



M/s. Laxmi Diamond Private Limited  
ITA No.2350/Mum/2019  
Assessment Year :2010-11

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, MUMBAI**

**माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing through Video Conferencing Mode)**

आयकर अपील सं./ ITA No. 2350/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2010-11)

<b>Laxmi Diamond Private Limited</b> EW-2200, Bharat Diamond Bourse Bandra Kurla Complex Bandra (E), Mumbai – 400 051	<b>बनाम/</b> Vs.	<b>DCIT-5(2)</b> 5 <sup>th</sup> Floor, Aaykar Bhawan M.K.Marg Mumbai – 400 020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AABCL-1815-G</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Suchek Anchaliya, Ld. AR
<b>Revenue by</b>	:	Shri Michael Jerald-Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	19/10/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	22/10/2020

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2010-2011 contest the order of Ld. Commissioner of Income Tax (Appeals)-10, Mumbai, Appeal No. CIT(A)-10/DC/5(2)(1)/138/2014-15 dated 18/01/2019 on following grounds: -

1. The learned CIT(A) erred on facts and in law in sustaining the disallowance of interest of Rs.7150119/- u/s 36(1)(iii)



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2. The learned CIT(A) erred in following his own order for AY 2013-14 inas much as the facts therein are distinguishable.

As evident, the sole issue that arises for our consideration is interest disallowance u/s 36(1)(iii) for Rs.71,50,119/-.

2. The learned Authorized Representative for assessee (AR), at the outset, submitted that similar issue arose in preceding AY 2009-10 wherein vide ITA No. 1106/Mum/2016 in revenue's appeal, order dated 22/11/2019, the Tribunal deleted the similar additions made by Ld. AO. The copy of the order has been placed on record. The Ld. AR also took us through financial statements to support the submissions that facts are identical in this year and in support of the submissions that the assessee had sufficient own interest free funds to make the investments under consideration.

The Ld. DR, on the other hand, controverted the submissions by stating that facts are different in this year. It has been submitted that the assessee did not file any fund flow statements in support of the submissions that own funds were used to make the investments in certain premises, against which the disallowance has been computed by lower authorities.

3. We have carefully considered the rival submissions and perused relevant material on record including orders of lower authorities, assessee's financial statements for the year under consideration as well as the cited order of Tribunal in assessee's own case for AY 2009-10 which has been co-authored by one of us. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

4. The material facts are that an assessment was framed u/s 143(3) on 24/03/2014 for the year under consideration wherein the assessee



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was saddled with interest disallowance u/s 36(1)(iii) for Rs.71,50,119/-.

The assessee is stated to be engaged in import, export and polishing of diamonds. It so transpired that the assessee advanced amount of Rs.19.86 Crores for purchase of certain premises at Bharat Diamond Bourse and at Surat. None of the premises was put to use during the year which led Ld. AO to disallow proportionate disallowance u/s 36(1)(iii) out of interest expenditure of Rs.34.09 Crores claimed by the assessee. The assessee submitted that no specific borrowings were taken to make the said payment and the assessee had sufficient own funds in the shape of share capital, share premium & accumulated reserves aggregating to Rs.225.28 Crores besides unsecured interest free loans of Rs.58.72 Crores at year end. The interest expenses were stated to be incurred only in respect of packing credit or post-shipment credit which was not meant for funding the payment made for purchase of these premises. However, not convinced, Ld. AO computed proportionate interest disallowance of Rs.71.50 Lacs which has been arrived at in proportion of average investments vis-à-vis average of total assets employed by the assessee.

5. Upon further appeal, Ld. CIT(A) chose to confirm the disallowance in the light of his adjudication in AY 2013-14. Aggrieved, the assessee is under further appeal before us.

6. The perusal of assessee's financial statements would show that the assessee has own funds in the shape of share capital & reserves aggregating to Rs.225.28 Crores at year end as against opening funds of Rs.153.15 Crores. Besides the above funds, the assessee has interest free unsecured loans of Rs.58.72 Crores at its disposal at year end. As



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against this, the capital advances at year end stood at Rs.20.23 Crores as against opening balance of Rs.19.83 Crores which would show that there was only a marginal increase of Rs.40 Lacs during the year. Further, the interest-bearing secured loans obtained by the assessee were meant only for specific purposes i.e. packing credit or post-shipment credit.

In the background of aforesaid facts, it could very well be concluded that there was no nexus of borrowed funds with the capital advances made by the assessee and the assessee had sufficient own funds to make the aforesaid investments. Without establishing any direct nexus of borrowed funds vis-à-vis capital advances, no such disallowance could have been made by revenue authorities.

7. In fact, the coordinate bench of the Tribunal, on identical set of facts, deleted the similar additions in AY 2009-10 vide ITA No.1106/Mum/2016 order dated 22/11/2019 by relying upon the binding decision of Hon'ble Bombay High Court in the case of **CIT V/s Reliance Utility & Power Ltd. (2009 313 ITR 340)** as well as in **CIT V/s HDFC Bank Ltd. (2014 366 ITR 505)**. We find the factual matrix to be similar in this year. Therefore, on the facts and circumstances of the case, the impugned interest disallowance is not sustainable in law. By deleting the same, we allow the appeal.

8. The appeal stands allowed.

*Order pronounced on 22<sup>nd</sup> October, 2020.*

**Sd/-**

**(Amarjit Singh)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**



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मुंबई Mumbai; दिनांक Dated : 22/10/2020  
Sr.PS, Jaisy Varghese

**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/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.