

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SMT. P.MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
2132/Hyd/17	2010-11	M/s.Associated Broadcasting Company Private Limited, Hyderabad [PAN: AAECA2935P]	Addl. Commissioner of Income Tax, Range-13, Hyderabad (Presently with Asst.CIT, Circle- 14(1), Hyderabad)
1752/Hyd/16	2011-12	M/s.Associated Broadcasting Company Private Limited, Hyderabad [PAN: AAECA2935P]	Asst. Commissioner of Income Tax, Circle-13(1), Hyderabad
31/Hyd/17		The ACIT, Circle-14(1) Hyderabad	M/s.Associated Broadcasting Company Private Limited, Hyderabad [PAN: AAECA2935P]
671/Hyd/17	2012-13	M/s.Associated Broadcasting Company Private Limited, Hyderabad [PAN: AAECA2935P]	DCIT, Circle-14(1), Hyderabad
636/Hyd/17		The ACIT, Circle-14(1) Hyderabad	M/s.Associated Broadcasting Company Private Limited, Hyderabad [PAN: AAECA2935P]

825/Hyd/17		M/s.Associated Broadcasting Company Private Limited, Hyderabad [PAN: AAECA2935P]	ACIT, Circle-14(1), Hyderabad
795/Hyd/17	2013-14	The ACIT, Circle-14(1) Hyderabad	M/s.Associated Broadcasting Company Private Limited, Hyderabad [PAN: AAECA2935P]

For Assessee : Shri Ravi Bharadwaj, AR

For Revenue : Shri Abhaya Rout, DR

Date of Hearing : 09-09-2020

Date of Pronouncement : 30-09-2020

ORDER

PER BENCH :

The appeal for AY.2010-11 is filed by the assessee while for the AYs.2011-12, 2012-13 & 2013-14 appeals are filed by both the Assessee as well as the Revenue. Since the facts and issues involved in all these appeals except for the amounts mentioned therein are common and identical, all these appeals were heard together and are being disposed-of by way of this common and consolidated order. For the sake of convenience, appeal of the assessee in ITA No.2132/Hyd/2017 (AY.2010-11) is discussed hereunder in detail.

2. Brief facts of the case are that, the assessee-company, engaged in the business of Production and Broadcasting of Television Content, filed its return of income electronically for

the AY.2010-11 on 30-09-2009, admitting total loss of Rs.5,02,78,869/-.

3. During the course of assessment proceedings u/s.143(3) of the Income Tax Act [Act], the assessee's representatives appeared and submitted the details called-for from time to time. On perusal of the Cash Flow Statement for the year ending 31-03-2010, the AO observed that the assessee has utilised borrowed funds for investing Rs.12.78 Crores as share application money in its subsidiaries. Therefore, the assessee was asked to show cause as to why the interest on borrowed funds which are not utilised for business purposes of the assessee should not be disallowed u/s.36(1)(iii) of the Act or alternatively u/s.14A of the Act as the borrowed funds were utilised in equity of subsidiaries and thus the assessee is entitled to dividend income therefrom which is exempt u/s.10(34) of the I.T.Act.

3.1. The assessee filed its reply stating that the assessee has deep interest in the business of its subsidiaries and therefore the investments made by the assessee-company in its subsidiaries was for the business purposes of the subsidiaries which is also for the business purpose of the assessee-company as held by the Hon'ble Supreme Court in the case of SA Builders Ltd., Vs. CIT(Appeals), Chandigarh [288 ITR 1] (SC). Therefore, he pleaded that the investments are towards commercial expediency of the assessee and therefore disallowance u/s.36(1)(iii) is not attracted.

3.2. As regards the proposed disallowance u/s.14A of the Act, the assessee submitted that there was no exempt income earned by the assessee during the relevant assessment year and therefore, no disallowance was to be made u/s.14A of the Act. However, the AO observed that the Hon'ble Special Bench of the ITAT Delhi Tribunal in the case of Cheminvest Limited Vs. ITO [121 ITD 318] (Del)(SB) has held that – *disallowance u/s.14A can be made in the year in which no exempt income has been earned or received by the assessee.*

3.3. As regards the disallowance u/s.36(1)(iii) of the Act, the AO, however, was not convinced with the submissions of assessee. He observed that the Hon'ble Supreme Court has admitted the Special Leave Appeal (Civil) 2012 (CC No.7138 to 7140/2012) on 30-04-2012 in the case of ACIT Vs. Tulip Star Hotels Ltd., wherein the interim order has been passed that the view in the case of SA Builders Ltd., (supra) needs re-consideration. Taking the same into consideration, the AO held that the assessee's contention of commercial expediency is not acceptable. Further, following the decision of the Special Bench (cited supra), he disallowed the interest on borrowed funds utilized by the assessee to invest in equity of its subsidiaries @17.5% which is the rate at which the assessee has paid interest.

4. Aggrieved, the assessee preferred an appeal before the CIT(A), who observed from the details of sources of investments that the assessee has made investments in the subsidiaries to the extent of Rs.12,78,00,000/- and that it

included a sum of Rs.10,55,50,000/- from Axis Bank cash credit account, on which the assessee paid interest @17.5%. The CIT(A) also considered that though the assessee had own interest free funds but it has utilized borrowed funds for investment in share application money in subsidiaries. Thus, he upheld the disallowance of interest only to the extent of Rs.10.55 Crores as against the total investment of Rs.12.78 Crores. Therefore, partial relief was granted by the CIT(A).

5. Against the said order of the CIT(A), the assessee is in second appeal before us.

6. The case is taken up for hearing through video conferencing and both the parties were heard.

7. Ld.Counsel for the assessee, while reiterating the submissions made by the assessee before the lower authorities, submitted that assessee's own funds being the share capital and reserves were much more than the investments made by the assessee in its subsidiaries. He relied upon the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities & Power Ltd., (2009) [178 135/313 ITR 340] (Bombay HC), wherein it was held that – *“if the funds are available, both interest free and/or loans taken, just presumption would arise that investments would be out of interest free funds generated or available with company, provided such funds are sufficient to meet the investments”*. He submitted that the Hon'ble Supreme Court in the case of CIT Vs. Reliance Industries Ltd., (2019) [102 taxmann.com 52] (SC)

has confirmed the view taken by the Hon'ble Bombay High Court by holding that – *“the funds available to the assessee, where sufficient to meet its investments, it could be presumed that investments were made from the interest free funds available with the assessee and there was no reason to interfere with the judgment of the Hon'ble High Court”*. He also relied upon the decision of the Hon'ble Supreme Court in the case of Pr.CIT-9 Vs. ECity Investments and Holdings Company (P.) Ltd., (2020) [117 taxmann.com 124] (SC), wherein the SLP filed by the Department against the decision of the Hon'ble Bombay High Court was dismissed by considering the decision of the Hon'ble Supreme Court in the case of SA Builders (supra) and confirmed the view that the amounts advanced to the sister concern was for the purposes of commercial expediency and therefore, the interest paid on such loan is allowable as 'business expenditure'. Thus, Ld.Counsel for the assessee prayed for deleting the disallowance made by the AO and the CIT(A).

8. Ld.DR, on the other hand, supported the orders of the authorities below and submitted that the direct nexus between the borrowed funds and the investments have been proved in this case and therefore, the assessment order may be confirmed.

9. Having regard to the rival contentions and material on record, we find that the investments have been made from the cash credit account, into which, the Ld.Counsel for the assessee has claimed, that the sale proceeds of the assessee as

well as the borrowed funds have been deposited and utilised. The AO has disallowed the interest on the entire investment though according to the assessee, the cash credit account contains both interest free as well as interest bearing funds. As held by the Hon'ble Supreme Court – *where the interest free funds and interest bearing funds are mixed and the assessee makes investments in sister concern, it is to be presumed that such investments are out of interest free funds only and there cannot be any disallowance of interest on borrowed funds.* Though the assessee has filed before us, the financial statements as on 31st March, 2010 to show that the interest free funds available with it at the time of investments, were much more than the investments made by the assessee, we are of the opinion that it needs verification by the AO. Therefore, we remit the appeal to the AO for the limited purpose of verification of AO's own and interest free funds available and if the AO finds that the assessee's own and interest free funds were much more than the investments made by the assessee, then no disallowance shall be made by the AO and if it is found that such funds are not sufficient, then, disallowance shall be made only to the extent of funds utilised for investment over and above the own funds available with the assessee.

10. In the result, this appeal of assessee is treated as allowed for statistical purposes.

Appeals for the AYs.2011-12, 2012-13 & 2013-14:

11. In these assessment years also facts and circumstances are the same and there are cross-appeals by the Assessee as well as the Revenue against the order(s) of the CIT(A). Revenue is aggrieved by the partial relief granted by the CIT(A), while the assessee is in appeal against the confirmation of the part of the disallowance made by the AO u/s.36(1)(iii)/14A of the Act.

12. Since the facts and circumstances of the present appeals of the assessee for the assessment years under consideration are similar as in the AY.2010-11, and therefore, for the reasons given by us in the appeal of the assessee in ITA No.2132/Hyd/2017 (AY.2010-11), all the present appeals of assessee are also treated as allowed for statistical purposes.

13. As far as the appeals of the Revenue for the assessment years under consideration are concerned, it is submitted by the Ld.Counsel for the assessee that the tax effect in Revenue appeals for the AYs.2011-12 and 2013-14 is below the tax limit fixed by the CBDT vide Circular No.17 of 2019 dated 8th August, 2019.

13.1. Ld.DR also confirmed that the tax effect in these two appeals is less than Rs.50 Lakhs and therefore for these reasons and as well as for the findings given by the CIT(A) in all these appeals of Revenue that the interest free funds available with the assessee were much more than the investments made by the assessee in subsidiary companies,

we do not see any reason to remit the same to the file of the AO. Therefore, we dismiss the appeals of Revenue for the AYs.2011-12 and 2013-14.

Appeal of the Revenue for the AY.2012-13:

14. As far as this appeal of Revenue is concerned, the CIT(A) has given a finding that the own funds of the assessee were much more than the investments made by the assessee in its subsidiary. Therefore, in view of our decision for the AYs.2011-12 and 2013-14, this appeal of Revenue (AY.2012-13) is also dismissed.

15. To sum-up, all the appeals of assessee are treated as allowed for statistical purposes and all the appeals of Revenue are dismissed.

Order pronounced in the open court on 30th September, 2020

Sd/-

(D.S. SUNDER SINGH)
ACCOUNTANT MEMBER

Hyderabad, Dated: 30-09-2020

TNMM

Sd/-

(P. MADHAVI DEVI)
JUDICIAL MEMBER

Copy to :

*1.M/s.Associated Broadcasting Company Private Limited,
Plot No.97, Road No.3, Banjara Hills, Hyderabad.*

*2.Addl.Commissioner of Income Tax, Range-13,
Hyderabad.*

3.DCIT, Circle-14(1), Hyderabad.

4.ACIT, Circle-14(1), Hyderabad.

5.ACIT, Circle-13(1), Hyderabad.

6.CIT(Appeals)-9, Hyderabad.

7.CIT(Appeals)-6, Hyderabad.

8.The Pr.CIT-6, Hyderabad.

9.D.R. ITAT, Hyderabad.

10.Guard File.