

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

1. आयकर अपील सं./ITA No.2786/Ahd/2017

2. आयकर अपील सं./ITA No.2787/Ahd/2017

(निर्धारण वर्ष/Assessment Years : 2013-14 & 2014-15 respectively)

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| 1-2. Nik-san Engineering Co.Ltd. 201, 204, Vikas Chambers Jn. Of Link & Marve Road Malad West, Mumbai | बनाम/ Vs. | 1-2. The DCIT Cicle-2(1)(1) Aayakar Bhavan Baroda |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCN 8963 D | | |
| (अपीलार्थी/Appellant) | .. | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी ओर से/ Appellant by : | Written submission |
| प्रत्यर्थी की ओर से/Respondent by: | Shri L.P. Jain, Sr.DR |

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| सुनवाई की तारीख/ Date of Hearing | 25/10/2019 |
| घोषणा की तारीख/Date of Pronouncement | 20/11/2019 |

आदेश / ORDER

PER MAHAVIR PRASAD, JUDICIAL MEMBER:

The captioned appeals have been filed at the instance of the Assessee against the separate orders of the Commissioner of Income Tax (Appeals)-2, Vadodara [CIT(A) in short] vide appeal nos.CIT(A)/Vadodara-2/10145/16-17 and CIT(A)/Vadodara-2/10209/16-17 dated 20/10/2017 and 05/09/2017 arising in the assessment orders passed under s.143(3) of the Income Tax Act, 1961(hereinafter referred to as "the Act") dated 18/02/2016 and 19/05/2016 relevant to Assessment Years (AYs) 2013-14 & 2014-15 respectively.



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2. Since the issues are inter-connected, these appeals were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The assessee in ITA No.2786/Ahd/2017 has raised the following ground of appeal:-

1. *The Ld. Commissioner of Income Tax (Appeals)-2, Vadodara has erred in law and in facts in upholding the action of the Ld. Assessing Officer in confirming the disallowance of interest of Rs.33,37,941/- holding the same to be for non-business purposes. The disallowance being made in disregard to facts available and bad in law is prayed to be allowed.*
2. *Your appellant craves the liberty to add, alter, amend or delete any or all the grounds(s) of appeal stated above.*

4. Brief facts of the case are that the assessee had filed its return of income u/s.139(1) of the Act on 26^{11/2013} declaring total income of (-) Rs.3,68,34,517/-. during the course of assessment proceeding, on verification of the balance sheet it is seen that during the year under consideration the assessee has given short term loan to various parties which amount to Rs.2,43,95,630/- and short term advances to M/s.Chaudhary Global Ltd. for Rs.1,50,00,000/-. Further, it is also seen that the assessee has not charged any interest to the party while the assessee is paying heavy interest to bank and other on loan and advances it has received. So vide order sheet entry dated 18/01/2016 for the reason mentioned above the A.R. of the assessee was asked to show cause as to



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why the notional interest at the rate of 12% on the total loan and advances as mentioned above should not be worked out and added to the total income of the assessee. In response to the same the assessee vide its letter dated 01/02/2016 submitted the details and argument in response to the specific query raised as above.

“During the year under consideration, the assessee has given advances to the following persons –

| Sr.No. | Particulars | Amount |
|--------|--------------------------------------|-------------|
| 1. | Chaudhary Global Ltd. | 1,50,00,000 |
| 2. | Champion Advances Materials Pvt.Ltd. | 5,54,000 |
| 3. | Vidhata Towers Pvt.Ltd. | 15,37,000 |
| 4. | Gateway Leasing Pvt.Ltd. | 45,40,876 |
| 5. | Hanuman Iron and Steel Pvt.Ltd. | 27,70,000 |
| 6. | Miraj Steels Pvt.Ltd. | 90,00,000 |
| 7. | RSA Enterprises | 27,754 |
| 8. | Strata Exim Pvt.Ltd. | 37,50,000 |
| 9. | Sunita Singhania | 22,16,000 |

Copy of ledger account of party mentioned in Sr.No.1 and 9 were submitted vide letter dated 14.12.2015 as per Annexure – 9. Further, ledger account from Sr.2 to 9 is enclosed as per Annexure-4.

It is also submitted that assessee has received interest on from the following parties to whom loans were given –



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| Sr.No. | Particulars | Interest Amt. |
|--------|--------------------------------------|---------------|
| 1. | Champion Advanced Materials Pvt.Ltd. | 60,000 |
| 2. | Gateway Leasing Pvt.Ltd. | 491,792 |
| 3. | Hanuman Iron and Steel Pvt.Ltd. | 270,000 |
| 4. | Sunita Singhania | 240,000 |

Further, in respect to loans given other parties, it is humbly submitted that the above advances have been made out of own funds which were more than sufficient to cover the advances made as shown above. The total amount available to the assessee company, which is free of interest, is as under:

| Particulars | As on 31.3.2012 | As on 31.3.2013 |
|--------------------|-----------------|-----------------|
| Capital | 4,69,16,000 | 4,69,16,000 |
| Reserves & Surplus | 11,80,56,408 | 9,72,02,497 |
| Total | 16,49,72,408 | 14,41,18,497 |

As can be seen from the above, the assessee had sufficient interest free funds available at its disposal of making the above advances. It is submitted that once monies are available, it is for the assessee to take a business decision for application of funds. Where there are both borrowed funds as also interest free funds, discretion lies in the hands of the assessee for utilization of those funds. Reliance for that purpose is placed on the judgment of the Calcutta High Court in the case of Woolcombers of India Ltd. vs. Commissioner of Income-tax 134 ITR 219. It was further submitted that the view taken by the Calcutta High Court had found approval by the Supreme Court in East India Pharmaceutical Works Ltd. vs. Commissioner of Income-Tax 224 ITR 627 (S.C.).”



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5. The Ld. Assessing Officer was not agreed with the contention of the assessee and made addition of Rs.33,37,941/- holding that assessee had diverted its business money for other than business purposes, therefore same are not allowable.

6. Against the said order of the Assessing Officer, assessee preferred appeal before the CIT(A), who confirmed the action of the AO.

7. Now, assessee has come in appeal before us and non-appeared on behalf of the assessee but written submissions are filed before us. As we can see, for AY 2013-14, assessee has having share capital of Rs.4,69,000 and Reserves & Surplus of Rs.11,80,56,408 which comes to total at Rs.16,49,72,408/- and advances were given to the tune of Rs.2,93,14,754/- for which no interest was claimed. In support its contention, assessee relied upon the order of Co-ordinate Bench in assessee's own case in ITA No.2421/Ahd/2016 for AY 2012-13 order dated 01/08/2018 wherein similar facts and circumstances relief was granted to the assessee with the following observation:

“4. With the assistance of the Id.representatives, we have gone through the record carefully. A perusal of the assessment order would indicate that the assessee has demonstrated before the Id.AO that it has given a sum of Rs.3,42,50,000/- to these four entities/person. However, it has a huge surplus of more than Rs.16 crores in the shape of capital, reserves and surplus on which no interest expenditure was claimed. Thus, the case of the assessee was



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that out of these interest free funds, it could be presumed that interest free advances were given. We also noticed that though the assessee has cash credit and unsecured loans to the tune of Rs.23.18 crores, but we find that non-interest bearing funds was to the extent of Rs.16.30 crores as on 31.3.2011 and Rs.16.49 as on 31.3.2012. The interest free fund has an increasing trend. These interest free funds could easily take care of interest free advances amounting to Rs.3.42 cores. In order to fortify ourselves, we make reference to the decision of Hon'ble Bombay high Court in the case of CIT Vs. Reliance utilities and Power Ltd., 313 ITR 340 (Bom) and CIT Vs. Reghuvir Synthetics ltd., 354 ITR 222 (Guj). Therefore, we allow this ground of appeal and delete addition of Rs.24,48,592/-.

5. *In ground no.2, the assessee has challenged confirmation of addition of Rs.74,177/-, but the Id.counsel for the assessee did not press this ground of appeal, hence, it is rejected.*

6. *In the result, the appeal of the assessee is partly allowed.”*

8. Thus, in parity with the aforesaid order of the Co-ordinate Bench, wherein judgement(s) of Hon'ble Jurisdictional High Court in the case of CIT vs. Raghuvir Synthetics Ltd. 354 ITR 222 (Guj.) and Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities and Power Ltd. 313 ITR 340 (Bom.) have been followed. Thus, we find merit in the case of the assessee and appeal of the assessee is allowed.

9. In the result, appeal of the assessee in ITA No.2786/Ahd/2017 for AY 2013-14 is allowed.

Assessee's appeal in ITA No.2787/Ahd/2017 for AY 2014-15



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10. In this appeal, the assessee has raised the following ground of appeal:

1. *The Ld. Commissioner of Income Tax (Appeals)-2, Vadodara has erred in law and in facts in upholding the action of the Ld. Assessing Officer in confirming the disallowance of interest of Rs.23,79,066/- holding the same to be for non-business purposes. The disallowance being made in disregard to facts available and bad in law is prayed to be allowed.*
2. *Your appellant craves the liberty to add, alter, amend or delete any or all the grounds(s) of appeal stated above.*

11. Since the identical issue is involved in this appeal as well. Thus, in parity with above para our view in ITA No.2786/Ahd/2017 for AY 2013-14 (supra) above shall apply *mutatis mutandis* to the appeal captioned above. As a result, the appeal of the Assessee in ITA No.2787/Ahd/2017 for AY 2014-15 is allowed.

12. In the combined result, both the appeals of the assessee are allowed.

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| This Order pronounced in Open Court on | 20 /11/2019 |
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 20/11/2019

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-2 Vadodara
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad