

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B" PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI S. S. VISWANETHRA RAVI, JM

ITA No.556/PUN/2018

निर्धारण वर्ष / Assessment Year :

Kumar Agro Products Private Limited,
1st Floor, Kumar Capital,
East Street, Camp,
Pune – 411 001.

..... अपीलार्थी /
Appellant

PAN : AAACK7660H.

बनाम v/s

The Income Tax Officer,
Ward – 14(4), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Rajan Vora / Shri Rajendra Agiwal.

Revenue by : Shri Mahadevan A.M. Krishnan.

सुनवाई की तारीख / Date of Hearing : 09.07.2021

घोषणा की तारीख / Date of Pronouncement : 12.07.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of learned Commissioner of Income Tax (Appeals) – 7, Pune dated 29.12.2017 for the assessment year 2014-15.

2. The brief facts of the case are as under :

The appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of construction of sale and residential commercial buildings. The return of income for A.Y. 2014-15 was filed on 31.08.2014 declaring a loss of Rs.4,24,68,213/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward 14(4), Pune (hereinafter referred to as "Assessing Officer") at a total income of Rs.8,76,61,830/- vide order dated 23.12.2016 passed u/s 143(3) of the Income Tax Act (hereinafter referred to as "the Act"). While doing so, the Assessing Officer made disallowance of the following items :

- 1) Disallowance of interest of Rs.5,15,54,324/- on the ground that the appellant company had diverted interest bearing funds to sister concerns / related parties by advancing loans and advances.
- 2) Disallowance of Rs.3,59,33,237/- on account of income from other sources.
3. Being aggrieved by the above additions, assessee preferred appeal before the Id.CIT(A) who vide impugned order had deleted the addition of Rs.3,59,33,237/- on account of interest received under the head "Income from other sources". As regards to the addition of Rs.5,15,54,324/- on account of proportionate interest being not for business purpose, Id.CIT(A) had restricted the addition to the extent of total interest claim of Rs.3,80,00,399/-.

4. Being aggrieved with the direction of Id.CIT(A), the appellant is in appeal before us.

5. The learned counsel for the assessee submitted that the Assessing Officer made a disallowance of proportionate interest on the ground that interest bearing funds have been diverted to sister concerns / related parties. According to the Ld.A.R, this finding is contrary to the facts that the non-interest bearing funds were utilized for the purpose of making advances to the sister concerns / related parties. In this connection, he taken us through the financial statements demonstrating that non-interest bearing funds were available for the purpose of making the advances to sister concerns / related parties and also taken us through Page No.12 of the order of Id.CIT(A) to demonstrate that interest free funds in the form of Reserves and Surpluses and Advance from Customers are available for the purpose of making loans and advances to sister concerns / related parties. Ld.A.R. further taken us through the Charts placed at Page No.321 and 322 of the Paper Book demonstrating that interest free funds are available. He further submitted that most of the loans and advances are made during the previous year relevant to the years 2012-13 and 2013-14. The details of which are furnished at Page No.324 to 338 of the Paper Book. He further submitted that in the initial year in which advances were made, no disallowance u/s 36(1)(iii) was made, it was only for the first time during the assessment year under consideration, Assessing Officer had chosen to make the disallowance u/s 36(1)(iii) of the Act. Ld.A.R. further taken us through Page No.323 of the Paper Book demonstrating that a sum of Rs.4,37,39,540/- was given to sister concerns / related parties as loans and advances during the previous year relevant to the assessment

year under consideration as against the reserves generated of Rs.13,12,44,064/-. Finally, the contention of the Ld.A.R. is that even in case when there is a mixture of borrowed funds as well as interest free funds are utilized and when the interest free funds are more than the investments, then a presumption should be drawn that loans and advances to sister concerns / related parties is made out of the own funds. In support of this proposition, he relied on the decision of Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities reported in 313 ITR 340. On the said proposition, he also relied on the following decisions :

- 1) ACIT Vs. M/s. Indo Industrial Engineers – ITAT, Delhi.
- 2) JCIT Vs. M/s. Mbharat Fritz Werner Ltd, ITAT, Bangalore.
- 3) PCIT Vs. Shapoorji Pallonji and Co., Ltd 423 ITR 220 (Bom)
- 4) CIT(LTU) Vs. Reliance Industries Ltd 410 ITR 466 (SC).
- 5) CIT Vs. HDFC Bank Ltd. 366 ITR 505 (Bom)
- 6) Munjal Sales Corporation Vs. CIT - 298 ITR 298 (SC).

6. The next limb of Ld.A.R.'s argument is that the disallowance, if any, should be restricted to the extent of only incremental advances made during the previous year relevant to the assessment year under consideration. In this connection, he relied on the decision of Hon'ble Karnataka High Court in the case of CIT Vs. Sridevi Enterprises reported in 192 ITR 165. Ld.A.R. further submitted that when no disallowance was made in earlier years, on the principle of consistency, no disallowance can be made in the subsequent years relying on the following judicial precedents :

(1) CIT Vs. Sridevi Enterprises – 192 ITR 165 (KAR)

(2) CIT Vs. Givo Limited (ITA No.941/2010) of Hon'ble Delhi High Court.

7. On the other hand, ld.D.R. had placed reliance on the order of ld.CIT(A).

8. We have heard the rival submissions and perused the material on record. The issue in the present appeal relates to disallowance of interest u/s 36(1)(iii) of the Act on the ground that interest bearing funds have been diverted to the sister concerns / related parties. The Assessing Officer found that the appellant company had borrowed funds of Rs.44,86,69,395/- on which interest of Rs.7,39,32,205/- was paid. After deducting the interest on loans and advances received, the total interest expenditure claimed is Rs.3,80,00,399/-. The Assessing Officer also observed that the appellant company had given loans and advances to the sister concerns / related parties to the tune of Rs.51,37,56,632/- on which interest @ 7% p.a. was charged. Based on this information, the Assessing Officer was of the opinion that interest bearing funds have been utilized for the purpose of making loans and advances. Accordingly, in the absence of any business expediency, made disallowance of proportionate interest i.e., interest charged on loans to the related parties was at 7% per annum as against interest paid on borrowed funds @ 14.93% by the appellant and the balance interest at the rate of difference of 7.93% was brought to tax as interest was paid for non-business purposes.

9. On appeal before ld.CIT(A), ld.CIT(A) while rejecting the contention of the appellant restricted the amount of disallowance to the extent of

interest claimed as an expenditure vide Para 6.10 of the order of Id.CIT(A) by holding that interest is required to be disallowed irrespective of the fact that whether the borrowed funds have been utilized for the purpose of making advances to the sister concerns / related parties as no business expediency was established.

10. On perusal of the relevant financial statements of the appellant company which are placed at Page No.323 of the Paper Book, two things are clear, firstly, a sum of Rs.51,37,56,632/- was advanced to sister concerns / related parties as on 31.03.2014 out of which only, a sum of Rs.4,79,39,540/- were advanced to sister concerns / related parties during the previous year relevant to the assessment year under consideration and secondly, total Reserves and Surpluses available as on 31.03.2014 was Rs.25,10,65,020/- and the Advances from Customers which are also interest free funds available are of Rs.45,02,27,730/- which aggregate to a sum of Rs.70,12,92,750/-. Out of which the net incremental interest free funds available during the previous year relevant to the assessment year under consideration is Rs.29,57,23,475/-. This financial information is also borne out of the record. Thus, from the material on record, it is clear that major advances were made prior to the A.Y. 2012-13 to the tune of Rs.45,32,63,443/- and during the previous year relevant to the assessment year 2013-14, incremental advances to the extent of Rs.4,79,39,540/- was made during the previous year relevant to the assessment year under consideration.

11. It is an undisputed fact that during the earlier assessment year, no disallowance of interest u/s 36(1)(iii) was made by the Assessing Officer. During the previous year relevant to the assessment year under

consideration, the net incremental interest free funds available to the appellant are to the tune of Rs.29,57,23,475/- and the incremental loans and advances to sister concerns / related parties is only Rs.4,79,39,540/-. Therefore, in view of the settled position of law that the disallowance, if any, u/s 36(1)(iii) of the Act can be made only to the extent of incremental loans and advances made during the previous year relevant to the assessment year under consideration, in view of the law laid down by the Hon'ble Karnataka High Court in the case of CIT Vs. Sridevi Enterprises (supra) and the Hon'ble Delhi High Court in the case of CIT Vs. Givo Limited (ITA No.941/2010) for the purpose of disallowance of interest u/s 36(1)(iii) of the Act in case where no disallowance was made in the earlier years, the opening balance of loans and advances of sister concerns / related parties should not be considered. Therefore, we are of the considered opinion that applying the ratio of the decision of Hon'ble Delhi and Karnataka High Courts cited supra, the opening balance of loans and advances of sister concerns / related parties should not be considered for the purpose of making, any disallowance for the year under consideration.

12. Secondly, as regards to the incremental advances made to sister concerns during the previous year relevant to the assessment year under consideration as extracted by us, appellant company had generated incremental interest free funds of Rs.29,57,23,475/- and the loans and advances made to sister concerns / related parties during the previous year relevant to the assessment year under consideration is only Rs.4,79,39,540/-. It is settled position of law that where there is a mixture of both borrowed funds as well as the interest free funds are available, a presumption has to be drawn that investments are made out

of the interest free funds as held by the Hon'ble jurisdictional High Court in the case of CIT Vs. Reliance Utilities (supra) wherein it was held as under :

“10. If there be interest free funds available to an assessee sufficient to meet its investments 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. In our opinion the Supreme Court in East India Pharmaceutical Works Ltd. (Supra) had the occasion to consider the decision of the Calcutta High Court in Woolcombers of India Ltd. (supra) where a similar issue had arisen.. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in Woolcomber's case (Supra) the Calcutta High Court had come to the conclusion that the profits were sufficient to meet the advance tax liability and the profits were deposited in the over draft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there was sufficient material and the assessee had urged the contention before the High Court. The principle therefore would be that if there are funds available both interest free and over draft and/or loans taken, then a presumption would arise that investments would be out of the interest free fund generated or available with the company, if the interest free funds were sufficient to meet the investments. In this case this presumption is established considering the finding of fact both by the C.I.T. (Appeals) and I.T.A.T.

The above ratio was reiterated by several High Courts in several cases like PCIT Vs. Shapoorji Pallonji and Co., Ltd reported in 423 ITR 220 of Hon'ble Bombay High Court, CIT Vs. HDFC Bank Ltd reported in 366 ITR 105 (Bom) etc.

13. The decision of Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities reported in 313 ITR 340 was confirmed by the Hon'ble Supreme Court in the case of CIT Vs Reliance Industries Limited reported in 410 ITR 466 (SC) and similar is the decision of Munjal Sales Corporation Vs. CIT reported in 298 ITR 298 (SC). Therefore, no disallowance u/s 36(1)(iii) is called for in the light of the above legal settled

position of law and facts of the case in respect of the incremental loans and advances made to the sister concerns / related parties during the previous year relevant to the assessment year under consideration. Therefore, we are of the considered opinion that the orders of lower authorities are contrary to the facts of the law of the case. Therefore, we reverse the orders of the lower authorities and direct the Assessing Officer to delete the disallowance of interest of Rs.3,80,00,399/- as confirmed by the Id.CIT(A).

14. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 12th day of July, 2021.

Sd/-

(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 12th July, 2021.
Yamini

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-7, Pune.
4. The Pr.CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.