

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकरअपील सं./ I.T.A. No. 37/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2013-14)

DCIT Circle – 3(3)(1), R. No. 609, 6 th floor Aaykar Bhavan, M. K. Road Mumbai-400 020	बनाम/ Vs.	M/s Reliance Industrial Investment & Holdings Ltd. 9 th Floor, Maker Chambers IV, 222 Nariman Point, Mumbai-400 021
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAACR-5053-R		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Vinay Sinha, Ld. CIT-DR
Assessee by	:	Shri Nimesh Bora, Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	10/08/2021
घोषणा की तारीख / Date of Pronouncement	:	01/09/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income-Tax (Appeals)-8, Mumbai [CIT(A)], dated 24/10/2019 in the matter of assessment framed by Ld. AO u/s 143(3) of the Act on 29/12/2016. The ground raised by the revenue read as under: -

1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in holding that amount has been given on commercial expediency without appreciating that the assessee has not given any credible

evidence that Reliance Haryana SEZ Ltd. (RHSEZ) was not able to get loans from outside or will not be able to survive the pressure if interest @ 11.5% or more is charged and on the contrary Reliance Industries Ltd. (RIL) from whom the assessee company has taken loan at 11.5% could have directly advanced the money to RHSEZ from whom interest at the rate of 10.79% has been charged by assessee?

2. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in holding that the assessee has received both interest free funds as well as interest bearing funds from RIL then, an average method of changing of interest has to be put into place and thus, the average rate of borrowing comes to 2.99% whereas the interest charged by the assessee is 10.79% without appreciating that the assessee in its own submission submitted date wise chart of interest bearing loan taken from RIL and its advancement to four concerns which clearly shows that amount received from RIL has been given as loan on the same day to another concern at a lower rate of interest?

3. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified restricting the disallowance to Rs.2,13,159/- and in holding that the assessee's suo-moto disallowance u/s 14A is reasonably fair without appreciating the decision of the Hon'ble ITAT, Ahmedabad Bench in the case of DC1T vs. KARSAN KANJI RAGHVANI 2019-TIOL-1393-ITAT-AHM, wherein the Tribunal has held that disallowance should be restricted to the total expenditure claimed by the assessee?

4. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of Assessing Officer be restored.

As evident, in ground nos.1 & 2, the revenue is aggrieved by deletion of interest disallowance which was made by Ld. AO while framing the assessment. In ground no.3, the revenue is aggrieved by relief granted by Ld. CIT(A) on the issue of disallowance u/s 14A. Ground No.4 is general in nature.

2. The Ld. CIT-DR advanced argument that there was one-to-one nexus between the borrowed funds and advances granted by the assessee. The advances were made at lower rate of interest and in the absence of any commercial / business expediency, the interest disallowance as made by Ld.AO was justified. The Ld. AR, on the other hand, submitted that there was sufficient interest free own funds with the assessee and the advances were out of commercial expediency. The Ld. AR cited various judicial pronouncements as enumerated in the impugned order granting relief to the assessee.

3. We have carefully heard the rival submissions and perused relevant material on record including the documents placed in the paper-book. We have also deliberated on various judicial pronouncements as cited during the course of hearing before us. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

Assessment Proceedings

4. The material facts are that the assessee being resident corporate assessee is stated to be engaged in the business of making investment, advancing loans and trading in petroleum products. While framing assessment u/s 143(3), Ld. AO made interest disallowance u/s 36(1)(iii) & another disallowance u/s 14A. The same are the subject matter of dispute before us.

5. Interest disallowance u/s 36(1)(iii)

5.1 The assessee debited interest expenses of Rs.371.83 Crores in the Profit & Loss Account which was paid to its holding company i.e. M/s Reliance Industries Ltd. (RIL) against funds advanced by the parent company. The assessee also earned interest income of Rs.342.02 Crores. During the course of assessment proceedings, it transpired that though the assessee paid interest @11.5% to M/s RIL, however, it charged interest at lower rates as detailed below: -

No.	Name of the Concern	Rate of interest Charged by the assessee
1.	Reliance Haryana SEZ Ltd. (RHSL)	10.79%
2.	Infotel Telecom Inf. Pvt. Ltd.	9%
3.	Shinano Retail Pvt. Ltd	9%
4.	Reliance Polyfins Ltd.	14%

Accordingly, Ld. AO proceeded to compute interest disallowance u/s 36(1)(iii) and the assessee was asked to justify charging lesser rate of interest and also show commercial expediency for granting the loans at lesser rates.

5.2 The assessee, inter-alia, submitted that as per the provisions of Sec. 36(1)(iii), interest on borrowings would be an allowable business expenditure provided the borrowed funds were used for the purpose of business. Since the granting of loans and advances is the business of the assessee and borrowed funds have been used for the purposes of business, no disallowance could be made u/s 36(1)(iii) since all the conditions prescribed therein were duly fulfilled by the assessee. It was further submitted that majority of funds were advanced to its sister concern namely M/s Reliance Haryana SEZ Ltd. (RHSL) which was subsidiary of fellow subsidiary i.e. M/s Reliance Venture Limited (RVL) which, in turn, was subsidiary of M/s RIL. The assessee was also subsidiary of M/s RIL. In the above background, the assessee sought to demonstrate the commercial expediency of granting the loans at lower rate of interest.

5.3 It was submitted that the loans were granted for business purposes as a measure of commercial expediency since M/s RHSL utilized the funds for developing the special economic zone (SEZ) which was evident from its financial statements. It was also submitted that M/s RHSL earned miniscule revenue since it was newly incorporated entity and the project was at under-development stage. That entity incurred losses and the project was being financed mainly by the loan funds provided by the assessee company. Therefore, to protect the interest of the groups in the business of M/s RHSL and as a measure of

commercial expediency, loans were granted at concessional rate. Reliance was placed on the decision of Hon'ble Supreme Court in the case of **S.A. Builders V/s CIT (288 ITR 1)** which held that money could be said to be advanced to a sister concern for commercial expediency. If the holding company advances borrowed money to subsidiary and the funds were used by the subsidiary for the purposes of business, the assessee would be entitled for deduction of interest on borrowed funds.

5.4 However, Ld. AO opined that there was one-to-one correlation between the interest bearing loans obtained by the assessee and the advances granted to the above entities. The assessee could not demonstrate commercial expediency of granting loans at lower rates and therefore, disallowance u/s 36(1)(iii) was to be computed.

5.5 Finally, Ld. AO applying benchmarking rate of 11.5% computed interest disallowance of Rs.22.59 Crores u/s 36(1)(iii) and added the same to the income of the assessee. The working of the same has been tabulated in para 5.6 of the assessment order. The same is also extracted below for the sake of ready reference: -

Name of the concern	Rate of Interest charged	Interest Income earned	Differential rate (11.5% minus interest charged)	Disallowance u/s 36(I)(iii)
Reliance Haryana SEZ Ltd.	10.7853%	337,29,82,960	0.7147	22,35,14,498
Infotel Telecom Infrastructure P. Ltd.	9%	77,30,137	2.5	21,47,260
Shinano Retail Pvt. Ltd.	9%	10,50,164	2.5	2,91,712
Total				22,59,53,470

6. Disallowance u/s 14A

The assessee earned exempt dividend income of Rs.259.26 Lacs and offered suo-moto disallowance u/s 14A of Rs.2.13 Lacs. The same was computed on the basis of 1/4th of expenditure under various heads. However, Ld. AO invoking Rule 8D, computed indirect expense disallowance u/r 8D(2)(iii) for Rs.1052.60 Lacs, being 0.5% of average value of investments. Since the assessee had claimed expenses of Rs.11 Lacs only, the disallowance was restricted to the extent of Rs.11 Lacs.

Appellate Proceedings

7.1 During appellate proceedings, the assessee reiterated that borrowed funds were utilized for business purposes and therefore, interest would be fully allowable u/s 36(1)(iii). Reliance was placed on the decision of Hon'ble Supreme Court in the case of **Hero Cycles (P.) Ltd. (379 ITR 347)** which held that once it was established that there was nexus between the expenditure and the purpose of the business, the revenue cannot justifiably claim to put himself in the armchair of the businessman or in the position of Board of Directors and assume the role to decide as to how much is reasonable expenditure having regard to the circumstances of the case. No businessman could be compelled to maximize his profits and revenue must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. Reliance was also placed on similar other judicial pronouncements to support the fact that interest was fully allowable u/s 36(1)(iii) since the prescribed conditions as enumerated therein were duly fulfilled by the assessee. In **Madhav Prasad Jatia V/s**

CIT (AIR 1979 SC 1291), it was held that the expression 'for the purpose of business' would be wider in scope than the expression 'for the purpose of earning income, profits or gains'.

7.2 Alternatively, the assessee also submitted that it had obtained interest free funds of Rs.1394 Crores from M/s RIL which were also used to make advances and therefore, disallowance u/s 36(1)(iii) was to be computed by taking average rate of borrowings. For the said proposition, reliance was placed on the decision of Hon'ble Supreme Court in **CIT V/s Reliance Industries Ltd. (410 ITR 466)** and **CIT V/s Reliance Utilities & Power Ltd. (313 ITR 340)** wherein it was held that in case interest free funds were available the assessee, it could be presumed that the investments were made from interest free funds.

7.3 The Ld. CIT(A), after going through assessee's submissions, concurred that the loans were given out of commercial expediency and out of business exigency, namely to develop a Special Economic Zone in Gurgaon. This was as per the ratio of decision of Hon'ble Mysore High Court in **CIT V/s United Breweries (89 ITR 17)** which held that business of subsidiary could be regarded as the business of the parent company. Further, in the decision of Hon'ble Supreme Court in the case of **S.A. Builders V/s CIT (288 ITR 1)**, it was held that it was enough to show that the money was expended not out of necessity and with a view to direct and immediate benefit but voluntarily and on grounds of commercial expediency and in order to indirectly facilitate the carrying on the business. The expression commercial expediency was of wide import and would include such expenditure as a prudent businessman would incur for the purpose of business. The expenditure may not have been incurred under any legal obligation but yet is allowable as business

expenditure if it was incurred on grounds of commercial expediency. Therefore, the impugned disallowance as made by Ld. AO was to be deleted.

7.4 Having held so, Ld. CIT(A) also observed that the assessee had obtained interest free funds as well as interest bearing funds from M/s RIL. Considering the combined funds, the average rate of interest paid by the assessee was merely 2.99% which was much less than the interest charged from M/s RHSL. The working of the average rate has been tabulated on page nos.38 to 41 of the impugned order. Therefore, disallowance would not be justified from this angle also.

7.5 Regarding disallowance u/s 14A, it was observed by Ld. CIT(A) that out of total expenditure of Rs.14.34 Lacs as claimed by the assessee, the assessee had suo-moto disallowed Rs.2.13 Lacs u/s 14A and another disallowance of Rs.5.77 Lacs was also made as 'Balances written off'. As against this, Ld. AO disallowed entire expenses debited to profit & loss account which could not be held to be justified. The disallowance offered by assessee u/s 14A was reasonable and fair and therefore, the disallowance as made by Ld. AO was to be deleted.

Aggrieved as aforesaid the revenue is in further appeal before us.

Our findings and Adjudication

8. From the facts on record, it could be observed that the assessee is a subsidiary of M/s RIL and is engaged in business of making investments and advancing loans. Undisputedly, the interest income as well as interest outgo has been assessed as 'Business Income' only. The assessee is a subsidiary of M/s RIL and obtains loans from parent entity on regular basis. The loans are interest free as well as interest bearing loans. During the year, it has obtained loan from M/s RIL

@11.5% and advanced to its various group entities, the major portion being advanced to M/s RHSL at rate of 10.79%. M/s RHSL is a subsidiary of M/s RVL, which, in turn, is also subsidiary of M/s RIL. In other words, the loans have been advanced by the assessee to subsidiary of a fellow subsidiary. It is evident that M/s RHSL has been incorporated as a special purpose vehicle between M/s RVL and M/s HSIIDC (govt. authority) for the purpose of procuring the land to develop a SEZ. It has acquired 1384 acres of land from HSIIDC for the said purpose. M/s RVL holds 92.5% shares in this entity wherein remaining 7.5% shares are held by M/s HSIIDC. M/s RHSL has no source of fund and it is fully dependent on other group entities. The funds have ultimately been provided by the parent entity i.e. M/s RIL through its investment arm i.e. the assessee. Thus, the main objective was to procure the land and develop SEZ. On the given facts, it could be seen that there was commercial expediency for the assessee to grant the loan to M/s RHSL since the success of RHSL would impact the business interest as well as profitability of the group as a whole. The main objective was not to earn the interest but to further the business interest of the group as a whole. Hence, no infirmity could be found in the conclusion of Ld. CIT(A) that the funds were advanced out of commercial expediency / business exigencies.

The case law of **CIT V/s United Breweries (89 ITR 17)**, as referred to by Ld. CIT(A), duly support the said proposition. The same is also supported by the decision of Hon'ble Supreme Court in the case of **S.A. Builders V/s CIT (288 ITR 1)** wherein it was held that it was enough to show that the money was expended not out of necessity and with a view to direct and immediate benefit but voluntarily and on grounds of

commercial expediency and in order to indirectly facilitate the carrying on the business. The expression commercial expediency was of wide import and would include such expenditure as a prudent businessman would incur for the purpose of business. The expenditure may not have been incurred under any legal obligation but yet is allowable as business expenditure if it was incurred on grounds of commercial expediency. Therefore, we concur with the conclusions drawn by Ld. CIT(A), in this regard.

9. Having held so, we find that the only requirement to claim interest expenditure u/s 36(1)(iii) is that the borrowed funds should have been expended wholly and exclusively for business purposes. We find that it is undisputed fact that there is one-to-one correlation between the borrowed funds and the advances granted by the assessee. The funds have been lent for business purposes since the main objective was to develop the SEZ. Therefore, in our considered opinion, the primary requirement to claim deduction u/s 36(1)(iii) was duly fulfilled by the assessee. The Ld. CIT(A) has computed average borrowing rate @2.99% which would further support the case of the assessee only.

Therefore, on the given facts and circumstances, we do not find any infirmity in the impugned order, in this regard. Ground Nos. 1 & 2 stand dismissed.

10. So far as the disallowance u/s 14A is concerned, it is undisputed fact that the assessee has claimed expenditure of Rs.11 Lacs only out of which it has already offered suo-moto disallowance of Rs.2.13 Lacs u/s 14A and another disallowance of Rs.5.77 Lacs as 'Balances written off'. It could be seen that the assessee is a corporate entity and it would necessarily be required to incur routine expenditure to maintain its

corporate personality. Therefore, no further disallowance would be warranted on the given facts. By confirming the stand of Ld. CIT(A) on this issue, we dismiss ground no.3 of the appeal.

Conclusion

11. The appeal stand dismissed.

Order pronounced on 1st September, 2021

Sd/-

(Mahavir Singh)

उपाध्यक्ष / Vice President

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 01/09/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.