner of Income Tax(Appeal), he has accepted that no exempt income was earned. However, disallowance could be made as per Rule 8D(2) of the Income Tax Rules, 1962. The Ld. AR further submitted that when it is accepted that no exempt income has been earned by the assessee, there is no question of disallowance u/s.14A of the Act.

18. Per contra, the Ld. DR has placed strong reliance on the orders of the Sub-ordinate Authorities.

19. We have perused the case records and heard the rival contentions. We find that in the case of **Godrej & Boyce Manufacturing Co. Ltd. Vs. UOI reported in (2010) 328 ITR 81 (Bom.)**, it has been held that it is a mandatory requirement of the law u/s.14A of the Act that the Assessing Officer has to scrutinize the claim of the assessee before making any disallowance. However, in the instant case, without looking into these facts, the disallowance was made. The Assessing Officer has not recorded satisfaction on judicious and objective application of mind. In fact, the order proceeds simply on the basis of surmises and assumptions that some expenditure would have been incurred by the assessee in order to maintain the investments and hence, a disallowance should be made u/s.14A r.w.r.8D.

20. Further, we observe that the Hon'ble Bombay High Court in the case of **CIT Vs. Delite Industries Ltd., ITA No.110 of 2009 order dated 26<sup>th</sup> February, 2009** has held that if the investments from whom no exempt income is received then there is no question of making any disallowance u/s.14A of the Act on these investments.

Respectfully following the decisions of the Hon'ble Bombay High Court as referred herein above and relating it to the facts of the present case before us, wherein no exempt income has been earned by the assessee, in such case, no disallowance can be called for u/s.14A of the Act. **Thus, additional ground raised by assessee in assessment year 2013-14 is allowed.**

21. In the result, appeal of the assessee in ITA No.2966/PUN/2016 is partly allowed.

22. In the combined result, both appeals of the assessee for assessment years 2012-13 and 2013-14 are partly allowed.

Order pronounced on 27<sup>th</sup> day of June, 2019.

Sd/-  
**ANIL CHATURVEDI**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 27<sup>th</sup> June, 2019.

SB

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

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

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	25.06.2019	Sr.PS/PS
2	Draft placed before author	26.06.2019	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		