

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ B ‘ Bench, Hyderabad
(Through Video Conferencing)

Before Shri S.S. Godara, Judicial Member
AND
Shri Inturi Rama Rao, Accountant Member

ITA No.1083/Hyd/2019		
Assessment Year: 2015-16		
The Deputy Commissioner of Income Tax, Circle 3(1), Hyderabad.	Vs.	Raghu Rama Renewable Energy Limited, Hyderabad. PAN : AACCR0809F.
(Appellant)		(Respondent)
Assessee by:		Shri Samuel Nagadesi
Revenue by:		Shri Rohit Mujumdar.
Date of hearing:		17.02.2022
Date of pronouncement:		21.02.2022

ORDER

Per S. S. Godara, J.M.

This Revenue's appeal for A.Y. 2015-16 arises from the Commissioner of Income Tax (Appeals) – 11, Hyderabad's order dated 28.12.2018 in case No.375/2017-18/DCIT CC-1(2)/CIT(A)-11/2018-19/Hyd, involving proceedings u/s 143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. The Revenue's first and foremost substantive grievance challenges correctness of the CIT(A)'s action deleting section 36(1)(iii) interest expenditure disallowance of Rs.17,11,356/- made by the Assessing Officer in his assessment order

dt.29.12.2017. The CIT(A)'s appellate discussion to this affect reads as under :

“4.0) Ground nos. 1 and 5 are general in nature. Ground no.2 deal with the addition made with regard to disallowance of interest expenditure claimed. Ground 3 's against initiation of penalty proceedings u/s 271(1)(c). As initiation of penalty proceedings is not appealable issue/cause/order, the ground raised is rejected. Ground No.2 is against disallowance of proportionate interest expenditure on interest free advances amounting to Rs.17,11,356/- The AO stated that the assessee company has given interest free loans to the related parties, as under:-

- a) Ind Barat Power Infra Ltd (Holding Company)*
- b) Dharmasala Hydro Power Limited (Fellow Subsidiary)*
- c) Ind Barat Enegies (Maharashtra) Ltd (Fellow Subsidiary)*
- d) Id Barat Power Gecom Limited (Fellow Subsidiary)*
- e) Sriba Seabase.*
- f) Arkay Energy (Utkal) Limited)*

The total amount of short term loans and advances advanced to the above group concerns as on 31.03.2015 was Rs.1,56,75,396/-. It was stated by the AO that the assessee company was in the business of production and selling of power and it has failed to establish that there was business expediency with its related / group concerns to whom it has advanced interest free loans and advances. The units of the assessee company and the sister concerns to whom it provided interest free loans and advances were located in different locations. Moreover, it took loans @ 12% p.a. from various banks / creditors and was claiming interest expenditure in its P&L A/c on the above loans. The AO held that if such interest free loans / advances were not given to its sister concerns, as mentioned above, the corresponding interest expenditure would have substantially reduced, thereby more profit would have been arrived. Accordingly, the AO held that such advancement of huge sums without any interest could not be concluded that there was a need of business expediency and disallowed the interest expenditure on prorata basis and accordingly made the addition of Rs.17,11,356/ .

4.1) The assessee in course of appellate proceedings has submitted as under: -

“In the instant case, appellant company is one of the group companies under the flagship of Ind Barath Group having other companies as SPVs pursuant to the undertaking or the PPA entered into by the respective entities with concerned State Governments. The necessity of creation of SPVs as legal entities arises as for the requirements of the same. The appellant along with group entities is in the business or'

generation of electricity, the same constitute the business of the group as a whole. The appellant group followed pooling of finances for the effective management of group entities. Accordingly, there are inter-corporate adjustments in the working capital among the group entities to ensure that the all entities could be operated without any financial difficulty. finance being lift blood of business the same should be made available to the arteries of every business entity in the group. The details of the said working capital adjustments are examined by the Assessing Officer in detail. The only issue for consideration in appeal is that the Assessing Officer added the amount of imputed interest on the said adjustments and completed the assessment impugned in the appeal under consideration. The working capital management in the group entities is according to the business necessity and commercial expediency of the appellant who is carrying on business and not according to the expectations of the Assessing Officer. This issue is required to be understood in the perspective and the judgement of a business entity and the Assessing Officer cannot substitute his own judgments on the principles of business necessity and commercial expediency. In the instant case the situation of commercial expediency has to be seen from the perspective of the business entity with the entries made in the books of account and the funds utilized and relative position of the funds required on the respective dates and no room for any assumptions and imputations. As it is clearly understood that no entity can admit a business failure as long as there is a scope to survive and it is the endeavor of the group as a whole to carry on the business without interruptions".

4.1.2. *The assessee relied on the ratio laid down in the following cases :*

- (i) S.A. Builders Ltd. Vs. CIT 288 ITR 1 (SC)*
- (ii) Hero Cycles Pvt. Ltd. Vs. CIT (Civil Appeal 514 of 2008)*
- (iii) CIT Vs. Dalmia Cement (Bharat) Ltd (Bharath) Ltd 254 ITR 377 (Del).*

4.2) I have considered the assessment order submissions of the assessee. The fact that the assessee has taken loans on which interest is being charged whereas the assessee has advanced amounts to sister concerns free of interest is not in dispute. The amounts are used by sister concerns for their business is also not in dispute. Applying the ratio laid down by the Hon'ble Supreme Court in the case of S. A Builders Ltd (Supra), it is held that no disallowance is called for and the addition made by AO is deleted. The assessee succeeds on this ground."

3. Both the learned representatives reiterate their respective stands against and in support of the CIT(A)'s action deleting the

impugned interest expenditure disallowance. Suffice to say, the assessee claims to have made interest bearing funds advanced to its sister concerns as per “commercial expediency” as upheld in hon’ble apex court’s landmark decision in S.A Builders (supra). The fact also remains that apart from discussion on legal aspect of this issue, the assessee has hardly been able to prove any such element either before the Assessing Officer or before the CIT(A); as the case may be. It is made clear that “commercial expediency” is indeed a factual aspect one which requires to be considered adjudicated as per the cogent supportive evidence to be produced at the concerned taxpayer’s behest only.

4. Faced with this situation, learned authorized representative submitted that the instant former issue be restored back to the Assessing Officer to verify all the necessary facts including assessee’s commercial expediency involved in advancing of interest free funds to the group concerns. We therefore accept the Revenue’s instant former substantive grounds for statistical purposes and leave it open for the Assessing Officer to carry out his afresh factual verification within three effective opportunities of hearing. It is made clear that it shall be the assessee’s onus only to file all contemporaneous evidence in support of its claim. Ordered accordingly.

5. Next comes the Revenue’s latter substantive grievance that the CIT(A) has erred in law and on facts in deleting ‘exceptional item’ disallowance of Rs.2,89,82,308/- made in the course of assessment. We note from a perusal of the CIT(A)’s detailed

discussion in para 5 onwards (Pages 6 to 12) that the assessee had claimed to have receivables involving M/s. PTC (India) Limited as per the corresponding invoices dt.30.08.2010, 01.10.2010 and 01.06.2011 which were stated to have been written off since having become irrecoverable on account of the latter's refusal. Mr. Samuel could not rebut the basic clinching fact that there is no material either before the Assessing Officer or before the CIT(A) indicating any such refusal from M/s. PTC (India) Limited. The very factual position has continued before us as well. We deem it appropriate to observe here that we are not dealing with bad debts claim which does not require the assessee to prove that the corresponding sums have really become bad. It is rather an instance wherein this assessee has claimed specific refusal from the payee side so as to claim the impugned sum as deduction wholly and exclusively incurred for the purpose of business u/s 37 r.w.s. 28 of the Act.

6. Faced with this situation, learned A.R. submitted that the instant matter be also restored back to the Assessing Officer to verify all necessary facts. We therefore restore the Revenue's instant corresponding grounds back to Assessing Officer in very terms as the former issue adjudicated in preceding paras.

No other ground has been pressed before us.

7. This Revenue's appeal is allowed for statistical purposes in above terms.

Order pronounced in the Open Court on 21st February, 2022.

Sd/- (INTURI RAMA RAO) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 21st February, 2022.

TYNM/sps

Copy to:

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1	M/s. Raghu Rama Renewable Energy Limited, #115/1 & 115/29, 6 th Floor, Sanpras Corporate Capital Sheraton Towers, Financial District, Nanakramguda, Gachibowli, Hyderabad - 500 032.
2	The Deputy Commissioner of Income Tax, Circle - 3(1), Hyderabad.
3	CIT(Appeals) - 11, Hyderabad.
4	Pr. CIT (Central), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order