

आयकर अपीलीय अधीकरण, न्यायपीठ – “सि” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “C” KOLKATA

Before **Shri J.Sudhakar Reddy, Accountant Member** and
Shri Sanjay Garg, Judicial Member

ITA No.940/Kol/2018
Assessment Year: 2013-14

M/s Laxmi India Finleasecap Pvt. Ltd., Kolkata PAN No. AAACL 2151 N	बनाम / V/s.	Principal Commissioner of Income Tax-1, Kolkata
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

Hearing through video Conferencing

अपीलार्थी की ओर से/By Appellant	Shri Miraj D Shah, Advocate
प्रत्यर्थी की ओर से/By Respondent	Mrs. Devi Sharon Singh, CIT-DR
सुनवाई की तारीख/Date of Hearing	11-01-2021
घोषणा की तारीख/Date of Pronouncement	22-01-2021

आदेश /O R D E R

PER Sanjay Garg, Judicial Member:-

The present appeal has been preferred by the assessee against the order dated 22.03.2018 of the Principal Commissioner of Income Tax-1, Kolkata's [hereinafter referred to as 'PCIT']. The assessee in this appeal has agitated the action of the Ld. PCIT in invoking the revision jurisdiction u/s 263 of the Income Tax Act, 1961 (in short 'the Act').

2. The facts of the case are that the Assessing Officer during the assessment proceedings noted that for the year under consideration, the assessee had paid an amount of ₹5,38,35,964 as interest on unsecured loan which was claimed as interest

expenditure for business purposes. However, the Assessing Officer found that the assessee during the year had made interest free capital advances of ₹2,53,82,976/- also. The Assessing Officer noticed that the aforesaid interest free advances were made out of the own funds as well as interest bearing borrowed funds. The Assessing Officer, invoking the provision of sec.36(1)(iii) of the Act, calculated the proportional notional interest in relation to the interest free advances and disallowed the same out of the interest expenditure claimed by the assessee. He for the purposes of calculation the proportionate disallowance in this respect applied the formula as under:-

Interest x capital advance / Average Assets

And accordingly calculated the disallowance at Rs.2099497/-

However, the ld. PCIT noted that the Assessing Officer had not properly calculated the disallowance and that the same should have been calculated in the following manner:-

Interest X capital advance
Average long-term borrowing

The Ld. PCIT accordingly calculated the disallowance at ₹24,62,692/-. He, therefore held that the order of the Assessing Officer in this respect was erroneous and prejudicial to the interest of the Revenue because of the short disallowance of ₹3,63,195/-. The Ld. PCIT further found that the assessee-company during the year had made investment in shares, the dividend income from which would have been exempt from taxation. He noted that the Assessing Officer, however, had not made any disallowance u/s 14A of the Act in respect of expenditure incurred for earning of such tax exempt income. The Ld. PCIT, therefore in exercise of his revision jurisdiction u/s 263 of the Act, set aside the order of the Assessing Officer and restore the matter to the file of the Assessing Officer with a direction to pass a fresh assessment order in the light of observation made by him.

3. Being aggrieved by the said impugned order of the Ld. PCIT the assessee preferred before us.

4. We have heard the rival contentions and also gone through the record. Ld. counsel for the assessee has submitted that the advances were made from the common pool. That the interest free funds available with the assessee for the year under consideration in the form of capital and reserves were at ₹14.56 crores whereas the assessee had made interest free capital advance of ₹2.05 crores only, which were much below than the interest free / own funds available with the assessee. Ld. counsel for the assessee while placing reliance on the decision of the Hon'ble Supreme Court in the case of *Hero Cycles (P) Ltd. vs. Commissioner of Income Tax* 379 ITR 347 (SC) has submitted that it has been held by the hon'ble apex court of the country that where the investments have been made from the common pool of funds and in case the assessee has sufficient own / interest free funds availing with him to meet the investment made, then in that event, presumption would be that the investment has been made out of own / interest free funds available with the assessee. That in that event no disallowance u/s 36(1)(iii) would be warranted. Ld. counsel for the assessee in this respect has also placed reliance on various case laws.

We find that the issue in this respect has been settled by the Hon'ble Supreme Court in the case of *CIT (LTU) vs. Reliance Industries Ltd.* (2019) 410 ITR 466 (SC) holding that if the assessee is possessed of sufficient own funds/interest free funds to meet the investments made, then under the circumstances, the presumption would be that such investments have been made by the assessee out of own/interest free funds available with the assessee. Moreover, in this case the Assessing Officer has already calculated the proportionate disallowance. Ld. PCIT while calculating the disallowance has taken into consideration the entire interest expenditure incurred as well as entire loan amount, whereas the facts of the case as noted by the Assessing Officer also is that the assessee has also used the own/ interest free funds for the purpose making interest free advances. Therefore, we do not find any justification on the part of Ld. PCIT in setting aside the order of the Assessing Officer on this issue by invoking revision jurisdiction u/s 263 of the Act.

So far as issue of disallowance of expenditure u/s 14A of the Act is concerned, the issue admittedly is covered by the various decisions of the Hon'ble High Courts of the country wherein it has been held that if no exempt income has been earned by the

assessee on the investments made, no disallowance is to be made u/s 14A. Reliance in this respect can be place on the following case laws: CIT, Faridabad Vs. Lakhani Marketing Inc. 226 Taxman 45 (P&H); CIT Vs. Winsome Textiles (2009) 319 ITR 204 (P&H) Cheminvest Ltd Vs. ITO (2015) 378 ITR 33 (Delhi) Corrttech Energy P. Ltd. (2014) 45 Taxmann.com 116 (Gujarat High Court) CIT Vs M/s Shivam Motors (P) Ltd (2014) 272 CTR (All) 277 in all the above referred to case laws, the Hon'ble High Courts have been unanimous to hold that no disallowance is attracted u/s 14A of the Act in case the assessee has not earned any income not forming part of the total income. The Assessing Officer, therefore, has not committed any error in not making the disallowance u/s 14A of the Act as the assessee during the year did not earn any tax exempt income. Therefore, Ld. PCIT wrongly and legally exercised his revision jurisdiction u/s 263 of the Act. The impugned order u/s 263 of the Act passed by Ld. PCIT is therefore quashed.

In the result, the appeal of the assessee stands allowed.

Order pronounced in open court on 22/01/2021

Sd/-
(लेखा सदस्य)
(J.Sudhakar Reddy)
Accountant Member
*Dkp-Sr.PS

Sd/-
(न्यायिक सदस्य)
(Sanjay Garg)
Judicial Member

दिनांक:- 22/01/2021 कोलकाता / Kolkata

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

1. अपीलार्थी/Appellant-M/s Laxmi India Finleasecap Pvt. 9th Floor, R.No.908A, 33 Chitta Ranjan Avenue, Kolkata-700 012
2. प्रत्यर्थी/Respondent-Principal Commissioner of Income-Tax-1 P-7, Chowringhee Square, R.No.4, 7th Floor, Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता/DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।