

**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA**

**BEFORE SHRI S. S. GODARA, JM & Dr. A. L. SAINI, AM**

**आयकर अपीलसं./I.T.A No.1822/Kol/2018**

**(निर्धारण वर्ष / Assessment Year: 2012-13)**

<b>Rubee Air Freight Limited</b> "Basu House", 2 <sup>nd</sup> Floor, 3, Chowringhee Approach, Kolkata – 700072, W.B	<b>Vs.</b>	<b>ITO, Ward-1(4), Kolkata</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCR4323D</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by : Shri K. M. Roy, FCA

Respondent by : Smt. Ranu Biswas, Addl. CIT

सुनवाईकीतारीख/ Date of Hearing : 17/12/2019

घोषणाकीतारीख/Date of Pronouncement : 31/12/2019

**आदेश / O R D E R**

**Per Shri S. S. Godara:**

This assessee's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (A) - 17, Kolkata dated 14.06.2018 passed in Case No.329/CIT(A)-17/Kol/17-18 involving proceedings u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

Heard both the parties. Case file perused.

2. The assessee's first substantive ground challenges correctness of both the lower authorities' action making proportionate interest amount of Rs.7,75,768/- towards interest free advances given to three entities M/s Eldorado, M/s Rubee Shipping Agencies Pvt. Ltd. & M/s Safe Express Ltd. involving sums of

Rs.14,44,325, Rs.38,49,917 & Rs.2,46,953/-; respectively, totalling to Rs.55,41,195/-. There is hardly any dispute that M/s Rubee Shipping Agencies Pvt. Ltd. happens to be the assessee's group concern. Both the learned lower authorities have disallowed the impugned proportionate interest calculated @14% on the ground that the assessee failed to prove any business exigency in diverting interest bearing secured loans towards interest free advances to the above three companies. We notice during the course of hearing that the assessee's interest free funds of Rs.139,10,271/- comprise of share capital with reserve and surplus amounting to Rs.62,31,200/- and Rs.76,79,071/-; respectively. The necessary presumption that arises in such an instance is that of utilisation of interest free funds only as per hon'ble Bombay high court's decision in [CIT vs. Reliance Utilities and Power Ltd.](#) **313 ITR 340**(Bom). Coupled with this, the assessee has also made interest free advances to its sister concern (supra). Hon'ble apex court's judgment in *S.A. Builders vs. CIT* (2007) 288 ITR 1(SC) holds that such interest free advances between group concerns carry the element of commercial expediency. We conclude in these facts and circumstances that both the lower authorities have erred in disallowing the impugned proportionate interest @14% of Rs.7,75,768/- in question. The Assessing Officer is directed to delete the same. Necessary computation to follow as per law.

3. Next comes unexplained cash credit addition of Rs.5,90,000/-. We notice from a perusal of the relevant assessment order dated 12.03.15 as well as the lower appellate adjudication that the assessee could not prove identity, genuineness and creditworthiness of the three parties M/s Ajaz Minerals Pvt. Ltd., M/s J. K. Enterprise and Sri Ranjan Kr. Raut involving corresponding sums of Rs.2,90,000/- and Rs.1,50,000 each in latter two cases; respectively. The very factual position has continued before us as well. We therefore affirm the impugned addition. This second substantive ground is rejected.

4. The assessee's third substantive ground seeks to delete section 40(a)(ia) interest expenditure disallowance of Rs.3,94,201/- on account of non-deduction of TDS u/s 194A of the Act. There is no dispute about the assessee having not deducted TDS on the impugned interest element. We therefore affirm both the lower authorities' action in principle. The fact also remains that the legislature has itself amended section 40(a)(ia) restricting the earlier full disallowance to 30% only vide Finance Act 2014 w.e.f. 01.04.14. This tribunal's coordinate bench's decision in *Dipak Parui vs. JCIT ITA No.767/Kol/2016* holds the above amendment as a curative one having retrospective effect. We therefore direct the Assessing Officer to restrict the impugned disallowance @30% only.

5. Next comes assessee's fourth substantive ground seeking to delete service tax provision disallowance of Rs.3,21,733/- made by the lower authorities u/s 43B of the Act. Its only case is that it has never claimed any deduction qua this amount in the computation of income. We therefore direct the Assessing Officer to finalise necessary factual verification. This fourth substantive ground is treated to be accepted for statistical purposes.

6. Lastly comes general expenses claim of Rs.15,21,860/- comprising of miscellaneous expenditure and general charges involving Rs.8,52,249/- and Rs.6,69,611; respectively. The Assessing Officer disallowed the same to the extent of 60% whereas the CIT(A) has restricted it to 10% only. We find that neither the assessee has been able to prove each and every instance of expenditure as incurred wholly and exclusively for the purpose of its business nor the learned lower authorities have drawn any comparative chart thereof vis-à-vis in any preceding and succeeding assessment years. We therefore direct the Assessing Officer to

restrict the impugned estimated disallowance @5% only. Necessary computation to follow as per law.

7. This assessee's appeal is partly allowed in above terms.

Order is pronounced in the open court on 31.12.2019.

Sd/-  
(A. L. Saini)  
ACCOUNTANT MEMBER

Sd/-  
(S. S. Godara)  
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 31/12/2019

(RS, Sr.PS)

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. The Appellant - Rubee Air Freight Limited
2. The Respondent- ITO, Ward-1(4), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.  
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,  
I.T.A.T, Kolkata Benches,  
Kolkata.