

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'F', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA Nos.4615 & 4616/Del/2019
(for Assessment Years : 2013-14 & 2014-15)

M/s. RTC Restaurants (India) Ltd., 703-706, Chiranjiv Tower, 43, Nehru Place New Delhi- 110019 PAN : AAACR 7638 C	Vs.	DCIT Circle – 15(1), New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Jaspal Singh Seth, Adv.
Revenue by	Shri Farhat Khan, Sr. DR

Date of hearing:	06.04.2021
Date of Pronouncement:	06.04.2021

ORDER

PER ANIL CHATURVEDI, AM :

Both the appeals filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-7, New Delhi dated 27.03.2019 for Assessment Years 2013-14 & 2014-15.

2. Before us, at the outset, Learned AR submitted that though the appeals of the assessee for the two years but the issue involved in both the years are identical i.e with respect to the disallowance of interest u/s 36(1)(iii) of the Act. He therefore submitted that the arguments made by him while arguing the appeal for A.Y. 2013-14 would be equally applicable to A.Y. 2014-15 and thus both the appeals can be heard together. Learned DR did not controvert the aforesaid submissions made by the assessee. We therefore proceed to dispose of both the appeals by consolidated order but however for the sake of convenience, we proceed with the facts for A.Y. 2013-14.

3. Assessee is a company who electronically filed its return of income for A.Y. 2013-14 on 30.09.2013 declaring loss of Rs.4,23,71,790/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Income Tax Act vide order dated 25.02.2016 and the total loss was determined at Rs.3,52,46,530/-.

4. As far as A.Y. 2014-15 is concerned, assessee electronically filed its return of income on 11.11.2014 declaring loss of Rs.4,26,66,527/- and thereafter in the assessment framed u/s 143(3) of the Act vide order dated 28.12.2016, the total loss was determined at Rs.3,84,24,830/-.

5. Aggrieved by the orders of AO, assessee carried the matter before the CIT(A) who vide order dated 27.03.2019 in Appeal No.10121/24/CIT(A)-7/Del/2016-17 for A.Y. 2013-14 and in

Appeal No. 10811/250/CIT(A)-7/Del/2016-17 for A.Y. 2014-15 granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before us and has raised the following grounds of appeal:

- “1. *That the appellate order as passed is against law and facts of the case.*
2. *That the learned Commissioner of Income Tax (Appeals) has erred in up holding the disallowance of interest to the tune of Rs.28,10,386/- (A.Y. 2013-14) & Rs.22,54,693/- (A.Y. 2014-15) paid by the appellant company on the loans raised from banks.*
3. *That the appellate order as passed is not sustainable on the facts and circumstances of the case.”*

6. During the course of assessment proceedings, AO noticed that assessee had taken loan of Rs.3.25 Crores from Catholic Syrian Bank and it was diverted as an interest free advance to TRR Properties Ltd. The assessee was asked to show-cause as to why the interest paid on the said loan be not disallowed to which the assessee *inter alia* submitted that TRR Properties Ltd. is a company which is 100% subsidiary of the assessee and the amount of Rs. 3.25 crores was advanced to TRR Properties Ltd. to purchase a property in Mumbai which is being used by the assessee for running its restaurant business and for which assessee is not paying any rent. It was further submitted that the non-charging of interest to M/s. TRR properties Ltd. was directly attributable to the business activity of the assessee company. The submissions made by the assessee was not found acceptable to AO. AO noted that assessee has paid interest of Rs.28,10,386/- on the loan that was diverted by the assessee to the M/s. TRR Properties Ltd. He noticed that no evidence of the purchase of

property by subsidiary company and it being used as a restaurant by the assessee has been furnished by the assessee. He therefore held that the interest expenditure of Rs.28,10,386/- on loan diverted to subsidiary company to be not an allowable expenditure and accordingly it was disallowed. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). CIT(A) noted that on similar facts in assessee's case for A.Y. 2011-12, his predecessor had upheld the order of AO. He therefore for similar reasons and following the decision of his predecessor confirmed the action of AO. Aggrieved by the order of CIT(A), assessee is now before us.

7. Before us, Learned AR reiterated the submissions made before the AO & CIT(A) and further submitted that against the order of CIT(A) for A.Y. 2011-12, assessee had preferred appeal before the Hon'ble ITAT and Hon'ble ITAT vide order dated 15.04.2019 in Appeal No.2942/Del/2014 has decided the issue in its favour. He pointed to the copy of the order placed on pages 30 onwards in the paper book. He further submitted that during the year under consideration assessee had sufficient interest free funds which are more than the amount advanced to the subsidiary companies and in such a situation a presumption could be drawn that the loan to subsidiary is out of interest free funds and in support of the aforesaid proposition he placed reliance on the decision in the case of CIT vs. Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Bom.).

8. Learned DR on the other hand pointed to the findings of CIT(A) and submitted that assessee has not filed any cash flow statement to demonstrate that the interest free funds have been used by the assessee for advancing the loan to its subsidiary company and the Balance Sheet position showing sufficient interest free funds is as on the last day of the year and not when the amount was advanced. He further submitted that the submission of the assessee of having utilized the interest free funds for advancing money to its sister concern needs to be examined and therefore the matter may be remitted to AO.

9. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the disallowance u/s 36(1)(iii) of the Act. The addition was made by the AO for the reasons that assessee has diverted the interest bearing funds as interest free advance to its subsidiary company and assessee could not establish that the interest free funds have been used for advancing the money to the subsidiary. When the matter was carried before the CIT(A), CIT(A) following the decision of his predecessor for A.Y. 2011-12 had upheld the order of AO. We find that in assessee's own case, against the order of CIT(A) for A.Y. 2011-12, assessee preferred the appeal before the Co-ordinate Bench of Tribunal. The Co-ordinate bench of Tribunal has decided the issue in favour of the assessee by observing as under:

"6. We have considered the rival submissions and perused the material on record. The Hon'ble Bombay High Court in the case of CIT vs., Reliance Utilities & Power Ltd., (2009) 313 ITR 340 (Bom.) held as under :

“The assessee claimed deduction of interest on borrowed capital. The Assessing Officer recorded a finding that the sum of Rs. 213 crores was invested out of its own funds and Rs. 147 crores was invested out of borrowed funds. Accordingly he disallowed interest amounting to Rs.4.40 crores calculated at 12 per cent, per annum for three months from January, 2000 to March, 2000. The Commissioner (Appeals) found that the assessee had enough interest-free funds at its disposal for investment and accordingly deleted the addition of Rs.4.40 crores made by the Assessing Officer and directed him to allow the deduction under section 36(l)(iii). The order of the Commissioner (Appeals) was upheld by the Tribunal. On appeal to the High Court :

Held, dismissing the appeal, that if there were funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free funds generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this presumption was established considering the finding of fact both by the Commissioner (Appeals) and the Tribunal. The interest was deductible.

6.1. *The Hon’ble Supreme Court in the case of CIT vs Reliance Industries Limited (2019) 410 ITR 446 (SC) has held as under :*

“Business expenditure – Interest on borrowed capital – Finding of Tribunal that interest-free funds available with assessee sufficient to meet investment – Presumption that investments in subsidiaries were out of interest-free funds – Interest referable to funds invested in subsidiaries allowable – Income Tax Act, 1961, s. 36(1)(iii).”

6.2. *Learned Counsel for the Assessee referred to the balance sheet of the assessee-company which shows that assessee-company has share capital and unsecured loans to the tune of Rs.16.92 crores. The assessee has interest free unsecured*

loans in a sum of Rs.11,61,52,631/-. Thus, assessee has sufficient interest free funds available, then presumption would arise that loan given by the assessee-company to the subsidiary company, would be out of the interest free funds generated as are available with the assessee-company. When interest free funds were sufficient to meet the Investments above, no disallowance could be made against the assessee. In view of the above and following the decisions referred to above, we are of the view that addition is wholly unjustified. We, accordingly, set aside the orders of the authorities below and delete the addition.”

10. Before us, Revenue has not pointed to any distinguishing feature in the facts of the case in the year under consideration and that of A.Y. 2011-12. Revenue has also not placed any material on record to demonstrate that the ITAT order in assessee's own case for A.Y. 2011-12 has been stayed/ set aside/ overruled by higher judicial forum. Further CIT(A) while deciding the issue had also followed the reasoning of CIT(A) for A.Y. 2011-12. In such a situation, we for the reasons stated by the Coordinate Bench of Tribunal while deciding the issue for A.Y. 2011-12 and for similar reasons are of the view that AO was not justified in disallowing the interest expenditure. We accordingly set aside the addition made by the AO and **thus the ground of the assessee is allowed.**

11. As far as A.Y. 2014-15 is concerned, before us, both the parties had submitted that the facts of the case in the year under consideration are identical to that of the year 2013-14. We have hereinabove while deciding the issue in the case of the assessee for A.Y. 2013-14 have decided the issue in favour of the assessee. Following the same reasoning, we hold that the AO in A.Y. 2014-

15 was not justified in disallowing the interest to the extent of Rs.22,54,693/-. We therefore set aside the addition made by the AO. **Thus the ground of the assessee is allowed.**

13. **In the combined result, both the appeals of the assessee are allowed.**

Order pronounced in the open court on 06.04.2021

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Date:- 06.04.2021
PY*

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI