

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

माननीयश्रीवी. दुर्गराव, न्यायिकसदस्यएवं
माननीयश्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपीलसं./ **ITA No.2530/Chny/2019**
(निर्धारणवर्ष / **Assessment Year: 2016-17**)

MR. Rajappa Kumar No.802 & 804, Navins Triumph Annasalai, Nandnam, Chennai - 600 035.	बनाम/ Vs.	ITO Corporate Ward 4(4) Chennai.
स्थायी लेखासं./जी.आइ.आर.सं./PAN/GIR No. AAOPK-5368-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri B.Ramakrishna (CA) – Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri G. Johnson (Addl.CIT) – Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	04-01-2022
घोषणाकीतारीख / Date of Pronouncement	:	17-01-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. The only grievance of the assessee in captioned appeal for Assessment Year (AY) 2016-17 is interest disallowance u/s 36(1)(iii) for Rs.10.72 Lacs. The impugned order has been passed by learned Commissioner of Income Tax (Appeals)-8, Chennai [CIT(A)] on 28.06.2019 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 03.12.2018.

2. Drawing our attention to the grounds of appeal, Ld. AR assailed the disallowance, inter-alia, by submitting that the borrowed funds as obtained by the assessee were for specific purpose only. Further, own funds were sufficient to advance to group entities. The Ld. AR also submitted that the loans were granted in earlier years and only a part of loan was granted during this year and therefore, disallowance was not justified. The Ld. DR controverted the same by submitting that the assessee was to show availability of interest free funds on the dates on which loans were advanced to group concerns.

3. Having heard rival submissions and after going through the orders of lower authorities, our adjudication would be as under.

4. The assessee being resident individual has carried out business of civil construction in the name of M/s Vasudha Enterprises. During assessment proceedings, it transpired that the assessee debited interest / processing fees of Rs.11.63 Lacs as finance charges on Overdraft Limit. It was also noted that the assessee advanced interest free loan of Rs.1233.30 Lacs to two entities i.e. M/s Navin Housing & Properties Private Ltd. and M/s Entrayan Educational Technology Private Ltd. The assessee was stated to be shareholder and director in these two entities. On the basis of these facts, Ld. AO proceeded to compute interest disallowance u/s 36(1)(iii). The assessee, inter-alia, submitted that the loans were given out of own funds. However, considering the fact that the assessee had mixed funds, Ld. AO disallowed expenditure of Rs.11.63 Lacs in its entirety.

5. During appellate proceedings, the assessee submitted that it had two overdraft accounts with State Bank of Travancore against which impugned interest was paid by the assessee. These funds were used for

the purpose of business which was evident from statement of inflow and outflow of funds as placed on record. Therefore, the conclusion of Ld. AO that the interest-bearing funds were diverted for non-business purposes was wrong. Further, M/s Entrayan Educational Technology Private Ltd. was engaged in the business of developing educational platform for business purposes and investment was necessary to make business operational. The second entity was stated to be engaged in similar civil construction business. Therefore, the investments were out of commercial expediency. The attention was also drawn to the fact that the assessee had capital balance of more than Rs.5 Crore besides advances received from flat buyers. However, Ld. CIT(A) concluded that the capital balance was fully utilized for personal investments and deposits and the assessee did not have free reserves to make interest free advances of Rs.12.33 Crores. Further, the assessee could not establish the commercial expediency of making these investments. Finally, interest component of Rs.10.72 Lacs was held to be disallowable whereas the bank charges and processing fees of Rs.0.91 Lacs paid by the assessee was held to be allowable. Aggrieved, the assessee is in further appeal before us.

6. Upon perusal of assessee's financial statement as extracted in impugned order, it could be seen that the assessee has own capital of more than Rs.5 Crore as on 31.03.2016. The assessee is also having interest free advances received from flat buyers which are more than Rs.40.15 Crores. The loans of Rs.7.92 Crores on which interest has been paid by the assessee is secured loan in the shape of bank overdraft. The assessee is also having unsecured loans of more than Rs.12.77 Crores. On asset side, the assessee has closing work-in-

progress for Rs.30.14 Crores and the assessee has advanced sum of Rs.10.05 Crores to landowners. The deposits are to the tune of Rs.9.21 Crores whereas interest free loans and advances to group concerns amount to Rs.12.33 Crores. Thus, it could be seen that the assessee has used mix of funds. Nevertheless, in such a case, unless nexus between the borrowed funds vis-à-vis investment made by the assessee was established by Ld. AO, a presumption was to be drawn in assessee's favor that the investments were sourced out of own funds. From record, it also emanates that the fresh loan advanced to M/s Entrayan Educational Technology Private Ltd. during the year was only Rs.146 Lacs out of total loan of Rs.433.30 Lacs. Further, the investment in this entity was for business purposes only. The other entity was also engaged in similar line of business i.e. civil construction and sale of flats. Therefore, in our considered opinion, these investments were out of commercial expediency and the ratio of decision of Hon'ble Supreme Court in the case of **S.A. Builders Ltd. V/s CIT (288 ITR 1)** was applicable wherein it was held that once it was established that there was nexus between the expenditure and purposes of business, which need not be the business of the assessee, deduction u/s 36(1)(iii) was to be allowed. The ratio of decision of Hon'ble High Court of Madras in **CIT V/s Hotel Savera (239 ITR 795)** is applicable to the facts of the case wherein it was held that in case own funds and borrowed funds were inextricably mixed up in such a way that it was impossible to delineate which funds were advanced to group concern, no interference could be made in the Tribunal's finding that no disallowance u/s 36(1)(iii) would be called for. Deriving strength from these decisions, we delete the

impugned disallowance of Rs.10.72 Lacs as sustained by learned first appellate authority.

7. The appeal stands allowed.

Order pronounced on 17th January, 2022.

Sd/-

(V. DURGA RAO)

न्यायिकसदस्य /JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 17 -01-2022

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR6. गार्डफाईल/GF