

**IN THE INCOME TAX APPELLATE TRIBUNAL “G”  
BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, AM &  
SHRI RAVISH SOOD, JM**

आयकरअपीलसं./ I.T.A. No. 4841/Mum/2018  
(निर्धारणवर्ष / Assessment Year: 2015-16)

Synergy Diagnostics Pvt. Ltd. 127/128, Laxmi Market, Pokharan Road No. 2, Vartak Nagar, Thane-400 606	<b>बनाम/ Vs.</b>	ACIT Circle-3, Room No. 2, B-Wing, 6 <sup>th</sup> floor, Ashar IT Park, Road no. 16Z, Wagle Estate, Thane-400 604.
स्थायीलेखासं./जीआइआरसं./PAN No. AAEC9451N		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Ravi Mulchandani, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri V. Vinod Kumar, DR
सुनवाईकीतारीख/ Date of Hearing	:	20.11.2019
घोषणाकीतारीख / Date of Pronouncement	:	10.02.2020

आदेश / ORDER

**Per S. Rifaur Rahman, Accountant Member:**

The present Appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) – 22,

Thane in short referred as 'Ld. CIT(A)', Thane, dated 14.06.18 for Assessment Year (in short AY) 2015-16.

2. The brief facts of the case are that the assessee is engaged in the business of supply of diagnostic and life saving drugs in the field of Bio-pharmaceutical and Diagnostic marketing in India. The issue in this AY is that a subsidiary company M/s Vacc-Syn Biotech Pvt. Ltd. who manufactures animal sera and marketing thereof. During this year, assessee borrowed huge funds from different lenders @ 13.3% to 19.5% and claimed interest of Rs. 3.62 crores. The AO observed that the majority of funds borrowed by the assessee are lent to the subsidiary company and gave on interest free basis. AO further observed that the majority of the funds were diverted to the subsidiary company and assessee has not utilized the funds for the purpose of its business. Therefore, the AO by relying on various case laws, he held that assessee has not utilized the funds for the purpose of its business and assessee cannot claim deduction u/s 36(1)(iii) of the Act. Accordingly, he disallowed the interest expenditure to the extent of Rs. 3.37 crores.

3. Aggrieved with the above order, assessee preferred appeal before Ld. CIT(A) and submitted before him that the subsidiary company is dealing in the similar trade in which assessee is dealing and assessee holds 90% of the shares and balance shares were held by the directors. Therefore, the assessee controls whole subsidiary company and any investment made in that company is meant for the business of the assessee company and it fulfils the required condition of business expediency and further assessee relied on various decisions likes Hero Cycles Pvt. Ltd., SA builders and other similar decision in its favour.

4. After considering the submissions of the assessee, Ld. CIT(A) dismissed the appeal of the assessee with the following observations:-

*5.1 During the course of appellate proceedings the Ld. AR mainly contended that the appellant company had advanced Rs 22,86,60,209/- to its associate concern, viz. M/s VSBPL, to expand the business of the appellant company and the entire loan was given for the purpose of commercial expediency of the appellant company i.e. for the purpose of business of appellant company. The Ld. AR further submitted*

*that without prejudice to whatsoever, the AO has erred in, disallowing proportionate interest of Rs 3,37,37,280/- by calculating the interest @ 14.75% on balance amount of Rs 22,86,60,209/-, instead of calculating same on the average balance of loan outstanding during the year i.e. Rs 20,01,92,098/-. The Ld. AR further claimed that the appellant company owns 90% of total share holding and remaining 9% is held by directors 7 promoters of the appellant company, therefore, whatever profit accrues to M/s VSBPL, automatically accrues to the appellant company, being holding company. The Ld.AR, therefore, requested that the interest paid on borrowed capital is entirely for the purpose of business of the appellant company and accordingly allowable as deduction u7s 36(l)(iii) of the Act. The Ld. A R also placed reliance on the rulings of various courts.*

*5.2 From careful consideration of the above contention of the Ld. AR it is observed that the appellant company, along with promoters 7 directors, are holding 100% shares in M/s VSBPL, in which the appellant company had advanced interest free loan of Rs 22,86,60,209/-. On the other hand the appellant company borrowed the above amounts from various parties by paying the interest of Rs 3,50,58,531/-, at*

*average rate of 14.75%. The appellant company did not charge any interest against said advances to its associate concern, with the plea that the said loan was advanced for commercial expediency, being 100% owner of the associate concern, therefore, carried out expansion of business. It is further noticed that the appellant company as well as associate company, are filing returns of income independently, therefore, by not charging interest against the said advance is not as per provisions of the Act, because by manipulating the transfer of interest bearing funds to loss making company, may lead to suppression of tax in the hand of profit making company, i.e. appellant company, by debiting such interest which has actually been incurred for associate concern, which may be loss making company. In view of these facts in my considered opinion the debit of interest of Rs 3,37,27,380/-, relating to the amount advanced to its associate concern, is not justified as this fund, on which interest of above amount had been claimed, has not been utilized for generation of income of the appellant company. Secondly in the associate concern also though there was huge investment in the capital assets but the commercial production not at commenced, therefore, interest relating to this investment, without commencing the **commercial** production, is **otherwise***

*not allowable. The AO had given detailed finding while disallowing the interest of above amount, therefore, in my considered opinion it does not require any interference. In this regard I would like to place my reliance on the rulings in following courts: -*

*Where assessee builder advanced borrowed amount to its sister concern for purpose of acquiring a portion of property in project proposed to be developed by its sister concern and said amount was not utilised for said project but it was used for some other project, the assessee was not entitled for deduction of interest paid on borrowed amount — Embassy Development Corporation vs AC IT [2015]62 taxmann.com 234 (Karnataka)/[2015] 378 ITR 677*

*Once it is borne out from record that assessee had borrowed certain funds on which liability to pay tax is being incurred and on other hand, certain amounts had been advanced to sister concerns or others without carrying any interest and without any business purposes, interest to extent that advance had been made without carrying any interest is to be disallowed under section 36(1)(iii) - Abhishek Industries Ltd. P&H*

*HC20061156 Taxman 257 (P&H)/[2006] 286 ITR  
1 (Punjab & Haryana)/[2006] 205 CTR 304  
(P&H)*

*In this case there was absolutely no finding recorded by Tribunal that interest free advances were made by assessee to sister concern for its business purposes. It was also noticed that advances were extended out of borrowed funds and not out of any credit balance available with assessee-firm. It was held that impugned order passed by authorities below was to be upheld - Punjab Stainless Steel bids. Vs CIT Delhi High Court [2011] 196 Taxman 404 (Delhi)/2010J 324 ITR 396 (Delhi)*

*In the case of M M Nagalinga nadar Sons 318 ITR 210, the borrowed fund which was suppose to be utilised only for the business purpose, some part were transferred to partner's personal account. Hence, proportionate disallowance of interest was justified.*

*Expenditure may either relate to new units on expansion of existing business or it may relate to a totally new business apart from existing business. In the latter case, pre-commencement*

*expenditure of new business would be required to be capitalized. They cannot be charged to the pre-existing business. It is only for the former case, that relates to expansion of existing business, that can be allowed under Section 36(l)(iii). This was analyzed in the case of CIT Vrss. Vadilal Dairy International Ltd. [2010] 328 ITR 544 by Gujarat High Court.*

*Punjab Stainless Steel Lid. 324 ITR 396 /Delhi High Court), in this the Hon'ble High Court has given a finding which is in favour of revenue and has clearly distinguished Munjal Sales Corporation v. CIT, 298 ITR 298. In this judgment the Hon'ble ITAT has squarely followed Hon'ble Delhi High Court decision Punjab Stainless Steel Ltd. 324 ITR 396, the relevant para (11) is reproduced below for the sake of ready reference :-*

*"We find that as per this judgment of Hon'ble Delhi High Court, where mixed fund's are used for the purpose of giving interest free advances, the only relevant text is as to whether such interest free advances are due to commercial expediency or not. In the present case also, the funds are mixed funds and the assessee could not*

*establish any commercial expediency and hence, in our considered opinion, this issue is squarely covered against the assessee by this judgment of Hon'ble Delhi High Court and respectfully following the same, this issue is decided against the assessee".*

*CIT Vs. Indian Express Newspaper (Madurai) P. Ltd. 238 ITR 70 (Mad). - Interest paid on amount borrowed by the assessee company and transferred to the investment company floated by it which in turn transferred to same to an associate company of the assessee company which was engaged in the construction of a building was held not deductible because the borrowed amount was not used for the purposes of the assessee 's business.*

*CIT Vs. Swapna Roy (All) 331 ITR 367 - Borrowed funds were invested in financially fragile sister concerns. The court held that there was no intention to earn income but merely to assist sister concerns. A deduction of interest paid on such borrowings is not allowable.*

*5.3 As regards the case laws relied by the Ld. AR are concerned it is noticed that the facts of the case are,*

*distinguishable from the facts of the case under appeal, therefore, not considered. Considering the facts as discussed above, in my considered opinion, the AO has rightly disallowed the interest of Rs 3,37,27,380/-, in respect of fund which had not been used by the appellant company, for generation of the income of the year, therefore, such expenses can't be set off against the income of the year. Accordingly, the addition of Rs 3,37,27,380/-, made by the AO, is quite justified, therefore, sustained and above grounds of appeal are dismissed.*

