

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 4284/MUM/2019
Assessment Year: 2016-17**

Acme Avenue Infrastructure
Private Limited,
Building 10, 5th floor, Solitaire
Corporate Park, Guru Har
Govindji Marg, Chakala,
Andheri-400059.

PAN No. AAJCA 8284 C
Appellant

ITO-9(1)(1),
Vs. Aayakar Bhavan,
Mumbai-400020

Respondent

Assessee by : None
Revenue by : Ms. Smita Verma, DR

Date of Hearing : 16/02/2021
Date of pronouncement : 18/03/2021

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2016-17. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-16, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

Though the case was fixed for hearing on 15.12.2020 & 16.02.2021, neither the assessee nor its authorized representative appeared before the Bench on the above dates. As there is non-compliance by the assessee, we are

proceeding to dispose off this appeal after examining the materials available on record and after hearing the Ld. Departmental Representative (DR).

2. The grounds of appeal filed by the assessee read as under :

1(a) The Ld. CIT(A) erred in confirming the disallowance of interest expenses of Rs.3,52,251/- u/s 36(1)(iii) of the I.T. Act stating that the interest bearing funds were utilized for non-business purposes, i.e. investment in mutual funds.

(b) The Ld. CIT(A) erred in confirming the disallowance of interest u/s 36(1)(iii) of the Act without appreciating that the appellant has sufficient free funds to make investments.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the AY 2016-17 on 17.10.2016 declaring total income at Rs.77,050/-. Order u/s 143(3) of the Act dated 24.12.2018 was passed by the Assessing Officer (AO) determining the total income at Rs.2,67,603/-. The issue here in this appeal is the disallowance of interest expense of Rs.3,52,251/- by the AO u/s 36(1)(iii). The AO disallowed the above sum on the reason that the primary condition for claiming deduction of the interest paid in respect of capital borrowed is that it should be used for the purpose of business, whereas in the present case, the interest bearing fund was utilized for non-business purpose i.e. for investment in mutual fund.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that vide order dated 30.04.2019, the Ld. CIT(A) confirmed the above disallowance made by the AO by holding that :

“6.1.1 In these grounds appellant is agitated against disallowance of Rs.3,52,251/- u/s 36(1)(iii) of the I.T. Act. In the assessment order, the AO concluded that assessee has used borrowed funds from ICICI bank to invest in Mutual Fund. Thus, not utilize for the business purpose.

6.1.2. During the appellant proceeding, the appellant furnished a written submission which find place in para-5 of this order. It is needless to mention that Section 36(1)(iii) of the Income Tax Act provides for deduction of interest of loan raised for business purposes. Once the appellant claimed any such deduction in the books of account, the onus will be on the appellant to satisfy the Assessing Officer that whatever loans were raised by the appellant were used for business purposes. If in the process of examination of genuineness of such a deduction, it transpires that the appellant had utilized certain funds for investment for short period or for any other than business purpose, there would be a very heavy onus on the appellant to discharge before the Assessing Officer to the effect that in spite of pending term loans and working capital loans on which the appellant is incurring liability to pay interest, there was justification for investment made for non-business purposes.

6.1.3. Further, in the case of CIT v. Sujanni Textiles (P.) Ltd. [1997] 225 ITR 560 (Mad.), the Hon'ble Madras High Court observed that interest paid by an assessee on borrowed funds, which were used for non-business purposes, cannot be allowed under section 36 (1)(iii) of the Income Tax Act, 1961.

6.1.4. In the instant case, the appellant company was not having its own capital. It has borrowed the funds from the market on interest. Thus, the appellant has paid heavy interest and the same is not for business purpose.

6.1.5. In view of above discussion and by considering the totality of the peculiar facts and circumstances of the case, it is established that the borrowed funds on interest will have to be utilized only for the purposes of business. But in the case in hand, it was not done so. Therefore, it is held that no interference is called for in the decision of assessing officer as the appellant has failed to discharge the onus required under Section 36(1)(iii) of the Act and the Assessing Officer was justified in disallowance and added back to the appellant's income of Rs.3,52,251/-. Therefore, addition u/s 36(1)(iii) of the Act is confirmed. The appeal of the assessee on this ground is dismissed.”

5. Before us, the Ld. DR relies on the order of the Ld. CIT(A) and submits that the same be affirmed.

We have heard the Ld. DR and perused the relevant materials on record. It was the contentions of the assessee before the Ld. CIT(A) that “the investment in mutual funds are made out of its own funds and interest-free advances”.

The Hon’ble Bombay High Court in the case of *CIT v. Reliance Utilities & Power Ltd.* (2009) 178 Taxman 135 (Bom) has held in the context of section 36(1)(iii) of the Act that “if there is 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 investments were from the interest-free funds available”.

The above ratio laid down by the Hon’ble Jurisdictional High Court is to be examined in the instant case. Therefore, we set aside the order of the Ld.

CIT(A) on the above issue and restore the matter to the file of the AO to examine the applicability of the ratio laid down in *Reliance Utilities & Power Ltd.*(supra). We direct the assessee to file the relevant documents/evidence before the AO.

6. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open Court on 18/03/2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 18/03/2021

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai