

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 1754/H/2017 Assessment Year: 2013-14		
Srinivas Rao Kalagara, Nizamabad. PAN - AJAPK 4065A (Appellant)	Vs.	Asst. Commissioner of Income-tax, Circle - 1, Hyderabad. (Respondent)
Assessee by:		Shri K.A. Sai Prasad
Revenue by:		Shri Rohit Mujumdar
Date of hearing:		26/10/2021
Date of pronouncement:		29/10/2021

ORDER

PER L.P. SAHU, A.M.:

This appeal filed by the Assessee is directed against CIT(A) - 5, Hyderabad's order dated 16/03/2021 for AY 2013-14 involving proceedings u/s 143(3) of the Income Tax Act, 1961 ; in short "the Act, on the following grounds of appeal:

- 1. The order of the learned Commissioner of Income Tax (A) is not correct either on facts or in law and in both.*

2. The learned Commissioner of Income Tax(A) is not justified in confirming an addition of Rs.33,96,662/- towards interest disallowance u/s.36(1)(iii) of the I.T Act.

3. The learned First Appellate Authority failed to appreciate the fact that the appellant had sufficient interest free funds and hence the disallowance of interest u/s.36(1)(iii) is not justified.

4. The appellant crave leave to add or amend or alter any of the grounds at the time of hearing of appeal."

2. Briefly, the facts of the case are that the assessee, a civil contractor, filed his return of income for the AY 2013-14 on 04/10/2013 admitting a total income of Rs. 18,36,18180/-. The AO completed the assessment u/s 143(3) of the Act assessing the total income of the assessee at Rs. 61,43,140/- by making various disallowances including the interest disallowance u/s 36(1)(iii) of Rs. 33,96,662/-, which is the subject matter in appeal before the ITAT.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) partly allowed the appeal of the assessee.

4. Aggrieved by the order of CIT(A), the assessee is in appeal before the ITAT.

5. The only issue in this appeal is against the addition of Rs. 33,96,662/- towards interest disallowance u/s 36(1)(iii) of the Act and the facts relating to this ground are that the AO observed that the assessee had debited expenditure on account of interest on borrowings to the profit and loss account at Rs. 65,26,471/-. He further observed that the assessee provided interest free loans and advances to Smt. K. Rajyalakshmi of Rs. 34,06,725/- and Rs. 2,32,41,413/- to Bhagyalaxmi Agro Projects Karimnagar. According to AO, the above free loans attract the provisions of section 36(1)(iii) to the extent relate to the amounts not used for business purposes as the assessee has diverted borrowed funds for non-business purposes. Since the assessee has paid interest on borrowed funds @ 14.25%, interest on interest free advances was worked by the AO at Rs. 14.25%, which comes to Rs. 33,96,662/- and disallowed the same.

6. When the assessee preferred an appeal before the CIT(A), the CIT(A) confirmed the disallowance made by the AO.

7. We have considered the rival submissions and perused the material on record. Before us, the Id. AR of the assessee submitted that the assessee had sufficient surplus own funds on the date advanced to the Smt. K. Rajyalakshmi of Rs. 34,06,725/- and Rs. 2,32,41,413/- to Bhagyalaxmi

Agro Projects Karimnagar. He, therefore, requested the Bench to remit the matter to the file of the AO to substantiate assessee's claim by way of documentary evidence. Therefore, we set aside the order of CIT(A) and remit the matter to the file of the AO with a direction to decide the issue based on the evidence filed by the assessee to substantiate his claim that the assessee had own surplus funds on the particular date of advancing the amounts to the said parties, and in accordance with law after providing reasonable opportunity of hearing to the assessee. The assessee is directed to substantiate his claim by furnishing fund flow, cash flow and other statements as on the date he had made the investments/advances to prove that he had own surplus funds for interest free loans. Thus, the grounds raised by the assessee on this issue are treated as allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on 29th October, 2021.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 29th October, 2021.

kv

Copy to :

<i>1</i>	<i>Sri Kalagara Srinivasa Rao, C/o Ch. Parthasarathy & Co., 1-1-298/2/B/3, 1st Floor, Sowbhagya Avenue, St. No. 1, Ashoknagar, Hyderabad – 500 020.</i>
<i>2</i>	<i>ACIT, Circle – 1, Aayakar Bhavan, Subhashnagar, Nizamabad.</i>
<i>3</i>	<i>CIT(A) – 5, Hyderabad.</i>
<i>4</i>	<i>Pr. CIT - 5, Hyderabad.</i>
<i>5</i>	<i>ITAT, DR, Hyderabad.</i>
<i>6</i>	<i>Guard File.</i>