

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 493/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Poona Construction Machinery and Products Pvt. Ltd., Universal House, Near Old Jakat Naka, Warje, Kothrud, Pune – 411 029 PAN : AADCP2679L	Vs.	DCIT, Circle-4, Pune
Appellant		Respondent

Assessee by None  
Revenue by Shri S.P. Walimbe

Date of hearing 06-10-2020  
Date of pronouncement 07-10-2020

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A)-2, Pune on 04-11-2016 in relation to the assessment year 2012-13.

2. The only issue raised in this appeal through various grounds is against the confirmation of disallowance of interest u/s.36(1)(iii) of the Income-tax Act, 1961 (hereinafter also called 'the Act') amounting to Rs.1,29,22,224/-.

3. Briefly stated, the facts of the case are that the assessee has been engaged in Manufacturing and Fabrication of Construction machinery. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee paid interest on bank borrowings to the tune of Rs.2,38,71,029/-. It was further noticed that the assessee had also advanced interest free loans to its Directors/their relatives and sister concerns to the tune of Rs.8,07,63,900/-. On being called upon to explain as to why disallowance of interest be not made towards the advancing of interest free loans without business purpose, the assessee submitted that it had sufficient interest free funds at its disposal and hence, no disallowance of interest was called for. Not convinced, the AO applied interest rate of 16% on the amount of interest free loans and worked out disallowance at Rs.1,29,22,224/-. The Id. CIT(A) affirmed the view of the AO.

4. We have heard the Id. DR through the Virtual Court and gone through the relevant material on record. There is no appearance from the side of the assessee despite several notices. In fact, the appeal was first fixed for hearing on 16-05-2009 when the assessee did not appear. The matter was adjourned for 15-07-2009. Again,

the assessee neither appeared nor put up any adjournment application. The case was adjourned from time to time, namely, 09-09-2019, 04-11-2019, 26-02-2020, 07-08-2020, 08-09-2020 and finally for 06-10-2020. The assessee has chosen to remain absent despite so many notices. We are, therefore, proceeding to dispose off the appeal *ex parte qua* the assessee on merits.

5. It is an undisputed fact that the assessee advanced non-business interest free loans to its Directors, their relatives and sister concerns amounting to Rs.8,07,63,900/- without interest. It is also not disputed that the assessee borrowed funds on which interest of Rs.2.38 crore odd was paid. The assessee made out a case before the AO and the Id. CIT(A) that its share capital and Reserves and Surplus stood at Rs.5,71,49,014/- and to that extent no disallowance of interest should be made, which contention came to be jettisoned.

6. The Hon'ble Bombay High Court in *CIT vs. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom)*, has held that where an assessee possessed sufficient interest free funds of its own which were generated in the course of relevant financial year, apart from substantial shareholders' funds, presumption stands established

that the investments in sister concerns were made by the assessee out of interest free funds and, therefore, no part of interest on borrowings can be disallowed on the basis that the investments were made out of interest bearing funds. In reaching this conclusion, the Hon'ble High Court relied on the judgment of the Hon'ble Supreme Court in the case of *East India Pharmaceutical Works Ltd. Vs. CIT (1997) 224 ITR 627 (SC)*. Similar view has been taken by the Hon'ble Dehi High Court in *CIT vs. Tin Box Company (2003) 260 ITR 637 (Del)*, holding that when the capital and interest free unsecured loan with the assessee far exceeded the interest free loan advanced to the sister concern, disallowance of part of interest out of total interest paid by the assessee to the bank was not justified. More recently, the Hon'ble Supreme Court in *CIT(LTU) VS. Reliance Industries Ltd. (2019) 410 ITR 466 (SC)* has reiterated the same view.

7. As the assessee's capital along with Reserves and Surplus stood at Rs.5.71 crore as against interest free loans amounting to Rs.8.07 crore, we hold that no disallowance of interest could have been made to the extent of availability of interest free funds. We, therefore, accept the availability of interest free funds for diversion towards Directors, their relatives and sister concern to the extent of

Rs.5,71,49,014/- and hold that the remaining amount of loan of Rs.2,36,14,886/- was advanced interest free out of interest bearing funds. The AO is directed to work out the amount of proportionate disallowance of interest by considering the rate of interest at which the assessee paid interest on such amount of Rs.2.36 crore and odd. Needless to say, the assessee will be allowed a reasonable opportunity of hearing by the AO in such fresh proceedings.

8. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 07<sup>th</sup> October, 2020.

Sd/-  
**(PARTHA SARATHI CHAUDHURY)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 07<sup>th</sup> October, 2020

सतीश

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Pune
4. The Pr.CIT-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे  
“ए” / DR ‘A’, ITAT, Pune
6. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	06-10-2020	Sr.PS
2.	Draft placed before author	07-10-2020	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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