

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री जी. मंजूनाथा, लेखा सदस्य के समक्ष
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.978/Chny/2018
निर्धारण वर्ष /Assessment Year: 2014-15

M/s.G.E.T.Water Solutions Pvt. Ltd., v. The Asst. Commissioner of
No.1/134, Dhanakoti Raja Street, Income Tax,
Sundar Nagar, Company Circle-2(1),
Ekkattuthangal, Chennai. Chennai.
Chennai-600 032.
[PAN: AABCN 1835 E]
(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.N.V.Balaji, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr. AR.V.Sreenivasan,
Addl.CIT
सुनवाई की तारीख/Date of Hearing : 16.12.2022
घोषणा की तारीख /Date of Pronouncement : 10.02.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-6, Chennai, dated 28.12.2017 and pertains to AY 2014-15.

2. The assessee has raised the following grounds of appeal:

1. *The order of the learned CIT (Appeals) in as much as it confirms the disallowance of Rs.73,05,596/- is erroneous and opposed to law and the facts of the case.*

2. *The learned. CIT (Appeals) erred in ignoring the fact that the loan was given to the appellant company's wholly owned subsidiary which is engaged in similar line of business and the loan was given out of considerations of commercial expediency.*

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3. Further, the Learned Assessing Officer erred in not appreciating the fact that the Loans were provided only out of business receipts and not out of loans borrowed from banks. The overdraft facility, for which Interest was paid, was used for business purpose only and the LIP Loan was given for asset purchase and could not be diverted for giving loan to subsidiaries.

4. The Learned Assessing Officer has not appreciated the fact that there were no fresh loans taken during the year and that the loans to subsidiaries were given out of own funds.

5. The Learned CIT (Appeals)-6. Chennai in an order passed on 04.05.2017 on similar grounds held that, "The fact of advancing loan to subsidiary, interest free or otherwise comes within the realm of commercial expediency. The mere fact of advancing borrowed funds on interest free basis to subsidiary does not make, ipso facto, the purpose to be non-business. I am of the opinion [hat ratio of the decision of the Hon'ble Supreme Court of India in SA Builders' case (supra) is applicable to the facts and circumstances of the appellants' case". Hence, the Appeal was allowed.

6. For the above reasons and evidences to be adduced during the hearing the 'Appellant prays that the Hon'ble Tribunal maybe pleased to set aside the order of the Learned CIT Appeals and allow the appeal.

3. The brief facts of the case are that the assessee is a company engaged in the business of setting up & service of Effluent Water Treatment Plants, filed return of income for the AY 2014-15 on 29.11.2014 declaring a total income of Rs.1,18,90,850/-. During the course of assessment proceedings, the AO noticed that the assessee company had paid interest on various loans and advances. It was further noticed that the assessee company had also advanced loans and advances to groups/subsidiary companies, but not charged any interest on such loans. Therefore, the AO called upon the assessee to explain, as to why, interest paid on loans, cannot be disallowed u/s.36(1)(iii) of the Act for diversion of interest bearing funds for non-business purpose. In response, the assessee submitted that the company has advanced loans and advances to groups/subsidiary companies which are in similar line of business in the FY

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2011-12 out of own funds being convertible debentures to the extent of Rs.10 Crs. and also fresh share capital raised during the AY 2012-13 to the extent of Rs.15 Crs. However, no part of interest bearing funds have been used to advance loans and advances to groups/subsidiary companies. The assessee further contended that even otherwise, loans and advances given to groups/subsidiary companies are for commercial expediency, because, the assessee is having business connections with those companies which are engaged in similar line of business. Therefore, interest cannot be disallowed u/s.36(1)(iii) of the Act. The AO, however, was not convinced with the explanation furnished by the assessee and according to him, the assessee has utilized borrowed funds for the purpose of loans and advances given to sister concern for non-business purpose and accordingly, opined that interest paid on loans to the extent of monies diverted for non-business purpose, cannot be allowed u/s.36(1)(iii) of the Act and thus, disallowed a sum of Rs.73,05,596/- u/s.36(1)(iii) of the Act.

4. Being aggrieved by the Assessment Order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee had reiterated its arguments taken before the AO in light of certain judicial precedents including the decision of the Hon'ble Supreme Court in the case of M/s.Hero Cycles (P) Ltd. v. CIT reported in [2015] 379 ITR 347 (SC) and argued that loans and advances given to groups/subsidiary companies in the course of normal business of the assessee, cannot be considered as diversion of funds for non-business purpose to disallow interest

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u/s.36(1)(iii) of the Act. The Ld.CIT(A) after considering the relevant submissions of the assessee, rejected arguments of the assessee and uphold the findings of the AO towards addition made for disallowance of interest u/s.36(1)(iii) of the Act for diversion of borrowed funds for non-business purpose to sister concern by holding that there is no rationale to advance huge interest free funds to the sister concern when assessee itself is incurring huge interest expenses to help those groups/subsidiary companies to tide over working capital requirements, cannot be a good reason for not charging interest on loans and advances given to them. Therefore, he opined that there is no error in the reasons given by the AO to disallow interest u/s.36(1)(iii) of the Act for diversion of interest bearing funds for non-business purpose. Aggrieved by the Ld.CIT(A)'s order, the assessee is in appeal before us.

5. The Ld.AR for the assessee submitted that the Ld.CIT(A) has erred in confirming the disallowance of interest u/s.36(1)(iii) of the Act ignoring the fact that the loan given to groups/subsidiary companies, is out of interest free funds in the nature of capital and reserve, which is evident from the fact that the assessee had received additional share capital to the extent of Rs.25 Crs. during the previous year ended 31.03.2012 and out of said funds, it has given loans and advances to groups/subsidiary companies for business purpose. The Ld.AR further submitted that even otherwise, the assessee had advanced monies to the companies during the years ended 31.03.2011 & 31.03.2012, which are engaged in the business related to

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the assessee out of commercial expediency and thus, loans and advances given to them, cannot be considered as diversion of funds warranting disallowance of interest u/s.36(1)(iii) of the Act. In this regard, he relied upon the decision of the Hon'ble Supreme Court in the case of SA Builders Ltd. v. CIT reported in (2007) 288 ITR 001 (SC).

6. The Ld.DR, on the other hand, submitted that the AO as well as the Ld.CIT(A) brought out clear facts to the effect that the assessee had advanced loans to groups/subsidiary companies without charging any interest and at the same time, the assessee had paid huge interest expenses on loans and advances taken from Banks. Therefore, there is no error in the reasons given by the AO to disallow proportionate interest expenses u/s.36(1)(iii) of the Act for diversion of interest bearing funds for non-business purpose.

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The solitary issue that needs to be resolved in the given facts and circumstances of the case is whether loans and advances given to groups/subsidiary companies is out of interest free funds or out of interest bearing funds, which warrants disallowance of proportionate interest u/s.36(1)(iii) of the Act. The AO has disallowed proportionate interest on the ground that the assessee had diverted interest bearing funds for non-business purpose. We have given our thoughtful consideration to the reasons given by the AO in light of various evidences filed by the assessee and we ourselves do not subscribe

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to the reasons given by the AO to disallow proportionate interest expenses for the simple reason that once it is an established fact that there is a business connection between the assessee and its groups/subsidiary companies, then merely for the reason that the assessee has not charged any interest on loans and advances given to those groups/subsidiary companies, interest paid on borrowed money, cannot be disallowed u/s.36(1)(iii) of the Act. It is a well-established principles of law that when there is a business expediency, then the assessee is at liberty to deal with its finance in accordance with its business requirements. The AO cannot sit in arms chair of the businessman to decide its business affairs and direct how to deploy its funds. As long as the assessee establishes the business connection or commercial expediency, then it is free to deal with its affairs in accordance with its requirements and thus, we are of the considered view that the AO cannot disallow proportionate interest expenses u/s.36(1)(iii) of the Act merely for the reason that no interest has been charged on loans and advances given to groups/subsidiary companies. In this case, the assessee had filed necessary evidences to prove that there is a business connection between the assessee and the company to whom loans and advances were given. Therefore, we are of the considered view that once it is an established fact that there is a commercial expediency, no interest can be disallowed u/s.36(1)(iii) of the Act.

8. Be that as it may. We further noticed that the assessee has placed all evidences to prove that interest free loans given to groups/subsidiary

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companies is out of interest free funds available with the assessee at the relevant point of time, which is evident from the fact that when the loans and advances given in the FYs ended 31.03.2011 & 31.03.2012, the assessee had raised fresh funds in form of share capital of Rs.25 Crs. and out of which, it had given loans to its groups/subsidiary companies for business purpose. Therefore, we are of the considered view that on this count also, interest disallowance made by the AO u/s.36(1)(iii) of the Act, is not correct. The Ld.CIT(A) without appreciating the facts, simply confirmed the addition made by the AO towards disallowance of proportionate interest expenses u/s.36(1)(iii) of the Act. Hence, we set aside the order passed by the Ld.CIT(A) and direct the AO to delete the additions made towards interest u/s.36(1)(iii) of the Act.

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

Order pronounced on the 10th day of February, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 10th February, 2022.

TLN, Sr.PS

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF