



ITA No.6408/Mum/2018
Ezeego One Travel & Tours Limited
Assessment Year: 2014-15

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.6408/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2014-15)

Ezeego One Travel & Tours Ltd. 1 st Floor, CECIL Court, Landsdown Road, Colaba Mumbai – 400 001	बनाम/ Vs.	ACIT- Circle-2(1)(2) R.No.561,5 th Floor Aaykar Bhawan, M.K.Road Mumbai – 400 020
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AABCE-5758-R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Rajan Vora – Ld. AR
Revenue by	:	Shri Amit Pratap Singh – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	12/12/2019
घोषणा की तारीख / Date of Pronouncement	:	12/12/2019

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2014-15 contest the order of Ld. Commissioner of Income-Tax (Appeals)-4, Mumbai [in short referred to as ‘CIT(A)’], Appeal No. CIT(A)-4/IT-284/ACIT 2(1)(2)/2016-17 dated 31/08/2018, on the following grounds of appeal:-



1. erred in confirming the action of the learned Assessing Officer ('AO') and assessing the total loss of the Appellant at Rs (6,43,03,260) against Rs (8,10,89,858) as reported by the Appellant in its return of income;

Disallowance of Interest under Section 36(1)(iii) of the Act

2. erred in confirming the action of the learned AO in disallowing the interest expenses of Rs 1,67,86,595 under Section 36(1)(iii) of the Act in respect of interest free loans and advances granted to the subsidiaries without appreciating that the said loans and advances have been given for business purpose and commercial expediency;
3. Without prejudice to the above, not justified in disallowing the interest expenses without appreciating that since the owned funds in the financial year ('FY') 2008-09, FY 2009-10 and FY 2010-11 were more than the amount of loan advanced, the loans have been deemed to be given out of owned funds and not borrowed funds;
4. without prejudice to the above, erred in confirming the action of the learned AO in applying the interest rate of 16.17% (applied on an ad-hoc basis) disregarding the fact that the average cost of borrowing of the Appellant is 14.19%; and

Initiation of penalty proceedings under Section 271(1)(c) of the Act

5. erred in confirming the action of the learned AO and initiating penalty proceedings under Section 271(1)(c) of the Act.

As evident, the sole ground which form subject matter of present appeal is interest disallowance u/s 36(1)(iii). Ground No.1 is general in nature whereas Ground No. 5 is related with initiation of penalty. These grounds would not require any specific adjudication on our part.

2. In the above background, we have heard rival submissions and perused relevant material on record including documents placed in the paper-book. The Id. Authorized Representative for Assessee (AR), *Shri Rajan Vora*, pleaded that disallowance may be restricted to the extent of incremental investments / loans advanced by the assessee in AYs 2013-13 & 2014-15. The computations have been placed on record. The Ld. DR supported the disallowance computed by lower authorities.

3.1 Briefly stated, the assessee being resident corporate assessee stated to be engaged as tour operator and travel agent was assessed for year under consideration u/s 143(3) on 29/12/2016 wherein the



assessee was saddled with interest disallowance u/s 36(1)(iii) for Rs.167.86 Lacs.

3.2 During assessment proceedings, it transpired that the assessee claimed interest / financial expenditure of Rs.3916.63 Lacs. Accordingly, the assessee was directed to prove the nexus between own funds and interest free advances of Rs.1239.20 Lacs granted by it and also to prove the commercial expediency in the light of decision of Hon'ble Supreme Court in the case of S.A.Builders. However, the assessee could not submit any evidence in support of the claim that the funds were advanced for business purposes and also could not demonstrate the commercial expediency of advancing interest free loans to associate / sister concerns. Consequently Ld. AO, in terms of provisions of Section 36(1)(iii), observed that an amount of Rs.1085.35 Lacs has been advanced from mix funds and therefore, computed the disallowance as under:

Year ended	Own funds in lacs of Rs.	Borrowed Funds in Lacs of Rs.	Total Funds in Lacs of Rs.	% of Borrowed Funds
31/03/09	1005.11	6000.00	7005.11	85.65
31/03/10	1005.11	1000.00	2005.11	49.87
31/03/11	1005.11	2066.18	3071.29	67.27
31/03/12	11.35	23294.89	23306.24	99.95
31/03/13	11.36	19188.48	19199.84	99.94
31/03/14	11.36	24197.97	24209.33	99.95
	Average			80.54
	Interest free Advances			12,39,20,660
	Interest free Advances from borrowed funds			10,38,13,202
	Average interest rate for the year			16.17%
	Interest disallowable u/s.36(1)(iii)			1,67,86,595

It is evident from above computations that Ld. AO has applied average of proportion of borrowed funds of 6 years to interest free advances given



by the assessee and computed interest disallowance by applying average rate of interest for the year under consideration.

4. The learned first appellate authority, relying upon appellate orders for AY 2013-14, confirmed the said disallowance, against which the assessee is in further appeal before us.

5. Upon due consideration, we find that the prime argument of Ld. AR revolves around the fact that no such disallowance was made till AY 2012-13 and revenue accepted the position that own funds were quite sufficient to make the interest free advances / investments and therefore, no such disallowance would be warranted on such advances made up-to 31/03/2012. The said fact is uncontroverted fact which is evident from assessment orders of earlier years as placed on record. It is also evident that interest disallowance u/s 36(1)(iii) has been made for the first time starting from AY 2013-14. The plea of Ld. AR is that the disallowance should be computed based on incremental advances / investments made starting from AY 2013-14. Keeping in view the given factual matrix, we find substance in the same. The Ld. AR has placed on record a computation chart to submit that the disallowance, in this manner, would work out to Rs.60.42 Lacs considering the incremental advances made by the assessee in AYs 2013-14 & 2014-15. Concurring with the same, Ld.AO is directed to verify the computations and if found correct, restrict the disallowance to that extent, as worked out by the assessee. No other substantial argument has been made and no other relief has been sought in the appeal.



ITA No.6408/Mum/2018
Ezeego One Travel & Tours Limited
Assessment Year: 2014-15

6. In the result, the appeal stands partly allowed in terms of our above order.

Order pronounced in the open court on 12th December, 2019.

Sd/-

(C.N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 12/12/2019
Sr.PS, TNMM /Sr. PS. Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.