

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No. 2952/PUN/2017

निर्धारण वर्ष / Assessment Year : 2011-12

UB Ajanta Breweries Pvt. Ltd., (since merged with United Breweries Ltd.), Plot No.H-9 to 11, MIDC Waluj, Aurangabad PAN : AABCA6594R	Vs.	ACIT, Circle-2, Aurangabad
Appellant		Respondent

Assessee by Shri Nitin S. Bangad
Revenue by Shri S.P. Walimbe

Date of hearing 17-01-2022
Date of pronouncement 18-01-2022

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A) on 20-09-2017 confirming the disallowance of Rs.1,03,03,190/- made by the Assessing Officer (AO) u/s.36(1)(iii) of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2011-12.

2. Succinctly, the facts of the case are that the assessee is a company engaged in the business of manufacture and sale of beers. In the proceedings u/s.143(3) r.w.s. 263 of the Act, the AO noticed that the assessee made advance of Rs.1.30 crore to M/s. UB Nizam

Breweries Pvt. Ltd. (UBPL) during the year with the closing balance standing at Rs.8.85 crore. The assessee had also paid interest amounting to Rs.5.21 crore on borrowed funds. Treating the amount paid to UBPL, a related concern, for non-business purposes, the AO made disallowance of interest u/s.36(1)(iii) of the Act at Rs.1,03,03,190/-. The assessee remained unsuccessful before the Id. CIT(A), against which an appeal has been preferred before the Tribunal.

3. We have heard the rival submissions through Virtual Court and perused the relevant material on record. The AO has not accepted the assessee's contention of having advanced money to UBPL, its sister concern, for business purposes. In fact, the assessee failed to substantiate the advancement of such money to its sister concern for any business purposes. However, it is seen that the assessee's share capital with Reserves and Surplus as at the end of the year stands at Rs.96.55 crore with the opening balance at Rs.96.88 crore. As against that, the amount of advance given to sister concern during the year is Rs.1.30 crore with closing balance at Rs.8.55 crore. Thus, it is manifest that the assessee's shareholders' fund is much more than the amount of advance given to sister concern.

4. The Hon'ble Bombay High Court in *CIT vs. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom)*, has held that where an assessee possessed sufficient interest free funds of its own which were generated in the course of relevant financial year, apart from substantial shareholders' funds, presumption gets established that the investments in sister concerns were made by the assessee out of interest free funds and, therefore, no part of interest on borrowings can be disallowed on the basis that the investments were made out of interest bearing funds. In reaching this conclusion, the Hon'ble High Court relied on the judgment of the Hon'ble Supreme Court in the case of *East India Pharmaceutical Works Ltd. Vs. CIT (1997) 224 ITR 627 (SC)*. Similar view has been taken by the Hon'ble Dehi High Court in *CIT vs. Tin Box Company (2003) 260 ITR 637 (Del)*, holding that when the capital and interest free unsecured loan with the assessee far exceeded the interest free loan advanced to the sister concern, disallowance of part of interest out of total interest paid by the assessee to the bank was not justified. More recently, the Hon'ble Supreme Court in *CIT(LTU) VS. Reliance Industries Ltd. (2019) 410 ITR 466 (SC)* has reiterated the same view.

5. When we examine the amount of Investments at Rs.8.55 crore as against the availability of Share Capital and Reserves at Rs.96.55 crore, it becomes evident that the amount of such Investments is much less than the amount of shareholders' fund. Respectfully following the precedent, we order to delete the disallowance of interest amounting to Rs.1,03,03,190/-.

6. In the result, the appeal is allowed.

Order pronounced in the Open Court on 18th January, 2022.

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 18th January, 2022
Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-2, Aurangabad
4. The Pr.CIT-2, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" / DR 'A',
ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	17-01-2022	Sr.PS
2.	Draft placed before author	17-01-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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