5. Aggrieved by the order of the Ld. CIT(A), assessee is in appeal before us on the following grounds:-

*1) The learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer of making an addition of Rs. 3,37,27,380/- (calculated at 14.75% of the outstanding loan balance of Rs. 22,86,60,209/- in respect of loan given by the appellant company to its subsidiary company) by disallowing the proportionate interest on borrowed capital by observing that the appellant company has given interest free advances to its subsidiary company without appreciating the fact that entire loan was given to subsidiary company for the purpose of the*

*'Commercial Expediency' of the appellant company and thus for the purpose of the business of the appellant company.*

*2) Without having prejudice of whatsoever nature to the ground no. 1, The learned Commissioner Of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer of making an addition of Rs. 3,37,27,380/- by calculating the same @ 14.75% on balance of Rs. 22,86,60,209/- instead of calculating the same on the average balance of loan outstanding during the year which was Rs. 20,01,92,098/-.*

6. Before us, Ld. AR of the assessee submitted that assessee has invested as a holding company to the extent of Rs. 22 crores in subsidiary company and claim the interest on borrowed funds. He brought to our notice page 39 of the paper book which is balance sheet of subsidiary company in which assessee is holding 91% of shares, whereas 9% is held by the directors of the assessee company. Further, he brought to our notice page 55 to 73 of the paper book which is memorandum of association of assessee company. He brought to our notice at page no. 2 and 3 of the paper book in which assessee has submitted before us that the fund invested in its subsidiary company to create biotech

facility for developing animal sera products by which assessee was looking for establishing itself as a largest supply of maximum ranges of products including products of subsidiary company. He submitted that the purpose of setting up business of the subsidiary company is to improve overall object of the assessee company. He submitted that the investment made by the assessee company in its subsidiary company is for the business purposes only. In this regard, he relied upon the decision of Hon'ble Supreme Court in the case of Hero Cycles Pvt. Ltd. (Civil Appeal No. 514 of 2008) and further relied on other similar case laws to the facts of the present case.

7. On the other hand, Ld. DR relied upon the orders passed by the revenue authorities.

8. In the rejoinder, Ld. AR brought to our notice at page no. 6 to 8 of the paper book in which assessee has addressed all the observations of the AO for which assessee has explained the reasons for non-commencement of commercial production and how the interest expenditure can be claimed when the borrowed funds were utilized in subsidiary company.

9. Considered the rival contentions and the material placed on record, we notice from the record that assessee is holding 91% of shares, whereas 9% is held by the other directors /promoters. The assessee has borrowed funds and invested the same in the subsidiary company and claimed interest expenditure as business expenditure in its financial statement. AO disallowed the same with the reason that funds were not utilized for the purpose of business and the subsidiary company has not commensurate his business. On careful reading of the decision of Hon'ble Supreme Court in the case of **Hero Cycles Pvt. Ltd. (supra)** and **SA Builders Ltd. Vrs. CIT (Civil Appeal No. 5811 & 5812 of 2006)**, wherein it was held as under:-

*Business expenditure—Interest on borrowed capital—Interest-free loan to sister concern—Lower authorities disallowed interest on borrowed funds on the ground that the amount has been advanced by utilizing the overdraft account—Not justified—It was required to be enquired as to whether the interest-free loan was given to the sister concern as a measure of commercial expediency—If it is so, interest on borrowed funds is to be allowed—The High Court*

*and the other authorities should have examined the purpose for which the assessee advanced the money to its sister-concern, and what the sister-concern did with this money, in order to decide whether it was for commercial expediency, but that has not been done—  
The matter is remanded to the Tribunal for a fresh decision in the light of aforesaid observations*

10. Since assessee has invested the funds in the subsidiary in which assessee holds substantial portion of shares and controls the subsidiary company, the investment /lending of funds to the subsidiary company falls within the meaning of commercial expediency and investment in subsidiary company to develop animal sera products which is part of the biotech facility and the development of the subsidiary company will immensely benefit the operations of the assessee company in the near future and creating such facility will increase the operations and meet the objects of the assessee company. Therefore, investment/lending to the subsidiary company is a prudent decision of the assessee company to reap the benefit in future will definitely fall under the category of business expediency. Therefore, respectfully following the decision of Hon'ble Supreme Court, we hold that

the claim of the expenditure u/s 36(1)(iii) of the Act is allowable expenditure in the hands of the assessee company. Therefore, grounds raised by the assessee are **allowed**.

11. In the net result the appeal filed by the assessee is **allowed**.

*Order pronounced in the open court on 10<sup>th</sup> Feb 2020.*

<i>Sd/-</i> (Ravish Sood) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 10.02.2020
---	--

**आदेशकीप्रतिलिपिअग्रेषित/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**