

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

&

SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.7232 & 7233/Mum/2018

(Assessment Years: 2013-14 & 2014-15)

M.G. Consulting Pvt.Ltd. 4, Chandan Niwas (old) 1 st Floor Mathurdas Visanji Road Behind Andheri Gymkhana Andheri(E) Mumbai-400 069	Vs.	DCIT-10(2)(2) Room No.209 Aaykar Bhawan, M.K.Road Mumbai-400 020
PAN/GIR No.AAACN3292Q		
Appellant)	..	Respondent)

Assessee by	Shri Anil Sathe, AR
Revenue by	Shri. Kailash Mangal, DR
Date of Hearing	16/01/2020
Date of Pronouncement	22/01/2020

आदेश / ORDER

PER G.MANJUNATHA, Accountant Member:

These two appeals filed by the assessee are directed against separate, but identical orders of the Ld. Commissioner of Income Tax (Appeals)-17, Mumbai, both dated 19/09/2018 for the Asst. Years 2013-14 and 2014-15. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed-off by this consolidated order.

ITA.No.7232/Mum/2018 for AY 2013-14:-

2. The assessee has, more or less raised common grounds of appeal for both assessment years. Therefore, for the sake of brevity, the grounds of appeal filed for the AY 2013-14 are reproduced as under:-

1. *The Learned Commissioner of Income Tax (Appeals) erred in confirming the addition made by the learned assessing officer on the ground that there was no commercial expediency in advancing loans to sister concerns and therefore the ratio of the Apex Court in S.A. Builders Ltd. Was not applicable in the appellant's case.*
2. *Without prejudice to Ground No.1 and strictly in the alternative, the Learned Commissioner of Income Tax (Appeals) failed to appreciate that the principle of Reliance Utilities and Power Ltd. Is anyway applicable to the appellant and to the extent the appellant possesses interest-free funds to advance interest free loans, the interest on borrowed capital should not be disallowed.*
3. *Without prejudice to Ground NO.1 and Ground NO.2 and strictly in the alterative, the learned Commissioner of income tax erred in confirming the computation of the learned assessing officer without considering the actual utilization of funds during the year for the purpose of disallowances of interest on borrowed capital.*
4. *The appellant craves leave, to add alter or amend any of the grounds of appeal at any time before or at the time of hearing.*

3. The brief facts of the case extracted from ITA No.7232/Mum/2018 for AY 2013-14 are that the assessee company is engaged in the business of providing advisory/ consultancy services, filed its return of income for AY 2013-14 on 27/09/2013, declaring loss of Rs. 53,59,198/-. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO noticed that the assessee has diverted interest bearing funds for non business purpose to give loans and advances to its related concerns. Therefore, called upon the assessee to explain as to why interest paid on loans shall not be disallowed u/s 36(1)(iii) of the Act for diversion of loan for non business purpose. In response, the assessee vide letter, dated 15/02/2016 submitted that the loans and advances given to sister concerns are for business purposes and there is a commercial expediency in advancing loans. Therefore,

interest paid on loans cannot be disallowed u/s 36(1)(iii) of the Act. In this regard, the assessee has relied upon the decision of Hon'ble Supreme Court in the case of S.A Builders Ltd. vs CIT (288 ITR 01).

4. The Ld. AO after considering relevant submission of the assessee and also taken note of various loans and advances given to sister concerns noted that although, the assessee has advocated the theory of business expediency in advancing loans to sister concerns, but failed to substantiate its claim with necessary evidences to establish the fact that really there is a business connection between the assessee and the sister concerns. The Ld. AO further observed that if you go through the financial statements filed by the assessee, it is noted that during the year under consideration the long term borrowing were increased to Rs. 4,00,52,040/- from Rs. 2,40,27,850/-, whereas the short term loans and advances were increased to Rs. 3,34,26,600/- to Rs.2,61,92,760/-. He, further noted that the financial statement for the year end shows that there is no utilization of the loans taken for the purpose of business other than diverting them to give loans and advances to sister concerns without charging any interest. Therefore, he opined that the case laws relied upon by the assessee, in the case of SA builders Ltd. vs CIT (supra) has no application and accordingly, by taking note of rate of interest paid by the assessee towards loans borrowed from banks and other sources, adopted 15% rate of interest per annum on the total interest free loans given to sister concerns and worked out interest disallowances of Rs. 50,13,990/-. However, by taking note of the fact that a sum of Rs. 20,73,421/- has already been disallowed u/s 40(a)(ia), the balance sum of Rs. 29,40,569/- has been disallowed u/s 36(1)(iii) of the Act.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated its submissions made before the Ld. AO along with the decision of Hon'ble Supreme Court, in the case of SA builders Ltd. vs CIT (supra) and argued that loans and advances are given to sister concerns/associates towards business purpose and the element of commercial expediency is involved in giving loans and therefore, no interest can be disallowed u/s 36(1)(iii) of the I.T.Act, 1961. The assessee had also taken an alternative argument, in light of the decision of Hon'ble Bombay High Court, in the case of CIT vs Reliance Utilities and Power Ltd. 178 taxmann.com 135 (bom.) and submitted that if, there are funds available both, interest free and over draft and, or loans are taken, then a presumption would arise that loans and advances are out of interest free funds generated are available with the assessee. If interest free funds are sufficient to meet the loans and advances, then no disallowances could be made u/s 36(1)(iii)of the I.T.Act, 1961.

6. The Ld.CIT(A) after considering relevant submission of the assessee and also taken note of various case laws cited during the course of appellate proceedings held that although, the assessee has advocated the theory of commercial expediency, but failed to substantiate its claim with the facts that there is a business connection with the assessee and sister concerns. He, further noted that although, the assessee has relied upon the decision of Hon'ble Bombay High Court, in the case of Reliance Utilities and Power Ltd (supra), but even during appellate proceedings, it has not been clarified ,how the principles of said judgment is applicable to the facts of the instant case. He, further noted that the Hon'ble Bombay

High Court, in the case of Godrej & Boyce Manufacturing Company Ltd. (2010) 328 ITR 81 has stipulated that the assessee is required to explain that on the date of extending interest free advances, there was interest free funds available with the assessee, but the same has not been explained. Therefore, he opined that there is no reason to deviate from the finding recorded by the Ld. AO to disallow interest u/s 36(1)(iii), accordingly, confirmed interest disallowances on interest free loans given to sister concerns. However, he further noted that since, the Ld. AO has disallowed partial Interest u/s 40(a)(ia) , and said disallowances has been deleted for the reasons stated in para 4.1 of his order, has confirm the additions made by the Ld. AO towards interest of Rs. 29,40,569/-. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

7. The Ld. AR for the assessee submitted that the Ld.CIT(A) was erred in confirming interest disallowances u/s 36(1)(iii) towards loans and advances given to sister concerns, without appreciating the fact that there is a commercial expediency in advancing loans to sister concerns and the ratio laid down by the Hon'ble Apex Court, in the case of S.A Builders Ltd. (supra) has squarely applicable to assessee case. The Ld. AR, further submitted that although, the assessee has made an alternative plea, in light of the decision of Hon'ble Bombay High court, in the case of Reliance Utilities and Power Ltd (supra), but the Ld.CIT(A) rejected arguments without explaining how said judgment is not applicable to the facts of the assessee case. The Ld. AR further referring to financial statements filed for the year submitted that the assessee has interest free funds of Rs. 203.58 crores, which is available for explaining loans and advances, but the Ld. AO has rejected the explanation furnished by the assessee without recording any reasons. The Ld. AR has also

made an alternative arguments, in light of total loans and advances considered by the Ld. AO to disallow interest u/s 36(1)(iii) and submitted that if you go through the schedule of short term loans and advances, only a sum of Rs. 2,58,72,000/- has been given to related parties and other loans and advances are either for security deposits, loans and advances to employees and other obligations in the normal course of business . Therefore, if at all interest needs to be disallowed, the Ld. AO may be directed to restrict interest disallowances to the extent of utilization of funds to advances and loans to related parties.

8. The Ld. DR , on the other hand, strongly supporting order of the Ld.CIT(A) submitted that the assessee has failed to make out a case of business expediency and also, availability of own funds to cover-up loans and advances given to the sister concerns and hence, there is no reasons to deviate from the findings recorded by the Ld.CIT(A) to confirm interest disallowances u/s 36(1)(iii) of the Act.

9. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. It is an admitted fact that the assessee has made huge borrowing from banks and other financial institutions and diverted part of such funds to sister concerns to give interest free loans and advances. Further, as per the provisions of section 36(1)(iii), if any borrowed funds is diverted for non business purposes, then interest paid to that extent is not allowable as deduction. In light of the above factual and legal background, if you examine the claim of the assessee that it has given loans and advances to the sister concerns out of business expediency, we find that the assessee has failed to substantiate its

claims with the fact that there is an established business connection with the assessee and the sister concerns. No doubt, the principles laid down by the Hon'ble Supreme Court, in the case of SA builders Ltd. vs CIT (supra) has applicable, if the assessee made out a case of business expediency in advancing loans to sister concerns. Since, the assessee has failed to make out a case of business connection, we are of the considered view that the case laws relied upon by the assessee in the case of S.A builders Ltd. vs CIT (supra) has no application to the facts of the present case.

10. Coming back to the second arguments of the assessee, in light of decision of Hon'ble Bombay High court, in the case of Reliance Utilities and Power Ltd. The assessee has made an alternative argument, in light of above judgment that if own funds is in excess of loans and advance or there is mixed funds, including own funds, then the presumption goes in favour of the assessee that loans and advances given is out of interest free funds. In this case, on perusal of facts available on record, including financial statements of the assessee, we find that for the year under consideration, the assessee has incurred losses from its business. Further the net worth of the assessee has been reduced substantially due to losses incurred from the business. At the same time, the long term borrowings and short term borrowings are increased substantially. From the above, it is very clear that there is no interest free fund available with the assessee to explain loans and advances given to sister concerns. Therefore, we are of the considered view that the ratio laid down by the Hon'ble Bombay high court, in the case of Reliance utility power ltd, is also not applicable to the facts of the present case. As regards, another arguments of the assessee, in light of financial statements for the year that the Ld. AO has incorrectly taken loans

and advances as per schedule of short term loans and advances of Rs. 3,34,26,601/- as against actual amount of loans and advances to related parties is only at Rs. 2,58,72,330/- and therefore, if at all interest disallowances is required to be made ,then the Ld. AO may be directed to interest disallowances to the extent of loans and advances actually given to sister concerns. We find that, as per financial statements filed for the year, the assessee has given loans and advances to related parties of Rs.2,58,72,330/-, whereas the Ld. AO has taken the figure of Rs. 3,34,26,600/-, which includes other advances given in the normal course of business. It is an undisputed fact that advances given in the course of normal business cannot be considered as diversion of interest bearing funds for non business purpose. Therefore, we are of the considered view that the Ld. AO is incorrect in taking other advances for the purpose of disallowances of interest u/s 36(1)(iii) of the Act. However, the facts with regard to the details of loans and advances is available with the Ld. AO, at the time of assessment proceedings is not clear from the records. Therefore, for the limited purpose of verification of facts with regard to the actual amount of loans and advances given to sister concerns out of interest bearing funds, we restored the issue back to the file of the Ld. AO and direct him to consider the arguments of the assessee, in light of financial statements filed for the year that actual amount of loans and advances given to related parties is only at Rs. 2,58,72,330/-. If the Ld. AO found that the actual amount of loans and advances to related parties to is only Rs. 2,58,72,330/-, then the Ld. AO is directed to restrict interest disallowances u/s 36(1)(iii) to that extent.

11. In the result, appeal filed by the assessee for AY 2013-14 is partly allowed for statistical purpose.

ITA No.7233/Mum/2018

12. The facts and issues involved in this appeal is identical to the facts and issues, which we had considered in ITA No. 7232/Mum/2018. The reasons given by us in preceding paragraphs in ITA No.7232/Mum/2018 shall mutatis-mutandis apply to this appeal, as well. Therefore, for similar reasons, we partly allowed appeal filed by the assessee for statistical purpose and direct the Ld. AO to follow directions given by the Tribunal for AY 2013-14.

13. As a result, both appeals filed by the assessee are treated as partly allowed for statistical purpose.

Order pronounced in the open court on this 22/01/2020

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

**Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER**

Mumbai; Dated: 22/01/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai