

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH

(Virtual Court)

**Before: Shri Rajpal Yadav, Vice President
And Shri Amarjit Singh, Accountant Member**

**ITA No. 1852/Ahd/2018
Assessment Year 2014-15**

Turakhia Overseas Pvt. Ltd. B-203, Pushpavan Apartments, Opp. Ruchi Bungalows, Bodakdev, Ahmedabad-380054 PAN: AA ACT5636N (Appellant)	Vs	The Dy. Commissioner of Income Tax, Cir-4(1)(2), Ahmedabad (Respondent)
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**Revenue by: Shri L.P. Jain, Sr. D.R.
Assessee by: Shri Shri Parin Shah, A.R.**

Date of hearing : 09-09-2020
Date of pronouncement : 09-10-2020

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee’s appeal for A.Y. 2014-15, arises from order of the CIT(A)-8, Ahmedabad dated 10-07-2018, in proceedings under section 143(3) of the Income Tax Act, 1961; in short “the Act”.

2. The assessee has raised following grounds of appeal:-

- “1. The Ld. CIT(A)-8 Ahmedabad has erred both in law and on facts of the case in passing an appellate order for A.Y. 2014-15 on 01-07-2018.
2. The Ld. CIT(A) has erred in confirming the disallowance out of interest expenses of Rs. 6,59,425/-.
3. The Ld. CIT(A) has erred, not only in confirming the disallowance u/s. 14A of the I.T. Act, but has further erred in enhancing the disallowance to Rs. 14,36,931/-”

3. The fact in brief is that return of income declaring income of Rs. 12,02,23,628/- was filed on 9th Sep, 2014. The case was subject to scrutiny assessment and notice u/s. 143(2) was issued on 28th August, 2015. The assessment u/s. 143(3) was finalized on 26th June, 2016. The relevant facts of the case are discussed while adjudicating the grounds of appeal filed by the assessee as under:-

Ground No. 1(Disallowance of interest expenses of Rs. 6,59,425/-

4. During the course of assessment, on verification of the details of interest paid and interest received on loan and advances, the Assessing Officer noticed that assessee has not charged any interest in respect of advances of Rs. 41,50,000/- given to Ami Bhargav Shah. On query, the assessee explained that this loan was given to the wife of the one of the key personnel of the company Mr. Bhargav Shah who was associated with the company for the last 20 years and this loan was given as a part of business expediency of the assessee company. The Assessing Officer was of the view that advance given to the wife of an employee cannot be considered for the purposes of business expediency. Therefore, the Assessing Officer has charged interest @ 15% on such advance and added an amount of Rs. 6,59,425/-.

5. The assessee preferred appeal before the Id. CIT(A). The Id. CIT(A) has dismissed this ground of appeal of the assessee. The Id. CIT(A) held that the impugned advance was given to the wife of the employees out of the overdraft account having credit balance frequently resulting into payment of interest on which the assessee has paid interest @ 11.5%. Accordingly, the Id. CIT(A) has restricted the disallowance of interest on loan given to the employee of the wife to the extent of 11.5% as against disallowance of 15% made by the Assessing Officer.

6. During the course of appellate proceedings before us, the Id. counsel has submitted that this issue is covered by the decision of Co-ordinate Bench of the ITAT in the case of the assessee itself for A.Y. 2009-10 vide ITA No. 1563/Ahd/2013 dated 16/12/2016. It is also contended that small amount of loan of Rs. 41.05 lacs was advanced out of substantial amount of interest free funds of Rs. 25.6 crore available with the assessee. On the other hand, the Id. Departmental Representative has supported the order of the lower authorities.

7. Heard both the sides and perused the material on record. It is undisputed facts that assessee was having substantial amount of interest free funds of Rs. 25.6 crore as against amount of loan advanced of Rs. 41.05 lacs. With the assistance of the Ld. representatives, we have gone through the decision of the Co-ordinate Bench placed in the paper book on the identical issue and facts adjudicated in the case of the assessee vide ITA No. 1563/Ahd/2013 dated 16/12/2016 wherein the Co-ordinate Bench has held as under:-

“6. The Ld.AR for the assessee Mr. Parin Shah submitted that out of total advance of Rs.21.10 lakhs, the advance to one party, namely, Amiben B. Shah is of Rs. 18,50,000/- who happens to be wife of one of our employees Mr.Bhargav Shall serving the company for more than 16 years. The Ld.AR contended that interest-free advances to staff is normal feature of a corporate employer. Such action on the part of the assessee has improved the confidence and mutual trust between the employer and the employees. Since the interest-free advance given to these parties, has indirectly served for interest, of assessee, it ought to have been accepted as part of normal business feature. The Ld. AR for the assessee thereafter contended that the assessee is having its own fund of Rs.507.94 lakhs against which a meager advance of Rs.21.10 lakhs have been extended without charging interest and therefore in view of long line of judicial precedents referred to by the Coordinate Bench of the Tribunal in the case of Paresh Lalchand Shah vs. ITO in ITA No.3408/Ahd/2010 for Ay 2007-08, dated 29/04/2013, the disallowance under section 36(1)(iii) of the Act sustained by the CIT(A) is not justified at all.

7. The Ld. DR, on the other hand, submitted that the advance was given to the wife of Director of the assessee-company and was thus the advance extended was in the personal benefit of the Director without any traces of commercial expediency in such advance. He accordingly submitted that the reasons cited by the CIT(A) in sustaining the disallowance does not call for any interference.

8. We have carefully heard the rival submissions and perused the orders of authorities below. At the outset, we note that the interest free own funds available at the disposal of the assessee stands at Rs. 352.91 lakhs as on 31/03/2008 and Rs.507.94 lakhs as on 31/03/2009. The corresponding interest-free advance as on 31/03/2009 stands at Rs.21.10 lakhs. In such a situation, where interest-free own funds available to the assessee are far in excess of the interest-free advance, the

presumption would arise in favour of assessee that the advances were made from interest-free funds available with the assessee. On this issue, we find guidance from the judgement of Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities and Power Ltd. reported in (2009) 313 ITR 340 (Bom). Hon'ble Jurisdictional High Court is also in parity with the decision of the Hon'ble Bombay High Court in the case of CIT vs. Raghuvir Synthetics Ltd. (judgement dated 05/12/2011 in Tax Appeal No.829 of 2007). In view of the huge funds available with the assessee without any interest liability, we find that the issue is squarely covered by the aforesaid decisions. Thus, the disallowance of interest towards interest-free advance is uncalled for. Accordingly, we find merit in the grievance of the assessee. Ground No.2 is accordingly allowed."

In the light of the above cited decision of the Co-ordinate Bench adjudicated in favour of the assessee on the identical issue and facts, this ground of appeal of the assessee is allowed for the reasons and findings elaborated in the decision of the Co-ordinate Bench in the case of the assessee itself as supra.

Ground No. 2(Enhanced disallowance of Rs. 14,36,931/- u/s. 14A)

8. During the course of assessment, the Assessing Officer noticed that assessee has claimed Rs. 23,13,867/- as exempt income earned as dividend during the year under consideration. On query, the assessee explained that its investment in share/securities was to the amount of Rs. 3.07 crores whereas the assessee company had its own fund of Rs. 25.68 crores, therefore, no disallowance should be made. The Assessing Officer has not accepted the explanation of the assessee and computed the disallowance u/s. 14A r.w.r. 8D to the amount of Rs. 1,54,816/-.

9. The assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has enhanced the amount to the amount of disallowance to Rs. 14,36,931/-. The Id. CIT(A) was of the view that assessee has utilized overdraft to make investment in the shares, therefore, the interest amounting to Rs. 14,86,246/- was held as expenses exclusively laid out for earning exempt income after reducing the already offered sum of Rs. 49,315/- as interest expenses.

10. During the course of appellate proceedings before us, the Ld. counsel has contended that assessee was having substantial interest free funds as against

meagre investment on which dividend was earned. He has also placed reliance on the decision of CIT vs. Reliance Utilities and Power Ltd. 313 ITR 40 (Bom). The Id. Counsel has also placed reliance on the decision of Hon'ble Gujarat High Court in the case of Pr. CIT vs. Shreno Ltd. (2019) 102 taxman.com 129 (Gujarat). On the other hand, Id. Departmental Representative has supported the order of the lower authorities.

11. Heard both the sides and perused the material on record. During the course of assessment, the Assessing Officer has computed the disallowance u/s. 14A as per method prescribed in Rule 8D of the I. T. Rule, 1962 to the amount for Rs. 1,54,816/-. However, the Id. CIT(A) has enhanced the disallowance stating that borrowed funds were directly related to the investment made for earning exempt income.

The assessee was having own interest free funds of Rs. 25.67 crore as against investment of Rs. 2.70 crore as per copies of annual accounts placed in the paper book submitted during the course of appellate proceedings. We have perused the decision of Hon'ble Court of Bombay in the case of CIT vs. Reliance Utilities Power Ltd (2009) 178 taxman 135 (Bombay) wherein it is held that if there be interest free funds available to an assessee sufficient to meet its investment and at the same time the assessee had raised a loan it can be presumed that the investment were from the interest free funds available. The assessee had demonstrated from the above referred copies of annual accounts that it was having substantial amount of interest free funds of Rs. 25.67 crores as against investment of Rs. 2.70 crore. Considering the above facts and findings, we are not inclined with the decision of Ld. CIT(A), however, we consider that incurring of administrative expenses i.e. cost of employee, office expenses etc. to manage the investment cannot be ruled out therefore we restrict the disallowance to the extent

of administrative expenses of Rs. 85,923/- as computed by the Assessing Officer. Accordingly, this ground of appeal of the assessee is partly allowed.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 09-10-2020

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT
Ahmedabad : Dated 09/10/2020

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद