

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD
(Through Virtual Hearing)

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No. 383/Hyd/2018		
A.Y. 2014-15		
Asst. Commissioner of Income Tax, Central Circle-3(1), Hyderabad.	VS.	M/s. Musaddilal Projects Limited, 6-3-679, Elite Plaza, Panjagutta, Hyderabad- 082. PAN: AAECM 8691 A
(Appellant)		(Respondent)
Assessee by	Sri Venudhar Godesi, DR	
Revenue by	Sri Sunil Jain	
Date of hearing:	14/06/2021	
Date of pronouncement:	28/07/2021	

ORDER

PER A. MOHAN ALANKAMONY, A.M.:

This appeal is filed by the Revenue against the order of the Ld. CIT(A)-11, Hyderabad in appeal No. 455/DCIT-CC-3(1)/CIT(A)-11, Hyd/2016-17, dated 14/11/2017 passed U/s. 143(3) r.w.s 250(6) of the Act for the A.Y. 2-14-15.

2. The Revenue has raised nine grounds in its appeal and they are extracted herein below for reference:-

- 1) *"Whether on the facts and circumstances of the case and in law, the Id CIT(A) correct in deleting the disallowance of the interest of Rs. Rs.2,90,95,022/- u/s 36(1)(iii) being the proportionate interest attributable to interest-free loans given by assessee to its sister concern, out of interest-bearing borrowed funds"?*
- 2) *"Whether on the facts and circumstances of the case and in law, the Id CIT(A) correct in deleting the disallowance of the interest without bringing on record the fund flow of the assessee and simply stating that the assessee has received certain loans & advances from corporate for which no interest payment has been made by the assessee without substantiating the same with cogent reasons"?*
- 3) *"Whether on the facts and circumstances of the case and in law, the Id CIT(A) correct in relying on the decision of the Apex Court in the case of Mis S. A. Builder without appreciating that the facts of the instant case are different"?*
- 4) *"Whether on the facts and circumstances of the case and in law, the Id CIT(A) failed to appreciate that the Hon. Apex Court in the case of Mis S.A. Builders has categorically stated that "We wish to make it clear that it is not our opinion that in every case interest on borrowed loan has to be allowed if the assessee advances it to a sister-concern. It all depends on the facts and circumstances of the respective case"?*
- 5) *"Whether on the facts and circumstances of the case and in law, the Id CIT(A) correct in deleting the disallowance of interest without appreciating that the assessee failed to establish that it derived any benefit from each sister concern to which loans were advanced which is one of the condition mandated by the Supreme Court"?*
- 6) *"Whether on the facts and circumstances of the case and in law, the Id CIT(A) correct is deleting the disallowance of interest without appreciating that the assessee's investment are simply made in related concerns whose well being has no relation or benefit to the assessee company and in fact it is a loss to assessee company to the extent of such finance cost as held in the case of Mis S. A. Builders in the meaning of having deep interest"?*
- 7) *"Whether on the facts and circumstances of the case and in law, the Id CIT(A) correct in deleting the disallowance without appreciating the fact that the assessee failed to prove that the interest free loans and advances were given out interest free funds available at the relevant time"?*
- 8) *"Whether on the facts and circumstances of the case and in law, the Id CIT(A) correct in deleting the disallowance without appreciating the fact that the assessee simply do not have any own fund to provide the interest free loans and advances to the Sister concern"?*
- 9) *Any other ground that may be urged at the time of hearing."*

3. The brief facts of the case are that the assessee is a limited company filed its return of income for the AY 2014-15 on 15/09/2014 declaring total income of Rs. NIL. Thereafter, the case was selected for scrutiny under CASS. Finally, the Ld. AO completed the assessment u/s. 143(3) of the Act vide order dated 31/12/2016 wherein the Ld. AO made disallowance of Rs. 2,90,95,022/- by invoking the provisions of section 36(1)(iii) of the Act.

4. During the scrutiny assessment proceedings, the Ld. AO observed that the assessee had made investments in its sister concerns and claimed interest expenditure to the tune of Rs.2,90,95,022/- as allowable deduction in its return of income. However, the Ld. AO denied the claim of the assessee by holding that since the assessee had advanced its borrowed funds to its sister company and no interest was collected from the sister company, hence the interest expenses pertaining to such advances have to be proportionately disallowed. Aggrieved, the assessee filed appeal before the ld. CIT (A). On appeal, the Ld. CIT (A) allowed the appeal of the assessee by observing as under:

“4. I have considered the assessment and submissions of the appellant. It is seen that though the Assessing Officer has examined the issue for allowability U/s. 14A, the Addition is finally made U/s. 36(1)(iii) of the IT Act, 1961. As contended by the appellant, the provisions of section 14A are not applicable to the facts of the case, as the appellant has

not earned any income on the investments made in the subsidiary company / sister concerns. In view of the above, no disallowance U/s. 14A is called for.

4.1. As regards the allowability U/s. 36(1)(iii) is concerned, it is seen that the appellant has not made any fresh borrowals on which interest is paid during the year for investment in the subsidiary companies / sister concerns. The bank loan was obtained in earlier years and was said to be utilized for their business purpose i.e., construction of warehouses. During the year, the appellant received certain loans and advances from corporates for which no interest payment has been made by the appellant. The investments made / loans given to sister concerns and subsidiaries are to be treated as payments made for business purpose of the appellant as per the ratio laid down by the Hon'ble Supreme Court in the case of M/s. S.A Builders vs. CIT 288 ITR 1 (SC). Further, the decision of the Hon'ble Supreme Court in the case of SA Builders is good law until it is overturned by larger bench. In the facts of the case as above the legal position, as discussed supra, it is held that no disallowance is called for and the disallowance of Rs. 2,90,95,022/- is liable to be deleted and the same is, therefore, deleted.”

Aggrieved by the order of the Ld CIT (A), the Revenue is in appeal before the Tribunal.

5. At the outset, the Ld. AR submitted before us that the assessee had invested in its sister company as long-term loans and advances out of its non-interest-bearing funds and therefore, there was no expenditure incurred by the assessee for making such investment. It was further submitted that the assessee has not earned any income on such investments during the relevant year. It was therefore pleaded

that the Ld. CIT (A)'s decision in deleting the addition made by the Ld. AO is fair and reasonable and it does not call for any interference. The Ld.AR further argued by stating that reliance placed by the Ld.CIT(A) on the decision of the Hon'ble Apex Court in S.A.Builders reported in 288 ITR 1 is appropriate considering the facts and circumstances of the assessee's case. On the other hand, Ld. DR vehemently argued in support of the order of the ld. AO.

6. We have heard the rival submissions and carefully perused the materials on record. Though the assessee has claimed business nexus with the assessee's sister concern, the same could not be adequately established before us. Further the assessee and its sister concern are two different entities and profit or loss cannot be shifted from one entity to the other without genuine commercial transaction as per the provisions of the Act and the decision of the Hon'ble Apex Court relied by the Ld.CIT(A) cited supra. However, on this identical issue the Division Bench of the ITAT, Hyderabad in the case DCIT vs. M/s. Shalivahana Green Energy Limited (ITA No. 1990/Hyd/2018) vide its orders dated 15/02/2021 has held that when an assessee makes investment in its sister concern out of its non-interest-bearing funds no expenditure towards interest can be attributed for making such investment. The relevant order of the Tribunal is extracted herein below for reference:

“6. We have heard the rival submissions and carefully perused the materials on record. Factually for making any investment in equity shares by any entity only the following categories of expenditure will be attributable: -

- (i) Interest on interest bearing funds that is utilised for the purpose of making such investment.*
- (ii) Direct and indirect expenses attributable to the process of making such investment such as expenditure incurred for due diligence, managerial expenditure, clerical expense, stationary expenditure and portfolio management expenditure.*

7. There cannot be any other expenditure other than the expenditure mentioned herein above that can be incurred by an entity which will be attributable towards investments made in equity shares of other companies. In the case of the assessee, the assessee has invested in its own subsidiary companies out of its non-interest-bearing funds such as own share capital and reserves and this is not in dispute. Since in the case of the assessee the assessee company has utilised only its non-interest-bearing funds for making investment in its own subsidiary company, no interest cost can be attributable to the same because, there is no interest cost to the assessee, as it can be treated that the assessee has withdrawn from its capital and reserves which are assessee's interest free funds for making such investment. Further, for making investment in its own company there cannot be any cost attributable with respect to direct and indirect expenses towards the process of decision making, due diligence, managerial expenditure and portfolio management expenditure because no such cost can arise for making investment in one's own entity. Further, only meagre expenses can be attributable with respect to clerical and stationary expenses which is negligible and that is deserved to be ignored. Therefore, factually there cannot be any expenditure attributable to the investment made in sister company when the investment is out of its own interest free fund. When the above facts were pointed out to the Ld. DR, he could not controvert to the same however, he relied on the order of

the Ld. AO. Considering these factual aspects of the issue, We are of the view that the order of the ld. CIT (A) deleting the disallowance of expenditure made by the Ld. AO invoking the provisions of section 14A of the Act read with Rule 8D of the Rules does not call for interference. Hence, we hereby confirm the order of the Ld. CIT (A) on this issue.”

7. It is pertinent to mention that the ratio laid down in the decision extracted hereinabove will also apply to disallowance of interest expenditure U/s.36(1)(iii) with respect to loans and advances extended to sister concerns. Therefore, in the interest of justice, we remit the matter back to the file of the ld. AO in order to verify whether the assessee had made the entire investment towards long term loans and advances in its sister concern out of its interest free funds and if found so delete the addition made by invoking the provisions of section 36(1)(iii) of the Act and if found otherwise shall pass appropriate order in accordance with law and merit.

8. In the result, appeal of the Revenue is allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on the 28th July, 2021.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 28th July, 2021.
OKK

Copy to:-

- 1) M/s. Musaddilal Projects Limited, 6-3-679, Elite Plaza, Panjagutta, Hyderabad – 500 082.
- 2) Asst. Commissioner of Income Tax, Central Circle-3(1), 7th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad – 500 004.
- 3) The CIT(A)-11, Hyderabad.
- 4) The Pr. CIT (Central) Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File