

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 82/DEL/2016
[Assessment Year: 2012-13]

M/s ACB [India] Power Ltd
C - 102, Surya Enclave
New Multan Nagar
New Delhi

Vs. The Dy. C.I.T.
Circle - 1(2)
New Delhi

PAN: AAICA 7305 D

[Appellant]

[Respondent]

Date of Hearing : 30.06.2020

Date of Pronouncement : 30.06.2020

Assessee by : Shri Salil Kapoor, Sr. Adv
Revenue by : Ms Rakhi Vimal, DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
CIT(A) - 1, New Delhi dated 13.10.2015 pertaining to A.Y 2012-13.

2. The solitary ground by the assessee which was argued before us by the ld. counsel for the assessee relates to the disallowance of interest of Rs. 82,51,230/- u/s 36(1)(iii) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short].

3. Briefly stated, the facts of the case are that assessee company is engaged in the business of production, generation, storage, transmission, distribution and supply of electricity and power and energy. The assessee company is a wholly owned subsidiary of ACB (INDIA) Limited and it is a flagship company of Aryan Group. The assessee company was incorporated on 20.07.2010 with main object, inter alia, to carry on the business of production, generation, storage, transmission distribution, supply of electricity, to promote, own, acquire, erect, construct, establish, operate, maintain, take over power companies and to hold shares in power companies.

4. On scrutinising the return of income, the Assessing Officer noticed that the assessee has shown a sum of Rs. 2,50,000/-being earned by the assessee from professional consultancy charges. The Assessing Officer also noticed that interest income of Rs. 38,356/- has also been shown under the head "other income". The total revenue

was shown at Rs. 2,88,356/-, against which the assessee claimed the following expenses:

i)	Employee benefit expenses	Rs. 2,53,091/-
ii)	Finance cost	Rs. 82,51,230/-
iii)	Other expenses	Rs. 11,18,729/-

5. The Assessing Officer further observed that the only activity the assessee has carried out in the year under consideration is making investment in subsidiaries. The Assessing Officer further observed that professional consultancy charges which were charged to Maruti Clean Coal & Power Ltd. towards power consultancy for 300MW Project Thermal Power Plant was actually receivable as at the end of the year.

6. On these facts, the assessee was asked to justify its claim of expenditure.

7. The assessee filed detailed reply explaining the claim of interest u/s 36(1)(iii) of the Act. The relevant part of the reply of the assessee reads as under:

"ACB (India) Limited (referred as ACBIL herein after) is a flagship company of Aryan Group. ACBIL, along with its subsidiaries and associates, is largest and most efficient coal washery operator in the private sector with an aggregate designed beneficiation capacity, on a proportional basis, of 62.34 million tons per annum. The Company has the largest coal beneficiation plant in India in Dipka (Chhattisgarh), with a designed capacity of 12.00 million tons per annum.

ACB (India) Power Ltd (referred as ACBIPL herein after) was formed for better management prospective of power plants. The management of ACB has decided to segregate the reject based power plants and raw coal based power plant and in July' 2010 the company formed its new subsidiary ACBIPL. All coal based power plants are managed through ACBIPL and all rejects based thermal are managed by ACBIL.

The memorandum of ACBIPL reads as under:

1. To carry on the business of production, generation, storage, transmission distribution and supply of electricity (bulk and retail), power and ei
2. To promote, own, acquire, erect, construct, establish, operate, merge takeover power companies, hold share in power companies, and use the electricity generation capacities owned by any generators, including an title or interest therein as well as power purchase agreement, for venture with other for promoting and to own, acquire, develop mines for power generation and other end uses in

any parts of Indi and elsewhere through tenders, license from appropriate authority all such acts and things necessary in connection with the same company may from time to time think properly to be acquired for and to set up, promote, operate and carry on the business of coa washeries, liquefied natural gas for supply of fuel to stations and to

3. To take over, acquire, operate, maintain, manage and use companies power plants, cogeneration power plants, energy conservation proj« houses, and transmission and distribution systems for generation, d transmission, and supply of electrical energy....

During the year under assessment, the Assessee Company has received towards Share capital, Share Application Money and same were inv« subsidiaries and group companies to fulfil the objective of being a Holding to have better management of companies involved to Power production and commercial objectives as stated by MOA A AOA by subscribing to the She of subsidiaries and group companies.

A brief note on subsidiaries and group companies, in which the Investments have been made during the year under assessment is enclosed evidencing their nature of business, wherein the Assessee Company has in previous years and current year.

The subsidiaries and groupcompanies have entered into MOU Implementation agreements with the Govt Authorities. Long Term Open Access has been granted to the subsidiaries and group companies and Bulk Power Transmission Agreements, have been entered into by the Assessee Company.

It is one of the objective of the Assessee Company, to promote, own erect, construct, establish, operate, maintain, takeover power companies, ho in power companies or turnover, acquire, operate, maintain, manage companies engaged in power plants. Even the amount invested by the share capital infusion during the year under assessment. The Interest paid is allowable u/s 36(l)(iii) of the Income Tax Act, 1961.

We may refer to section 36(1)(iii) of the Income-tax Act, 1961 which states that "the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession" has to be allowed as a deduction in computing the Income-tax under section 28 of the Act.

In *Madhav Prasad JaticN. CIT AIR 1979 SC 1291*, Hon'ble Supreme Court held that the expression "for the purpose of business" occurring under the provision is wider in scope than the expression "for the purpose of earning income, profits or *gains*", and this has been the consistent view of Apex Court.

Thus in *Atherton v. British Insulated SJdelsby Cables Ltd.* [1925] 10 TC 155, it was held by the House of Lords that in order to claim a deduction, it is enough to show that the money is expended, not of necessity and with a view to direct and immediate benefit, but voluntarily and on grounds of commercial expediency and in order to indirectly to facilitate the carrying on the business. The above test in *Atherton's case*, {*supra*} has been approved by this Court in several decisions e.g. *Eastern Investments Ltd. v. CIT* [1951] 20 ITR 1, *CIT v. Chandulal Keshavlal dt Co.* [1960] 38 ITR 601 etc.

The expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been *incurred under any legal obligation*, but yet it is allowable as a business expenditure, if it was incurred on grounds of commercial expediency.

It has been repeatedly held by this Court that the expression "for the purpose of business" is wider in scope than the expression "for the purpose of earning profits" *vide CIT v. Malayalam Plantations Ltd*, [1964] 53 ITR 140, *CIT v. Birla Cotton Spg. & Wvg. Mills Ltd*. [1971] 82 ITR 166 etc.

It is important to mention that even the investments made in share capital of the subsidiary companies by the assessee could not be called the investments for non-business purpose because in the memorandum and the articles of the company, one of the objects the assessee-company mentioned is "investments in shares of other companies by the assessee"

We rely on the Hon'ble Supreme Court judgment in the case of *SA Builders vs CIT* 288 ITR 1 - SC, where in the Apex court has held as under:

"where it is obvious that a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would, in our opinion, ordinarily be entitled to deduction of interest on its borrowed loans..."

Particulars	<i>Amount as on 31.03.2012 (In crores)</i>	<i>Amount as on 31.03.2011 (In crores)</i>
<i>INFLOW OF FUNDS</i>		
Shareholder funds	547.47	273.70
Share Application Money-	-	27.45
Short Term Borrowings	-	57.03
<i>Total Funds Available</i>	<i>547.47</i>	<i>358.18</i>
<i>OUTFLOW OF FUNDS</i>		
<i>Non-Current Investments</i>	418.83	358.18
Share Application Money pending allotment with subsidiaries & group companies	128.60	
<i>Total Funds invested</i>	<i>547.43</i>	<i>358.18</i>

From the above chart, it is very clear that the borrowed funds were invested into subsidiaries & group companies and there was no diversion of funds at all. Since the funds have been invested into subsidiaries & group companies, which is a business activity of the Assessee Company, hence the interest is a business expense for the Assessee Company.

Hence it is requested not to make any disallowance of Interest paid on borrowed funds for making Investments in subsidiaries and group companies since the Interest has been incurred to peruse the objectives as laid down by the **MOA** and **AOA** and Investments in subsidiaries and group companies, is a business activity for the Assessee Company. "

8. After considering the aforesaid reply of the assessee, the Assessing Officer observed that the borrowings of the assessee also has been invested in share capital of subsidiary companies and even the funds raised during the year under consideration have been invested in subsidiary shares of group companies and also repaying the loans. The Assessing Officer was of the firm belief that borrowed funds have been utilised for non business purposes and, therefore, the claim of interest u/s 36(1)(iii) of the Act is not justified. The Assessing Officer was of the opinion that the interest paid on the borrowings should have been for the purpose of business and if the capital borrowed is not utilised for the purpose of business, the assessee is not entitled to deduction under this section. The Assessing Officer, accordingly, made addition of Rs. 82,51,230/-.

9. The Assessing Officer further justified the disallowance u/s 37(1) of the Act also.

10. The assessee carried the matter before the Id. CIT(A) but without any success.

11. Before us, the Id. counsel for the assessee reiterated what has been stated before the lower authorities.

12. Per contra, the ld. DR strongly supported the findings of the Assessing Officer and through her written submissions, placed reliance on several judicial decisions.

13. We have given thoughtful consideration to the orders of the authorities below as well as the judicial decisions relied upon by both the rival representatives. The undisputed fact is that this is not the first year of business of the assessee. It is also not in dispute that the subsidiary companies of the assessee are also engaged in the same business of production, generation, transmission and distribution and supply of electricity.

14. The Assessing Officer himself has observed at para 5.1 of his order that the assessee has paid interest on the borrowings as on 01.04.2011. The ratio laid down by the Hon'ble Supreme Court in the case of SA Builders 288 ITR 1 squarely applies on the facts of the case wherein the Hon'ble Supreme Court has held as under:

Where it is obvious that the holding company has deep interest in its subsidiary and hence if the holding company advances borrowed money to a subsidiary and the same is used for some business purpose of the

assessee would, in our opinion, ordinarily be entitled to deduction on interest of its borrowed loans."

15. The facts of the case in hand are on stronger footing in as much as in the case in hand, the appellant did not advance any loan to its subsidiaries but has invested in the shares of subsidiary companies. As mentioned elsewhere, subsidiary companies of the appellant are engaged in the same business as that of the assessee which is also evident from the main object clause in the Memorandum of Association.

16. The decisions relied upon by the Id. DR are totally on different set of facts. In case of Punjab Stainless Steel, the Hon'ble Delhi High Court has held that there was absolutely no findings recorded by the Tribunal that interests free advances were made by the assessee to sister concerns for its business purposes. That case was of advances whereas the case in hand is of investment.

17. Similarly, the case of Thukral Regal Shoes 391 ITR 119 was of loan wherein the assessee claimed that properties were purchased in the

name of partners and property was made available to the assessee firm and in that case, the Assessing Officer categorically found that assets purchased by partners were not put to use at least during the year under consideration. The decisions relied upon by the Id. DR in the case of Abhishek Industries Ltd is of no good as the same has been overruled by the Hon'ble Supreme Court in the case of Munjal Sales Corpn. 298 ITR 298.

18. Similarly, in the case of Mahindra World City Developers Ltd 107 Taxmann.com 16, the quarrel was in respect of proviso to section 36(1)(iii) of the Act vis a vis section 145A of the Act. On the same lines, the other judicial decisions are also clearly distinguishable.

19. Adverting to the facts of the case in hand, the assessee has successfully demonstrated that the investment in shares to subsidiary company was in furtherance of main objects of its business and, therefore, in our considered view, the assessee is very much entitled for claim of interest paid on borrowed capital. We, accordingly, set aside the findings of the Id. CIT(A) and direct the Assessing Officer to delete the addition of Rs. 82,51,230/-.

20. In the result, the appeal of the assessee in ITA No. 82/DEL/2016 stands allowed on the ground argued before us.

The order is pronounced in the open court on 30.06.2020.

Sd/-

**(BHAVNESH SAINI)
JUDICIAL MEMBER**

Sd/-

**(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

Dated: 30th June, 2020.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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