

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI
(Through Virtual Hearing)**

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.5895/Del/2019
Assessment Year: 2016-17

Moonrock Hospitality (P) Ltd., C-561, Defence Colony, New Delhi.	Vs.	ACIT, Circle-17(1), New Delhi.
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PAN: AAFCM7112H

(Appellant)

(Respondent)

Assessee by	:	Dr. Shaswat Bajpai, Advocate & Shri Vishal Aggarwal, Advocate
Revenue by	:	Shri Ramesh Kumar, Sr. DR
Date of Hearing	:	24.08.2021
Date of Pronouncement	:	22.09.2021

ORDER

This appeal filed by the assessee is directed against the order dated 6th May, 2019 of the CIT(A)-6, New Delhi, relating to Assessment Year 2016-17.

2. The only effective ground raised by the assessee reads as under:-

ö[2] That on the facts & circumstances of the case the Learned CIT(A), New Delhi, has grossly erred both in law and on facts in confirming the proportionate interest computed at Rs.22,56,750/- by the Ld. AO and making addition of Rs.20,56,750/- by incorrectly applying the provisions of section 36(l)(iii) of the I.T. Act, 1961 despite of the admitted fact that the funds have been extended to a wholly-owned subsidiary company to pursue its business activities and not for any purpose other than business in furtherance of commercial expediency.ö

3. Facts of the case, in brief, are that the assessee is a company having investments in wholly owned subsidiaries along with loan given to such companies mainly out of funds borrowed from various other companies. It filed its return of income on 30th August, 2016 declaring loss of Rs.52,06,669/-. During the course of assessment proceedings, the AO noted that the assessee company has advanced interest free loan of Rs.2,49,50,000/- to its subsidiary company M/s Vinu Promoters Pvt. Ltd. out of its interest bearing funds received on account of unsecured loan from various companies. He observed that this loan was advanced in previous years and a sum of Rs.2,52,00,000/- was outstanding against the company at the start of the year. The AO asked the assessee to explain as to why disallowance of interest expenses should not be made in view of the provisions of section 36(1)(iii) of the IT Act. The assessee explained that interest expenses are allowable as the funds were extended to wholly owned subsidiary for the purpose of business.

4. However, the AO was not satisfied with the explanation given by the assessee. According to him, there is diversion of interest bearing funds towards non-interest bearing advance to a related concern. Since the assessee company has paid interest @ 9% on unsecured loans, the AO computed the proportionate amount of interest on interest free advances given to subsidiary companies at Rs.22,56,750/-. Since the assessee has claimed total expenses at Rs.54,38,294/- out of which the AO had already made disallowance of Rs.41,49,856/- u/s 14A and since the assessee company had already offered a sum of Rs.2 lakhs as

disallowance u/s 14A in its computation of total income, the AO made addition of the remaining amount of interest expenses of Rs.10,88,438/- u/s 36(1)(iii) of the Act. In appeal, the Id.CIT(A) upheld the action of the AO.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The Id. Counsel for the assessee, at the outset, submitted that the Honøble Delhi High Court in the case of CIT vs. Tulip Star Hotels Ltd., 338 ITR 482, has held that where assessee is engaged in the business of owning, running and managing hotels, borrowed money and invested the same in its subsidiary company with a view to acquire control of a new hotel, it was to be held that interest paid on borrowed capital was allowable u/s 36(1)(iii) of the Act. Referring to the main object of the assessee company as per its Memorandum of Association, copy of which is placed at page 60 of the paper book, the Id. Counsel drew the attention of the Bench to the main objects which are as under:-

õ(A)THE MAIN OBJECTS TO BE PURSUED BY THE COMPANY ON ITS INCORPORATON ARE:-

1. To acquire, taken on lease or under an arrangement, deal, trade and purchase, sell, construct, own, posses, manage, carry on business of Hotel, Guest House, Malls, Restaurant, Cafe, Tavern, place of refreshment/Entertainment, boarding and lodging, house keepers, licensed victuallers, wine/beer/brandy/whisky and spirit merchants, ice cream parlours, tea/coffee lounge, motels, snack bars, fast food courts and every type of eating house, purveyors, cinema and show on caterers for public amusement; proprietors, porters on brokers of food, local and foreign produce of all types and kinds of perfumes, chemist, toys, other items of games, fancy items, gift items, clubs, nightclubs, discotheques, bath, dressing rooms, laundries, places of amusement, recreation, sportl entertainment, sports bar, casino, children cafe, tobacco and cigar merchant,

supplier/caterers for railways/shipping/aeroplanes companies and other modes of carriers, cinema- theatrical and opera box and to carry on the business of imports and exports of goods utilized for the aforesaid business.ö

7. Similarly, referring to the other objects of the assessee company, as per clause 19 at page 4 of the Memorandum of Association, he submitted that it is the other object of the assessee company to establish or promote or concur in establishing or promote any company for the purpose of acquiring all or any of the properties, rights and liabilities of the Company:-

ö19. To establish, or promote or concur in establishing or promote any company for the purpose of acquiring all or any of the properties, rights and liabilities of the Company.ö

8. Referring to the decision of the Honøble Supreme Court in the case of Hero Cycle (P.) Ltd., reported in 379 ITR 347, he submitted that the Honøble Supreme Court in the said decision has held that once it is established that there is nexus between expenditure and purpose of business Revenue cannot justifiably claim to put itself in arm-chair of businessman or in position of Board of Directors and assume role to decide how much is reasonable expenditure having regard to circumstances of case.

9. Referring to the decision of the Honøble Bombay High Court in the case of CIT vs. Reliance Communications Infrastructure Ltd., reported in 260 CTR 159, he submitted that the Honøble Bombay High Court in the said decision has held that where assessee for furthering its business had utilized borrowed funds for making investments in its subsidiary company and for making interest free

advances to a related company, no disallowance of interest paid on borrowed funds could be made.

9.1 The ld. Counsel for the assessee also relied on the following decisions:-

- (i) SA Builders Ltd. vs. CIT (2007) 158 Taxman 74 (SC);
- (ii) PCIT vs. Reebok India Company (2018) 98 taxmann.com 413 (Del);
- (iii) CIT vs. Dalmia Cement (P) Ltd. (2002) 121 Taxman 706 (Del);
- (iv) Hindalco Industries Co. vs. CIT (2017) 88 taxmann.com 532 (All);
- (v) DCIT vs. Enercon India Ltd. (2017) 82 taxmann.com 334 (Mumbai Trib.);
- (vi) ACB India Power Ltd. vs. DCIT (ITA No.82/Del/2016 (Del ITAT); &
- (vii) CIT vs. Tulip Star Hotels Ltd. (2011) 16 taxmann.com 335 (Del)

10. He accordingly submitted that this being a covered matter in favour of the assessee, the ground raised by the assessee should be allowed.

11. The ld. DR, on the other hand, heavily relied on the orders of the AO and the CIT(A).

12. I have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find, the AO, in the instant case, made addition of Rs.10,88,438/- u/s 36(1)(iii) of the Act on the ground that the assessee has diverted its interest bearing funds towards

non-interest bearing advances to a related concern. I find, the Id.CIT(A) upheld the action of the AO disregarding the argument of the assessee that loan had been advanced on account of commercial expediency and, therefore, no disallowance could be made in the light of the decision of the Honøble Supreme Court in the case of SA Builders vs. CIT reported in 288 ITR 1. It is the submission of the Id. Counsel that when the assessee has borrowed money and invested the same in its subsidiary companies with a view to acquire control of a new asset, such interest paid on borrowed capital has to be allowed u/s 36(1)(iii) of the Act.

13. I find merit in the above arguments of the Id. Counsel for the assessee. The Honøble Delhi High Court in the case of Tulip Star Hotels Ltd. (supra) has held that where assessee is engaged in the business of owning, renting and managing hotels, borrowed money and invested the same in its subsidiary company with a view to acquire control of a new hotel, such interest paid on borrowed capital is allowable u/s 36(1)(iii) of the IT Act, 1961.

14. I find, the Honøble Bombay High Court in the case of CIT vs. Reliance Communications Infrastructure Ltd. (supra) has held that where the assessee, for furthering its business had utilized borrowed funds for making investments in its subsidiary company and for making interest free advances to a related company, no disallowance of interest paid on borrowed funds could be made. I find, the Honøble Supreme Court in the case of Hero Cycle (supra) has held that once it is established that there is nexus between expenditure and purpose of business,

Revenue cannot justifiably claim to put itself in the arm chair of businessman or in position of Board of Directors and assume role to decide how much is reasonable expenditure having regard to circumstances of case. The various other decisions relied on by the Id. Counsel for the assessee in the case law compilation also supports the case of the assessee to the proposition that where interest free advances made to a wholly owned subsidiary company, no disallowance of interest paid on borrowed fund could be made. Since, in the instant case, admittedly, the assessee has extended funds to its wholly owned subsidiary company for the purpose of business, therefore, in view of the decisions cited supra, I hold that no interest paid on borrowed funds could have been disallowed u/s 36(1)(iii) of the IT Act, 1961. I, therefore, set aside the order of the CIT(A) and direct the AO to delete the disallowance of Rs.10,88,438/-. The grounds raised by the assessee are accordingly allowed.

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

The decision was pronounced in the open court on 22.09.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 22nd September, 2021.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi