

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM**

ITA No.3931/Mum/2019
(Assessment Year: 2015-16)

M/s. Olive Bar & Kitchen Pvt. Ltd. Pali Hill Tourist Hotel, 14, Union Park, Khar (W), Mumbai-400 052	Vs.	Asst. CIT-13(1)(1) Mumbai
PAN/GIR No. AAACO 5346 G		
(Appellant)	:	(Respondent)
Appellant by	:	Shri Mahesh Rajora
Respondent by	:	Ms. Shreekala Pardeshi
Date of Hearing	:	16.02.2021
Date of Pronouncement	:	01.04.2021

ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-21, Mumbai ('Id.CIT(A) for short) dated 28.03.2019 and pertains to the assessment year (A.Y.) 2015-16.

2. The grounds of appeal read as under:

1. The Commissioner of Income Tax (Appeals)-21, Mumbai (hereinafter 'the CIT(A)') erred in confirming the disallowance of interest expenses of Rs.10,30,036/- u/s. 36(1)(iii) of the Act made by the A.O. on the ground that interest free advance is given by the Appellant to its associate company 'Joie De Vivre Pvt. Ltd.' out of interest bearing borrowed funds.

The Appellant submits that the loan to associate company is given out of internal accruals forming part of accumulated reserves appearing in the Balance Sheet and that borrowed funds have not been utilized to give interest free loan to associate company.

Without prejudice to the above, the Appellant submits that loan given to associate company is for the purpose of business and in the normal course of carrying on its business activity; hence no part of interest paid on borrowed funds is to be disallowed.

3. Brief facts of the case are that the Assessing Officer (A.O. for short) has noticed from the balance sheet and profit and loss account submitted by the assessee that the assessee has substantial borrowed funds on which he has paid interest of Rs.10,30,036/-. Further, the A.O. observed that the assessee has advanced interest free loans to M/s. Joie De Vivre Pvt. Ltd. The A.O. has disallowed the interest expenses of Rs.10,30,036/- u/s. 36(1)(iii) of the Act wherein the A.O. has relied on the various decisions of High Court.

4. Upon the assessee's appeal, the Id. CIT(A) upheld the A.O.'s order following his earlier year order.

5. Against this order, the assessee is in appeal before us.

6. At the outset, the Id. Counsel of the assessee submitted that the issue is squarely covered in favour of the assessee by the ITAT decision in assessee's own case.

7. Upon hearing both the parties and perusing the records, we find that the ITAT in assessee's own case in ITA No. 1177/Mum/2018 for A.Y. 2014-15, vide order dated 09.04.2019 has decided the identical issue as under:

6. So far as the disallowance u/s 36(1)(iii) is concerned, upon perusal of financial statements, it transpires that the assessee's opening own funds in the shape of share capital and free reserves aggregating to Rs.36.87 Crores far exceeds the interest free loans of Rs.3.05 Crores advanced by the assessee. It has been argued that in case of mixed usage of funds, a presumption was to be drawn in assessee's favor that interest free loans were granted out of free funds available with the assessee in terms of decision of Hon'ble Bombay High Court rendered in CIT Vs. Reliance Utilities & Power Ltd. [313 ITR 340]. However, both the lower authorities distinguished the same on the ground that the decision was rendered in the context of investments made by the assessee and not in the context of grant of interest free advances. However, the said reasoning, in our opinion, would hold no water since the ratio of the cited decision would apply in all cases where the funds were diverted for non-business purposes i.e. either to make investments or to advance interest free loans. Therefore, the lower authorities were not justified in disallowing the same particularly in view of the fact that fresh loans granted by the assessee to the said entity during impugned AY was only to the tune of Rs.88.78 Lacs. Another factor is to be noted that the loan has been granted by the assessee to its subsidiary company and Ld. AO has rejected the stand of the assessee on the ground that the business of the subsidiary could not be considered in law as the business of the assessee without controverting the fact that the aforesaid subsidiary was also engaged in the business of running the restaurants and without appreciating the fact that the assessee would derive business benefits out of the same. In such a scenario, the ratio of decision of Hon'ble Apex Court rendered in S.A. Builders Vs. CIT [288 ITR 1] would also become applicable to the facts of the case. Therefore, viewed from any angle, the impugned

disallowance, in our opinion, could not be sustained. Hence, by deleting the same, we allow the assessee's appeal.

8. Respectfully following the precedent as above, we set aside the order of the authorities below and decide the issue in favour of the assessee.

9. In the result, the assessee's appeal is allowed.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board on 01.04.2021

Sd/-
(Amarjit Singh)
Judicial Member

Sd/-
(Shamim Yahya)
Accountant Member

Mumbai; Dated : 01.04.2021

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai