

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "A", BANGALORE**

**Before Shri Chandra Poojari, AM & Smt.Beena Pillai, JM**

ITA No.470/Bang/2020: Asst.Year 2015-2016

M/s.RNS Infrastructure Limited 7 <sup>th</sup> Floor, Naveen Complex, No.14, M.G.Road, Trinity Circle Bangalore – 560 001 <b>PAN : AACCR7165G.</b>	v.	The Dy.Commissioner of Income-tax, Central Circle 2(3) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Shreesh Kumar Hegde, CA  
Respondent by : Sri.Kannan Narayanan, JCIT-DR

<b>Date of Hearing : 16.08.2021</b>	<b>Date of Pronouncement : 16.08.2021</b>
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**ORDER**

**Per Chandra Poojari, AM**

This appeal by the assessee is directed against the order of the CIT(A)-11, dated 24.02.2020. The relevant assessment year is 2015-2016.

2. The assessee has raised following grounds:-

*“1. The order of the learned Commissioner of Income Tax (Appeals) in so far as it is against the Appellant, is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the case.*

*2. The learned Commissioner of Income Tax (Appeals) erred in upholding the action of learned Deputy Commissioner of Income Tax - 2(3) in disallowing the claim of interest of Rs.83,50,669 paid to non banking finance companies (NBFC's) by the Appellant under the provisions of Section 40(a)(ia) of the Act under the facts and circumstances of the case.*

*3. The learned Commissioner of Income Tax (Appeals) ought to have appreciated that the interest paid by the Appellant has been offered to income tax by such NBFC's and doubly taxing the same transactions in the hands of the Appellant as well such payees are not warranted under the facts and circumstances of the case.*

4. *The learned Commissioner of Income Tax (Appeals) erred in upholding the action of learned Deputy Commissioner of Income Tax - 2(3) in disallowance of Rs.73,85,397 made under the provisions of section 14A of the Act read with rule 80 of the Income-tax Rules, 1962 under the facts and circumstances of the case.*

5. *The learned Commissioner of Income Tax (Appeals) ought to have appreciated the fact that no disallowance can be made when Appellant has utilized internally accrued funds and not the borrowed funds under the facts and circumstances of the case. Further, Commissioner of Income Tax (Appeals) failed to appreciate that, the interest free funds available with the Appellant are much higher than the investments yielding exempt income.*

6. *Without prejudice to above, the learned Commissioner of Income Tax (Appeals) ought to have appreciated that the disallowance under section 14A of the Act cannot exceed the amount of exempt income under the facts and circumstances of the case.*

7. *The learned Commissioner of Income Tax (Appeals) erred in upholding the action of learned Deputy Commissioner of Income Tax - 2(3) in disallowing the interest expenses of Rs.66,49,705 relating to advances made to Naveen Hotels towards purchase of land under the facts and circumstances of the case.*

8. *The learned Commissioner of Income Tax (Appeals) failed to appreciate that the advance towards purchase of land by the Appellant are out of internally accrued capital and not out of borrowed funds under the facts and circumstances of the case.*

9. *Without prejudice the learned lower authorities have erred in law in levying interest under section 2348 and 2340 of the Act on the facts and circumstances of the case. Further without prejudice the calculation of interest, rate and period are not discernible from the order of assessment on the facts and circumstance of the case.*

10. *The Appellant craves to add, alter, delete or substitute any of the grounds urged above.*

11. *In view of the above and other grounds as may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”*

3. Ground No.1 is general in nature, which does not require any adjudication. Thus, this ground is dismissed.

4. Ground No.2 and 3 are with regard to disallowance of interest paid to non-banking finance companies for the reason that the assessee has not deducted tax at source u/s 194A of the Act.

5. At the time of hearing, the learned AR submitted that the recipient of the payment has already been paid the tax and as such the same cannot be disallowed in the hands of the assessee. In proof thereof, the learned AR placed for the following:-

(a) Certificate from Daimier Finance Services Private Limited stating that assessee has paid an amount of Rs.35,97,089 as interest without deduction of taxes at source;

(b) Certificate from Tata Capital Financial Services Limited stating that assessee has paid an amount of Rs.30,27,036 as interest without deduction of taxes at source; and

(c) Certificate from Indiabulls Housing Finance Limited stating that assessee has paid an amount of Rs.73,00,255 as interest without deduction of taxes at source.

6. According to the learned AR, the issue should be remitted to the A.O. for fresh consideration.

7. The learned Departmental Representative submitted that the documents furnished by the assessee are fresh evidences, which cannot be admitted and the disallowance should be confirmed.

8. We have heard both the parties and perused the material on record. In this case the assessee has not deducted the tax at source on the payment made to non-banking finance companies. However, the assessee has pleaded that in similar circumstances in assessee's own case for assessment year 2013-2014 in ITA No.318/Bang/2018 (order dated 20.12.2019) held as under:-

*“6. Admittedly, assessee has not deducted TDS under section 194A of the act against interest paid to non banking financial companies. It is also an admitted fact that the companies to whom assessee has made payments are repeated companies like M/s.L&T Finance Ltd., M/s.Bajaj Finance Ltd., M/s.Reliance Capital Ltd., M/s.India Bulls Ltd., M/s.Diamler Finance Ltd., M/s.Kotak Mahindra Bank Ltd, and M/s.Tata Capital Ltd., who are regular assessee's under Income tax Act. As Ld.AR filed before us certificate issued by chartered accountant which was not filed before authorities below, it is necessary that the same is to be verified. We set aside this issue to Ld.AO for due verification of the facts and to consider the claim in accordance with law.”*

9. In view of the above order of the Tribunal, we inclined to remit the issue to the files of the A.O. to allow the claim to the extent that the recipient of the payment paid the tax to the department. Accordingly, this issue is remitted to the files of the A.O. for verification of the issue and deciding the same in accordance with law.

10. Ground No.4,5,6 are with regard to deduction u/s 14A of the Act.

11. The learned AR submitted that the assessee earned dividend income of Rs.34,800, which is exempt from Income-tax and the amount used for investments yielding exempt income, was made from assessee's own funds. Hence, the learned AR submitted that disallowance u/s 14A of the Act is not warranted.

12. The learned DR relied on the orders of the Income Tax Authorities.

13. We have heard both the sides. It is the claim of the assessee that the assessee has earned dividend income of Rs.34,800, which is exempt from income tax and the funds used for investment is from its own funds. However, the assessee could not demonstrate the availability of its own funds for investment in exempt income. We, therefore, remit this issue to the files of the A.O. to examine the issue afresh and also direct the assessee to prove the availability of own funds for making investment in such exempted income yielding assets.

14. Ground No.7 and 8 is with regard to the disallowance of interest on advances made to Naveen Hotels towards purchase of land. In the assessment year under consideration, the assessee has diverted funds to the tune of Rs.6,64,97,058 for making advances to Naveen Hotels. On the other hand, the assessee has incurred interest on borrowed funds, which was claimed as deduction. The A.O. disallowed the claim of the assessee towards interest of Rs.66,49,705. The contention of the learned AR is that the assessee is having own funds to make investments to its sister concern,

namely, Naveen Hotels and such claim of interest cannot be disallowed. The learned AR also relied on the judgment of the Hon'ble Supreme Court in the case of CIT v. Reliance Industries Limited [(2019) 410 ITR 466 (SC)].

15. The learned DR relied on the orders of the lower authorities.

16. We have heard both parties and perused the material on record. In our considered view, the assessee has to prove that the it is having own funds to divert to its sister concern. The judgment of the Hon'ble Apex Court relied on by the assessee in the case of CIT v. Reliance Industries Limited (supra), held as under:-

*“Where Assessing Officer rejected assessee’s claim under section 36(1)(iii) taking a view that interest would not have been payable to banks if funds were not provided to subsidiaries, in view of fact that interest free funds were available to assessee which were sufficient to meet its investment in subsidiaries, appellate authorities were justified in allowing assessee’s claim for deduction.”*

16.1 We are in fully agreement with the above judgment relied on by the assessee. However, the assessee has to prove that it is having sufficient interest free own funds to make investment to its sister concern. Further, the assessee has also to prove that it has not used any borrowed funds. With these observations, we remit the matter to the files of the A.O. to examine whether the assessee is having availability of interest free funds to make investment in sister concern. This ground is partly allowed.

17. Ground No.9 is with regard to levy of interest u/s 234B and 234D of the Act, which are consequential and mandatory in nature.

18. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 16<sup>th</sup> day of August, 2021.

**Sd/-**  
**(Beena Pillai)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

Bangalore; Dated : 16<sup>th</sup> August, 2021.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-11, Bengaluru
4. The Pr.CIT (Central), Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore