

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'SMC' BENCH, MUMBAI**

[Coram: Pramod Kumar (Vice President)]

ITA No. 5097/Mum/2019
Assessment Year: 2014-15

Sumeet Developers **Appellant**
506/507, Persipolis, Plot No. 74, Sector-17
Vashi, Navi Mumbai 400703 [PAN: ACGFS5327N]

Vs.

Income Tax Officer-28(3)(3)
Mumbai. **Respondent**

Appearances:

None for the appellant

Vijaykumar Menon for the respondent

Date of concluding the hearing : May 10, 2021
Date of pronouncement : August 04, 2021

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee-appellant has challenged the correctness of the order dated 19th June 2019, passed by the learned CIT(A) in the matter of assessment u/s. 143(3) of the Income Tax Act, 1961 for the assessment year 2014-15.

2. The short issue that adjudicate is whether or not the learned CIT(A) was justified in upholding the disallowance of Rs. 1,67,167/- under section 36 (i) (iii) of the Act.

3. To adjudicate on this appeal, it is enough to take note of the fact that even though the assessee admittedly had sufficiently interest free funds of Rs. 3,28,60,826/-, far in excess of interest free loans extended to the tune of Rs. 32,50,000/- disallowed related interest of Rs. 1,67,167/- on the ground that commercial expediency of interest loan could not be justified by the assessee. In appeal learned CIT(A) confirmed the action of the Assessing Officer by observing as follows:-

8. Ground No.2 of appeal is against disallowance of interest of Rs, 1,67,167/- as against interest free loans advanced by the appellant. It was stated that M/s Manish Enterprises was to buy a plot of land which the Assessee was to take over and undertake building & developmental activities. The Assessee was expected to lend a sum of Rs 70 Lacs for this purpose. In case of loans advanced to Charkop Kaavya Beachwood CHS ('the Society')

being a sister concern wherein the assessee's partners are also Members of the Society. The Society was in dire need of urgent funds to carry on uninterrupted business. Owing to the urgency, the partners decided to lend funds out of the idle capital lying with the assessee. This was considered necessary as the partners constituted more than half the Members of the Society. In addition to financial interest in the Society, financial risk was also involved. Thus from the submission of the appellant it is clear that the interest free loan advanced is not for business purposes. Hence the addition made by the AO is confirmed. The ground of appeal is 'Dismissed'.

4. The assessee is not satisfied and is in further appeal before me.

5. Having heard the rival contentions and having perused the material on record, I am satisfied that interest free funds available to the assessee are far in excess of interest free loans extended by the assessee, and, as such, presumption has to be, in the light of Hon'ble jurisdictional High Court's judgement in the case of **CIT vs Reliance Utilities & Power Ltd., [(2009) 313 ITR 340 (Bom)]**, that the loans were extended out of interest free funds. As such, in my considered view, no part of interest on borrowings could be disallowed for non business use. I, therefore, delete the impugned disallowance of Rs. 11,67,167/-.

5. In the result, this appeal is allowed. Pronounced in the open court today on the 04th day of August 2021.

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 04th day of August 2021.

Copies to: (1) *The Applicant* (2) *The respondent*
 (3) *CIT* (4) *CIT(A)*
 (5) *DR* (6) *Guard File*

By order

Assistant Registrar/Sr.PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai