

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCHES, AHMEDABAD**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRADIP KUMR KEDIA, ACCOUNTANT MEMBER**

**ITA No.1055/Ahd/2018
Assessment Year: 2014-15**

Shri Shreyas V. Shah Ground Floor, Vama Tower Near Parul Apartment Fatehganj Baroda-390002	बनाम/ Vs.	DCIT Central Circle-1 Baroda
(Appellant)		(Revenue)
P.A. No.AFXPS9576H		

Appellant by	Smt. Urvashi Sodhan, A.R.
Respondent by	Shri Satish Solanki, Sr. D.R.
Date of Hearing:	18.09.2019
Date of Pronouncement:	18.09.2019

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is directed against order of the Ld. CIT(A)-12, Ahmedabad dated 22.2.2018 for the A.Y. 2014-15. The assessee has raised following grounds of appeal:

1. *Ld. CIT(A) erred in law and on facts confirming disallowance of interest expense of Rs.9,67,285/- paid to India Infoline Financial Services by A.O.*
2. *Ld. CIT(A) erred in law and on facts upholding action of A.O. disallowing interest paid to IIFSL based on observations for A.Y. 2012-13 & 2013-14 not appreciating the fact that funds available on return on loan is used for the purpose of business by the appellant*
3. *Ld. CIT(A) ought to have deleted disallowance of interest paid on funds borrowed & utilized during the course of business by the appellant.*
4. *Ld. CIT(A) erred in law and on facts not adjudicating ground challenging action of A.O. taxing interest income as 'Income from other sources' against 'income from business or profession' as offered by the appellant.*
5. *Ld. CIT(A) erred in law and on facts not adjudicating ground challenging action of A.O. not allowing legal & professional fees of Rs.9,90,000/- as business expenses.*
6. *Ld. CIT(A) erred in law and on facts not adjudication ground challenging action of A.O. not allowing Rs.3,55,806/- claimed as security charges.*
7. *Levy of interest u/s 234A/B/C & D of the Act is not justified.*
8. *Initiation of penalty proceedings u/s 271(1)(c) of the Act is not justified.*

2. At the outset, Ld. Counsel for the assessee submitted that under the instructions of the assessee, the assessee does not wish to press ground Nos.4, 5 & 6. It is further submitted that ground No.7 & 8 are consequential in nature needs no separate adjudication. The ground unnumbered is general in nature would need no separate adjudication. Therefore, the ground Nos.4, 5 & 6 are dismissed as not pressed. Ground Nos.7 & 8 being consequential in nature are held accordingly. The only grounds left to be adjudicated are ground Nos.1, 2 & 3, which are inter-connected. The issue is confirming disallowance interest of Rs.9,67,025/- paid to M/s. India Infoline Financial Services Ltd. by the A.O.

3. The facts giving rise to the present appeal are that case of the assessee was picked up for scrutiny assessment and the assessment u/s 143 (3) of the Income Tax Act, 1961

(hereinafter called as 'the Act') was framed vide order dated 7.11.2015. While framing the assessment, the A.O. noticed that assessee has claimed interest expenses payable to unsecured loans to M/s. India Infoline Financial Services Limited against interest income from M/s. Neptune Infra Space Pvt. Ltd. in the previous year relevant to assessment year 2012-13 and assessment year 2013-14. Similarly, in the year under consideration, the assessee had claimed interest expenses of unsecured loan of Rs.6,34,994/- and interest to M/s. India Infoline Financial Services Ltd. amounting to Rs.9,67,285/-. The A.O. did not accept the explanation as offered by the assessee and proceeded to make addition of Rs.9,67,285/- on account of disallowance of this expenditure.

4. Aggrieved by this, the assessee preferred an appeal before Ld. CIT(A), who after considering the submissions, sustained the addition by observing as under:

"I have perused the assessment order and carefully examined the appellant's submission.

12.1 From the submission of the appellant it is clear that the disallowances by the AO of interest paid by the Appellant various parties is not based on proper appreciation of the facts of the case. The appellant has clearly established that the nexus of various funds (i.e. interest free fund available for interest free advance) is not practically possible as it has mixed portfolio of interest free fund and interest bearing fund but has brought out that it has secured loan of Rs.22,98,030/- and unsecured loan of Rs. 38,82,69,260/- and has given further loan of Rs.7,00,00,000/- to M/s Neptune Infra Space Pvt. Ltd. taking the closing balance of loan to this company to Rs.34,62,51,922/- and has earned interest of Rs.54,75,822/-. Under the circumstances interest paid of Rs.9,18,078/- being aggregate of Rs.1,39,740/-, Rs.3,47,986/-, Rs.56,096/- and Rs.3,74,256/-(amount in grounds No. 2 to 5) do not appear to be a case to warrant disallowance of any interest. From the statements in the PNB A/c furnished during the appeal proceeding, it is clear that the contention of the appellant as to the sources of fund and the appropriation thereof is correct and no adverse inference could be drawn. The AO is directed to delete the addition of Rs.9,18,078/- on disallowance of interest paid. The appeal succeeds on these grounds.

12.2 In connection with disallowance of interest expenditure of Rs.9,67,285/- paid to India Infoline Financial Services Ltd.(IIFSL) it is seen that the loan was taken by the appellant from IIFSL in November 2011 was directly advanced to Monalisa Infrastructure Pvt. Ltd. (MIPL) and the amount was received back in F.Y.2011-12 within a period of 5 months and another amount taken on loan by MIPL from IIFSL in May 2011 was repaid in November 2011 but the AO observed that the appellant had made payment of interest to IIFSL amounting to Rs.23,08,120/- in A.Y. 2012-13, Rs.43,92,977/- in A.Y. 2013-14 and Rs.9,67,285/- in A.Y. 2014-15 and that if the amount was squared up, where was the necessity to pay the interest to IIFSL in the year other than A.Y. 2012-13. From the submission of the

appellant I find that the appellant is not correct in asserting that the AO had made the disallowance based on the observation for A.Y. 2012-13 and 2013-14. It has been learnt that the A.Ys.2012-13 and 2013-14 have been reopened u/s 148 by the AO. The appellant has not brought out as to on what account interest of Rs.9,67,285/- was paid to IIFSL for A.Y. 2014-15. Even if it is conceded that the transaction of funds between IIFSL and MIPL were for the purpose of business of the appellant, the appellant has failed to make out the nature of the impugned payment of Rs.9,67,285/- and its allowability during the A.Y. 2014-15. I do not find any reason to interfere with the finding and conclusion of the AO. The addition of Rs.9,67,285/- made by the AO is confirmed and appeal on this ground fails.”

5. Aggrieved against this, assessee preferred an appeal before this Tribunal. At the outset, Ld. Counsel for the assessee reiterated the submissions as made in the brief note. The submissions of the assessee are reproduced as under:

“The appellant vide Ground # 1 to 3 challenges disallowance of interest of Rs. 9, 67, 285/-paid to India Infoline Financial Services Pvt Ltd. AO made disallowance holding that interest bearing funds were not utilized for earning interest income. AO also noted that as this fact came to the notice during the course of assessment proceedings of A Y 2014/15 - year under consideration, separate proceedings to be initiated for the previous 2 years ie A Y 2012/13 & AY 2013/14 [Para 5.8 on page 12 of assessment order]

Ld. CIT (A) vide Para 12.2 (page 12/13) of order confirmed disallowance made by AO.

Thereafter assessments of A Y 2012/13 & 201.1/14 were reopened & interest paid to India infoline Financial Services Pvt. Ltd. of Rs. 23, 08. 120/- & Rs. 43, 92, 977/- respectively was disallowed by AO.

The disallowance of interest for A Y 2012/13 & 2013/14 to India Infoline was challenged by the appellant before Id. CIT (A) who vide order dated 25.03.2019 deleted disallowance.

Ld. CIT (A) in Para 7.3 on page 11 of the order dated 25.03.2019 held that -

"7.3 I must also note that while deciding the appeal for the A. Y. 2014-15 in case of the appellant vide order dated 22.02.2018 it was held by the undersigned in relation to the disallowance of interest expenditure of Rs. 9, 67, 285/- paid to M/s. India Infoline Financial Services Ltd. (IIFSL) that -

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7.5 It is case, of the appellant that the verification of the Fund Flow Statements for the three years would reveal that the Appellant had mixed bag of funds i.e. own capital + interest free fund +\ interest bearing funds, the loan taken from M/s IIFSL is used for repayment of interest bearing loan taken earlier and thus, it is a case of loan takeover where one interest-bearing loan is replaced by another interest-bearing loan.

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7.6 As per the AO, the appellant did not furnish any documentary evidence to prove that the loan taken from IIFSL and transferred directly to MIPL was for the purpose of the business of the appellant though it was the onus of the appellant to prove the business exigency of giving loan of such huge amount without interest after borrowing the same on huge interest expenses. Now during the appellate proceedings the appellant has been able to prove the business exigency of giving loan of such a huge amount without interest after borrowing the same at huge interest expenses. Thus the basis of disallowance by the AO has been addressed by the appellant and therefore the addition by way of disallowance of interest has to be deleted. It is also seen that against interest paid of Rs. 52, 00, 6187-(which included interest

paid of Rs. 23, 08, 120/- to IIFSL), the appellant has interest income of Rs. 247, 19, 137/- (to NISPL). Thus the appellant has earning of net interest income under the head 'Income from other sources'. ON this ground also, the interest paid to IIFSL cannot be disallowed. The AO is directed to delete the addition of Rs. 23, 08, /2ft/-The ground succeeds."

The above facts clearly shows that the same CIT (A) who confirmed disallowance of interest payment to IIFSL for AY 2014/15 (impugned order) has deleted disallowance while adjudicating appeals of reopened assessments for A Y 2012/13 & 2013/14 on appreciation of detailed documentary evidence paid on the same amount of loan taken by the appellant.

It is respectfully submitted that disallowance of Rs. 9. 67, 28S/- interest paid to IIFSI. be deleted & Grounds 1 to 3 of the appeal be allowed."

6. Ld. Counsel further submitted that in the year under appeal, the same Ld. CIT (A) has confirmed the addition on the identical set of facts for the assessment year 2012-13 & 2013-14. The expenditure was allowed on the ground that same is for the business purposes. She has drawn our attention to the order dated 25.3.2019 pertaining to the assessment years 2012-13 & 2013-14, wherein the Ld. CIT(A) recorded the factum of the order related to the assessment year under consideration.

7. Ld. D.R. opposed these submissions and vehemently argued that the assessing officer has given a finding on fact. The assessee could not prove that the expenditure was incurred for business purposes. Under these undisputed facts, the finding of the authorities below are justified.

8. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. We find that there is no change into facts and circumstances in respect of the assessment year 2012-13 and 2013-14 and the assessment year 2014-15 i.e. the year under consideration. The Ld. CIT(A) in respect of the assessment years 2012-13 & 2013-14 has allowed expenditure by holding as under:

“7. I have perused the assessment orders and considered the appellant's submission.

7.1 During the course of assessment proceedings for A.Y. 2014-15, it was noticed by the AO that in the previous years relevant to A.Ys. 2012-13 and 2013-14, the appellant had claimed deduction of Rs.52,00,618/- and Rs.99,95,031/- against the interest income under other sources amounting to Rs.2,47,19,137/- and Rs.2,87,42,973/- respectively. The AO observed that the

appellant had mainly claimed interest expenses payable to unsecured loan from M/s. India Infoline Financial Services Ltd. (IIFSL) against income from M/s. Neptune Infra Space Pvt. Ltd. (NISPL) in the previous years relevant to A.Y. 2012-13 and A.Y. 2013-14. The appellant had claimed interest expenses of Rs.52,00,618/- for A.Y. 2012-13 which included interest of Rs.23,08,120/- on loan from HFSL and interest expense of Rs.99,95,031/- for the A.Y. 2013-14 which included interest on loan from IIFSL of Rs.43,92,977/-. During the assessment proceedings, it was submitted by the appellant that the loan of Rs.4,27,64,647/- was taken from IIFSL on 04.11.2011 by the appellant but was directly paid to M/s. Monalisa Infrastructure Pvt. Ltd. (MIPL) under the instruction of the appellant and that MIPL had taken loan of Rs.7.57 crores and amount of loan of Rs.4,27,64,647/- taken by the appellant was utilized by MIPL for repayment of the same. As per the AO, the appellant did not furnish any documentary evidence to prove that the loan taken from IIFSL and transferred directly to MIPL was for the purpose of the business of the appellant though it was the onus of the appellant to prove the business exigency of giving loan of such a huge amount without interest after borrowing the same on huge interest expenses. It was contended by the appellant that he had received back the entire money by 31.03.2012 i.e. within a period of 5 months during the F.Y. 2011-12. But the AO observed that the appellant had made payment of interest to IIFSL amounting to Rs.23,08,120/- for the period of 5 months for the loans utilized by MIPL for the F.Y. 2011-12 and thereafter, the entire interest bearing fund received back from MIPL had been diverted to give the funds to the Partnership Firm from where no taxable income was generated. Thus, the end use of the interest bearing funds from IIFSL was to give interest free advance through a circular route to the Partnership firms in which the appellant was a majority stake holder to earn exempt income. The appellant had shown the entire interest bearing funds given to MIPL as received back in the same Financial Year and on the other hand, the appellant had kept claiming interest expenses on such interest bearing funds in subsequent years though the interest bearing funds had never been utilized to earn interest income. The appellant had earned majority part of interest income from NISPL only for the period F.Y. 2011-12 and for the subsequent years. Thus, it was the case of the AO that the appellant had not made the interest expenditure for the purpose of earning interest income and that the deduction claimed on account of interest payable to IIFSL for the period F.Y. 2011-12 and F.Y. 2012-13 was not allowable as deduction by virtue of provisions of section 14A. Further, the appellant kept paying the interest to IIFSL in subsequent years also, till the previous year relevant to A.Y. 2014-15 (i.e. Rs.23,08,120/- in A.Y. 2012-13, Rs.43,92,977/- in A.Y. 2013-14 and Rs.9,67,285/- in A.Y. 2014-15). On the other hand, the appellant had claimed above expenditure against interest income from NISPL. Therefore, as per the AO, these interests for respective Assessment Years were not allowable as deduction. The AO accordingly disallowed the claim of deduction in the respective years.

7.2 During the assessment proceedings u/s.147 for the A.Y. 2012-13 and A.Y. 2013-14, it was submitted by the appellant that the appellant had given loan of Rs.20,00,00,000/- from PNB Bank Account during F.Y. 2010-11 and had paid interest to parties from whom funds were borrowed and the loan given to NISPL was out of the borrowed fund. During the F.Y. 2011-12, the appellant gave further loan of Rs.4.5 crores from the PNB account and the same was received back. The appellant had borrowed Rs.4.29 crores from IIFSL and had also borrowed funds from MIPL, but during the year, the same was received back. The funds were received/paid through PNB bank account and HDFC bank account. The appellant had paid

interest to IIFSL and debited as financial charges and interest paid to other parties which was debited to interest paid account.

7.3 I must also note that while deciding the appeal for the AY 2014-15 in case of the appellant vide order dated 22.02.2018 it was held by the undersigned in relation to the disallowance of interest expenditure of Rs.9,67,285/- paid to M/s. India Infoline Financial Services Ltd,(IIFSL) that

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In connection with disallowance of interest expenditure of Rs.9,67,285/- paid to India Infoline Financial Services Ltd-(IIFSL) it is seen that the loan was taken by the appellant from IIFSL in November 2011 was directly advanced to Monalisa Infrastructure Pvt Ltd. (MIPL) and the amount was received back in F.Y.2011-12 within a period of 5 months and another amount taken on loan by MIPL from IIFSL in May 2011 was repaid in November 2011 but the AO observed that the appellant had made payment of interest to IIFSL amounting to Rs.23,08,120/-in A.Y. 2012-13, Rs.43,92,977/- in A.Y. 2013-14 and Rs.9,67,285/- in A.Y. 2014-15 and that if the amount was squared up, where was the necessity to pay the interest to IIFSL in the year other than A.Y. 2012-13. From the submission of the appellant I find that the appellant is not correct in asserting that the AO had made the disallowance based on the observation for A.Y. 2012-13 and 2013-14. It has been learnt that the A.Ys.2012-13 and 2013-14 have been reopened u/s 148 by the AO. The appellant has not brought out as to on what account interest of Rs.9,67,285/- was paid to IIFSL for A.Y. 2014-15. Even if it is conceded that the transaction of funds between IIFSL and MIPL were for the purpose of business of the appellant, the appellant has failed to make out the nature of the impugned payment of Rs.9,67,285/- and its allowability during the A.Y. 2014-15. I do not find any reason to interfere with the finding and conclusion of the AO. The addition of Rs.9,67,285/- made by the AO is confirmed and appeal on this ground fails.

7.4 It is stated now that the submission for the AY 2014-15 on the issue was not made in as detail as the submission now made for the AY 2012-13 & AY 2013-14. On critical examination of chains of transactions, it transpires that -

- > the appellant has claimed interest expenses payable of Rs.52,00,618/-for A.Y. 2012-13 which included interest of Rs,23,08,120/- on loan from IIFSL and interest expense of Rs.99,95,031/- for the A.Y. 2013-14 which included interest of Rs.43,92,977/- on loan from IIFSL on unsecured loan of Rs.4,27,64,647/- taken by the appellant from IIFSL on 04.11.2011,*
- > in AY 2012-13 the unsecured loan of Rs.4,27,64,647/- from IIFSL was taken by the appellant but on the direction of the appellant the entire amount from IIFSL went directly to the books of MIPL. Thus the appellant was borrower from IIFSL and MIPL became borrower from the appellant,*
- > the disbursement of loan of Rs.4,27,64,647/- to MIPL was in November 2011 which MIPL had returned in March 2012.*

- > *MIPL is one of the Companies in which the Appellant is shareholder/ Director. MIPL was in need of funds which led to giving the said loan of Rs.4,27,64,647/-.*
- > *In AY 2012-13, the Appellant had received Rs. 2.00 crores from MIPL in his proprietary concern M/s. Varna Builders in the month of September 2011 for which MIPL had not charged any interest from the Appellant. Similarly, the Appellant did not charge any interest to MIPL for use of Rs.4,27,64,647/- loan. It is case of the appellant that this was done based on business reciprocation,*
- > *The Appellant had borrowed funds from one of Partnership firms, M/s. Tulip Infra where he is partner from where the Appellant did not get any interest on capital and remuneration as working partner and the firm pays tax at maximum marginal rate and the Appellant receives the profit only which is tax free as per the provisions of section 10(2A) of the Act,*
- > *as MIPL had taken loan of Rs.7.57 crores, the amount of loan of Rs.4,27,64,647/- taken by the appellant was utilized by MIPL for repayment of the same to the partnership firm, M/s. Tulip Infra,*
- > *the appellant received back the entire money by 31.03.2012 i.e. within a period of 5 months during the F.Y. 2011-12 but the appellant made payment of interest to IIFSL amounting to Rs.23,08,120/- for the period of 5 months for the loans utilized by MIPL for the F.Y. 2011-12,*

7.5 It is case of the appellant that the verification of the Fund Flow Statements for the three years would reveal that that the Appellant had mixed bag of funds i.e. own capital + interest free fund + interest bearing funds, that loan taken from M/s. IIFSL is used for repayment of interest-bearing loans taken earlier and thus, it is a case of loan takeover where one interest-bearing loan is replaced by another interest-bearing loan. It is submitted by the appellant that the fund transferred to M/s. Tulip Realty was for repayment of fund received by the Appellant first. Thus, it is not the case that the Appellant had diverted the interest-bearing fund of M/s. IIFSL to M/s. Tulip Realty as held by the Assessing officer. As per the Fund Flow Statement for A.Y. 2012-13, the Appellant had net capital of Rs.3.86 crores and net reduction in borrowing of Rs.27.80 lacs and for A.Y. 2013-14 the net capital was of Rs.6.03 crores and net increase in borrowing of Rs.11.83 crores. As far as the A.Y. 2013-14 is concerned, the facts are different as there was no loan given to MIPL and no funds were given to Tulip Infra.

7.6 As per the AO, the appellant did not furnish any documentary evidence to prove that the loan taken from IIFSL and transferred directly to MIPL was for the purpose of the business of the appellant though it was the onus of the appellant to prove the business exigency of giving loan of such a huge amount without interest after borrowing the same on huge interest expenses. Now during the appellate proceedings the appellant has been able to prove the business exigency of giving loan of such a huge amount without interest after borrowing the

same at huge interest expenses. Thus the basis of disallowance by the AO has been addressed by the appellant and therefore the addition by way of disallowance of interest has to be deleted. It is also seen that against interest paid of Rs.52,00,618/- (which includes interest paid of Rs.23,08,120/ to IIFSL), the appellant has interests income of Rs.247,19,137/- (to NISPL). Thus the appellant has earning of net interest income under the head 'Income from other sources'. On this ground also, the interest paid to IIFSL cannot be disallowed. The AO is directed to delete the addition of Rs.23,08,120/-. The ground succeeds.”

9. The revenue could not rebut the finding pertaining to the assessment year 2012-13 & 2013-14 by placing any contrary material on record. Therefore, we hereby direct the A.O. to delete this addition. Ground Nos.4 to 6 of the assessee's appeal are allowed.

10. In the result, the appeal of the assessee in ITA No.1055/Ahd/2018 for the A.Y. 2014-15 is partly allowed.

Order was pronounced in the open court on 18.09.2019.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIALMEMBER

Ahmedabad; ॥नांक Dated : 18/09/2019
VG/SPS

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By order

Assistant Registrar, Ahmedabad