

आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री एम बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI M BALAGANESH, AM

आयकर अपील सं./ ITA No. 6056/Mum/2018

(निर्धारण वर्ष / Assessment Year 2015-16)

Tips Industries Ltd. 601, Durga Chambers, 6 th floor Linking Road, Khar West Mumbai-400 054	बनाम/ Vs.	The Asst. Commissioner of Income Tax- 16(1), Aayakar Bhavan, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AA ACT5284A		

अपीलार्थी की ओर से / Appellant by	:	Shri Deepak Tralshawala, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Amit Partap Singh, DR

सुनवाई की तारीख / Date of hearing:	05.11.2019
घोषणा की तारीख / Date of pronouncement :	05.11.2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

This appeal by assessee is arising out of order of the Commissioner of Income Tax (Appeals)-4, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-CIT(A)-4/e-file-61/ACIT-16(1)/2017-18 vide dated 28.09.2018. The Assessment was



framed by the Asst. Commissioner of Income Tax, Circle 16(1), Mumbai (in short ACIT/ ITO/ AO) for the A.Y. 2015-16 vide order dated 29.12.2017 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) confirming the action of the AO in upholding the addition of Rs.60 lacs from interest paid on loan on the ground that interest free rent deposit has been given out of business receipts/ transactions. For this assessee has raised the following ground No. 1: -

"j) Upholding the addition of ₹60,00,000/- from interest paid on loan on the ground that the Interest Free Rent Deposit have been given from the business receipts/ transactions, ignoring the fact that the Interest Free Rent Deposits are from the free reserves and surplus of the Appellant Company."

3. At the outset, the learned Counsel for the assessee stated that the AO and CIT(A) has made addition of this interest based on earlier years decisions. He stated that the facts and circumstance are exactly identical in this year as was in the earlier assessment year. He stated that the Tribunal in AYs 2011-12 and 2012-13 and 2013-14 in ITA Nos. 6194 to



6196/Mum/2017 vide order dated 03.05.2019, has considered this issue vide Para 11.2 as under: -

"11.2. We have gone through audited financial statements of the assessee for financial year 2003-04 and also from financial year 2007-08 to financial year 2012-13, which are all placed in paper book filed with the tribunal at page 6-18. The perusal of these financial statements clearly shows that the assessee has its own interest free funds available with it which are more than the interest free refundable rent deposit released by the assessee in favour of licensors of the aforesaid commercial premises. The net worth statement of the assessee company for the financial year 2003-04 to 2013-14 are also placed in paper book at page 5. The details of the interest free refundable rent deposit granted by the assessee was Rs. 2 crores in financial year 2003-04 while Rs. 7 crores stood disbursed in financial year 2006-07 and 2007-08 (Rs. 1 crore in financial year 2006-07 while Rs. 6 crores stood disbursed in financial year



2007-08) –Refer paper book/page 1-4.
The perusal of audited financial statements placed on record clearly reveals that own funds consisting of share capital and reserves and surplus were higher than interest free refundable rent deposit disbursed by the assessee in all these years. Revenue has also not brought on record any direct nexus of interest bearing borrowed funds being utilized for granting interest free refundable rent deposit. The interest free funds available with the assessee comprising of share capital and reserves and surplus for all these years are reproduced hereunder:

Financial Year	Share Capital	Reserves and Surplus	Total (Rs. In Crores)
2003-04	12.65	99.32	111.97
2006-07	15.94	28.64	44.58
2007-08	17.30	52.73	70.04
2008-09	17.30	61.96	79.27
2009-10	17.30	67.92	85.22
2010-11	15.96	63.51	79.47



2011-12	15.96	68.62	84.58
2012-13	15.36	72.49	87.85

Thus, perusal of audited financial statements for all these years clearly reveals as detailed above that the availability of interest free funds with the assessee were much higher than interest free refundable rent deposit of Rs. 9 crores advanced by the assessee and in the absence of any cogent material inextricably linking interest bearing borrowings with the interest free refundable rent deposit granted by the assessee, the presumption will apply that the assessee has released the interest free refundable rent deposit out of interest free funds available with it. The decision of Hon'ble Bombay High Court in the case of Reliance Utilities and Power Limited(supra) is relevant. We hold this ground number 2 raised by assessee in its appeal for AY 2011-12 in favour of the assessee and order deletion of additions as were made by the AO which stood later



affirmed by learned CIT(A). We order accordingly."

4. As the issue is squarely covered and the learned DR, when pointed out, could not controvert the same. Respectfully following the precedent in assessee's own case by Tribunal, we allow this issue of assessee's appeal.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 05.11.2019

Sd/-

(एम बालगणेश / M BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 05.11.2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai