

THE INCOME TAX APPELLATE TRIBUNAL
"H" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)

I.T.A. No. 368/Mum/2013 (Assessment Year 2009-10)

Shri Kamlesh Kanungo Office No. 18, 1 st Floor 65/73, Habib Building C.P.Tank, Mumbai-400 004. PAN : ABBPK9675R (Appellant)	Vs.	ACIT-15(3) Mumbai. (Respondent)
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Assessee by	Shri Rajkumar Singh
Department by	Shri S. Michale Jerald
Date of Hearing	18.09.2019
Date of Pronouncement	3.12.2019

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A) dated 2.11.12 and pertains to assessment year 2009-10.

2. In this appeal assessee is aggrieved by the confirmation by the learned CIT(A) of the following additions :-

Sr. No.	Particulars	Amount (Rs)
A	Addition on account of un-reconciled interest receipt	83,765/-
B	Disallowance of notional interest on borrowed fund	13,74,401/-
C	Disallowance of under section 14A	3,04,954/-
D	Disallowance under Section 40(a)(ia)	7,692/-
E	Ad-hoc disallowance of conveyance and vehicle expenses	11,911/-
F	Ad-hoc disallowance of depreciation on vehicle	27,197/-

3. This appeal was earlier disposed of by the Tribunal vide order dated 30/5/18. Subsequently by order dated 10.4.19 in Miscellaneous Application this order was recalled for adjudicating issue relating to disallowance of interest and disallowance under section 14A which had remained to be adjudicated. Pursuant to the aforesaid recall this appeal has been heard by us. We have heard both the counsel and perused the records.

4. At the outset learned counsel of the assessee submitted that on the both the issues of disallowance of interest and disallowance under section 14A assessee had submitted before the learned CIT(appeals) that assessee has sufficient own/interest free funds. Hence learned counsel submitted that it was pleaded before the learned CIT(A) that no disallowance for interest for diversion of funds or earning of exempt income can be done. However learned CIT(A) has dismissed this ground taken by the assessee by holding that assessee's funds are intermingled and that assessee was not in a position to correlate the interest free funds and the investment, interest upon which are subject matter of disallowance.

5. In this regard it is the submission of the learned counsel of the assessee that this approach of learned CIT(A) is not in consonance with the honourable jurisdictional High Court decision in the case of HDFC Bank Ltd. (WP No. 1753 of 2016 dt. 25.2.2016) and Reliance Utilities & Power Ltd. (178 Taxman 135), wherein it was held that if interest free funds are sufficiently available no disallowance for diversion or earning exempt income can be done and that assessee was not required to make one-to-one correlation.

6. In this view of the matter upon hearing both the Counsel and perusing the records, we in the interest of justice remit both these issues to the file of the assessing officer. The assessing officer shall consider this issue by examining the factual records. If assessee's interest free funds are sufficient to cover the impugned investment no disallowance for interest in this regard is required. Needless to add assessee should be granted adequate opportunity of being heard.

7. In the result appeal by the assessee stands partly allowed

Order has been pronounced in the Court on 3.12.2019.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 3/12/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai