

IN THE INCOME-TAX APPELLATE TRIBUNAL "SMC" BENCH MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND SHRI PAWAN SINGH JUDICIAL MEMBER
ITA No. 5013 /Mum/2018 (Assessment Year 2013-14)
ITA No. 5014 /Mum/2018 (Assessment Year 2014-15)

ACIT Circle - 3(1)(2) , Room No. 607 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020	Vs.	Chinsha Property Pvt Ltd 41/44, Shapoorji Pallonji Center, Minoos Desai Marg, Colaba , Mumbai-5 PAN: AAACC6982A
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Appellant

Respondent

Appellant by : None

Respondent by : Shri Chaitnya Anjaria (Sr.DR)

Date of Hearing : 31.07.2019

Date of Pronouncement : 01.08.2019

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT
PER PAWAN SINGH, JUDICIAL MEMBER;

1. These two appeals by revenue are directed against the separate order of Commissioner (Appeals)-8, Mumbai, both dated 18 June 2016 for assessment year 2013-14 and 2014-15. In both the appeals the revenue has raised identical grounds of appeal. The facts in both the appeals are identical, the revenue has raised identical grounds of appeal except variation of figure of disallowance of interest expenses, therefore both the appeals were clubbed, heard and are decided by common order for the sake of convenience and to avoid conflicting decision. For appreciation of facts, the appeal for assessment year 2013-14 is treated as lead case. The revenue has raised following grounds of appeal:

(1) Whether on the facts and circumstances of the case and a law, the commissioner (Appeals) was right in allowing interest expenditure of

₹2,04,72,034/- as deduction under section 36(1)(iii) of the Act, without appreciating that the assessee has diverted its interest-bearing loan to the business purpose of the other entity and without any commercial expediency and the same cannot be allowed as deduction under section 36(1)(iii)

(2) The appellants pray that the order of Commissioner (Appeals) on the above ground be set aside and that of assessing officer be restored.

2. Brief facts of the case are that assessee company and engaged in the business of investment in immovable properties, filed its return of income for relevant assessment year on 27th September 2013 declaring loss of ₹ 1.91 crore. The return of income was selected for scrutiny and assessment was completed under section 143 (3) on 30th January 2016. The assessing officer while passing the assessment order made disallowance of interest under section 36(1)(iii) of ₹ 2,04,72,034/- holding that the assessee has diverted to its interest bearing loan to M/s Joyous Housing Ltd, for non-business purposes and without any commercial expediency and the same cannot be allowed as deduction. The assessing officer noted that the assessee has borrowed funds from its holding company, M/s Shapoorji Pallonji Co. of Rs. 16,54,95,000/- and paid interest of Rs. 2,04,72,034/-. The assessee has paid interest free loans of Rs.11,25,00,000/- to M/s Joyous Housing Ltd. on show cause to the assessee, it was stated by assessee that the assessee has shareholding of 3.75% in Joyous Housing Ltd, the assessee was required to invest in the Joyous Housing as it has undertaken the development of slum rehabilitation in Tulsivadi Mumbai. The said advances are paid under an agreement as interest free as the assessee is entitled for its profit under an agreement. The contention of the

assessee was not accepted by assessing officer. The assessing office disallowed the interest claim by the assessee on the interest expenses paid to Sapporji Pallonji Co. On appeal before learned Commissioner (Appeals) the entire additions/disallowance was deleted. The learned Commissioner (Appeals) deleted the disallowance by following the decision of Tribunal in assessee's own case for assessment year 2010-11 in ITA No. 274/Mumbai/2014 dated 14 August 2015, wherein similar disallowances was deleted. Aggrieved, by the order of learned Commissioner (Appeals) the revenue/assessing officer has filed the present appeal before us.

3. None, appeared on behalf of assessee when the case was called for hearing despite the service of notice through registered post for the hearing of the appeal fixed for today. We have seen that the acknowledgement card of service of notice through registered post is available on record. Therefore, we left no option except to hear the submission of learned departmental representative (DR) for the revenue and to decide the appeal on the basis of material available on record. The learned DR for the revenue submits that the assessee diverted its interest-bearing loan to M/s Joyous Holding Ltd for non-business and without any commercial expediency. The assessing officer therefore reasonably disallowed the interest expenditure. The learned DR for the revenue supported the order of assessing officer. The learned DR further submits

that Commissioner (Appeals) allowed relief to the assessee on the basis of decision of Tribunal in assessee's own case for assessment year 2010-11. On our specific query to the learned DR for the revenue, if revenue has filed appeal before Hon'ble jurisdictional High Court against the order of Tribunal, learned DR expresses inability to answer our quarry.

4. We have considered the submission of learned DR for the revenue and perused the material of level on record. We have noted that assessing officer made the disallowance on account of interest expenses to its sister concern holding that the interest baring loan given to sister concern and has no business expediency, therefore, the assessing officer worked out the disallowance of interest expenditure. The learned Commissioner (Appeals) by following the decision of Tribunal in earlier year i.e. assessment year 2010-11 deleted the entire disallowances. We have noted that the grounds of appeal raised by revenue is fully covered in favour of assessee and against the revenue by the order of tribunal in assessee's own case for assessment year 2010-11 in ITA No. 274/Mumbai/2014 dated 14 August 2015, wherein the coordinate bench of Tribunal deleted the similar disallowance of interest expenditure on giving loan to same sister concern i.e. M/s Joyous Housing Ltd. For completeness of the order they relevant part of the order of Tribunal is extracted by Id Commissioner (Appeals) in his order is extracted below;

“ 4. After hearing both the parties and on perusal of the material on record, we find that it is an undisputed fact that the assessee along with 2 other companies have invested in a joint-venture company Mrs joyous holding Ltd, which had undertaken a project of solemn redevelopment Tulsivadi, Tardeo under the DCR of greater Mumbai, 1991. As per the tripartite agreement and the MOU, for the now development of this project, use funds were required, which were to be contributed by the company in the form of participation of equity shares. Apart from that further amount of ₹ 11.25 crore was funded which was over and above the subscription and acquiring of shares which was in the form of interest free. The business of the joyous housing Ltd has already been set up and commenced. Such a fun deployed out of interest-bearing loan was wholly for the purpose of business, of joint-venture which was to develop project because of assessee was in the business of real estate and earning income therefrom. Further, the assessee were entitled for profit of ₹ 42 crore from the said business, which was stated in the MOU itself. All these aspects have been dealt by CIT(A) and finding of fact have been given that the said funds were utilised wholly for the purpose of business and for commercial expediency and therefore, any interest paid on such fund has to be allowed as “business expenditure” under section 36(1)(iii) list finding recorded by learned CIT(A) is thus affirm accordingly, we do not find any merit in the grounds raised by the venue and the same are dismissed.”

5. Considering the decision of coordinate bench of Tribunal and respectfully following the same, we do not find any merit in the grounds of appeal raised by revenue.
6. In the result the appeal of the revenue is dismissed.

ITA No. 4014/Mumbai/20184 assessment year 2014-15.

7. The revenue has raised identical grounds of appeal as raised in appeal for assessment year 2013-14, which we have already dismissed. Therefore,

following the principle of consistency the appeal for the year under consideration is also dismissed with similar observation.

8. In the result appeal of the revenue is dismissed.

Order pronounced in the open court on 01/08/2019.

Sd/-
SHAMIM YAHYA
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 01.08.2019

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Copy of the Order forwarded to :

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| 1. Assessee | 2. Respondent |
| 3. The concerned CIT(A) | 4. The concerned CIT |
| 5. DR "SMC" Bench, ITAT, Mumbai | |
| 6. Guard File | |

BY ORDER,
Dy./Asst. Registrar
TAT, Mumbai