

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:903/CHNY/2018
निर्धारण वर्ष /Assessment Year: 2009 - 2010

M/s. Indonet Global Limited,
Kothari Building,
4th Floor, 114, Mahatma Gandhi Salai,
Nungambakkam,
Chennai – 600 034.

Vs. The Assistant Commissioner of
Income Tax,
Corporate Circle – 2 (3),
Chennai – 600 001.
Tamil Nadu

PAN : AAACI 6476 K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Mr. N. Arjunraj, C.A. for S. Sridhar, Advocate
: Mr. G. Johnson, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 03.03.2022

घोषणा की तारीख/Date of Pronouncement : 04.03.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

The appeal by the Assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-13, Chennai in ITA No.98/CIT(A)-13/AY 2009-10; dated 16.02.2018. The assessment was framed by the ACIT, Company Circle-II (3), Chennai for the Assessment Year 2009 – 2010 u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), vide order dated 30.12.2011.

2. The only issue in this appeal of the Assessee is against the order of the learned Commissioner of Income Tax (Appeals) confirming the action of the Assessing Officer in charging notional interest computed at the rate of 12% on the presumption of diversion loan amount to sister concern for non-business purpose, adding the same to the returned income of the Assessee amounting to Rs.34,58,681/- at the rate of 12%. For this, Assessee has raised various grounds which we need not reproduce for the sake of brevity.

3. The brief facts are that the Assessee is a non-banking finance company and the Assessing Officer during the course of the assessment proceedings, on verification of the balance sheet, noticed that the Assessee has borrowed substantial funds from the Life Insurance Corporation of India to a tune of Rs.4,35,00,835/-. The Assessee has paid interest expenses on this loan of Rs.48,14,730/-. The Assessing Officer noted that the Assessee has advance interest free loans to its group concerns amounting to Rs.2,71,04,581/- which is as follows:

SI.No.	Name of the Party	Opening Balance	Closing Balance	Average
(1)	M/s. Bekae Properties Private Limited	1,89,75,000	28,84,424	1,09,29,712
(2)	M/s. Ind Eco Ventures	0	34,35,526	17,17,763
(3)	Loyal Credit and Investment Limited	81,49,460	74,49,460	77,99,460
(4)	Ravello Advertisements Private Limited	66,57,646	66,57,646	2,71,04,581
Total		3,37,82,106	2,04,27,056	2,71,04,581
Interest @ 12% fpr Rs.2,71,04,5681 = Rs.32,52,550/-				

As the Assessee has advanced interest free loan to its group concerns, the Assessing Officer had charged notional interest on the interest free loan given to its group concerns by calculating at the rate of 12% and added to the returned income of the Assessee amounting to Rs.34,58,681/-. Aggrieved, the Assessee preferred appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) also confirmed the action of the Assessing Officer on identical reasoning. Aggrieved, the Assessee came before the Tribunal.

4. We have heard the rival contentions and gone through the facts and circumstances of the case. Before us, the learned Counsel for the Assessee made a first submission that, there is no provision in the Act of charging of notional interest on the interest free loans advanced to its sister concern companies. He stated that the interest can be disallowed which has been claimed as expenses on interest bearing funds diverted towards interest free loans.

The second argument made by the learned Counsel for the Assessee was that it has ample interest free loans available in the shape of accruals, share funds and reserve and surplus to the tune of Rs.11,08,79,343/- as against advances made to group companies to the tune of Rs.3,37,82,106/-. The learned Counsel for the Assessee, before us filed the complete balance sheet, i.e. financial statement in its paper-book and drew our attention to the share capital and

reserve and surplus. We noted that this issue is squarely covered by the decision of the Hon'ble Bombay High Court in the case of the Commissioner of Income Tax Vs. Reliance Utilities and Power Limited reported in [2009] 313 ITR 340 (Bombay), wherein in page no.16 it is held that if there are funds available, both interest free and overdraft and / or loans taken, then a presumption would arise that investments would be out of interest-free funds generated or available with the company, provided, the said funds are sufficient to meet investments. Hon'ble Bombay High Court in paragraph no.10 has held as under:

"If there are funds available both, interest free and overdraft and / or less are taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds are sufficient to meet the investments. In the instant case, said presumption was established considering the findings of fact, both by the Commissioner (Appeals) and the Tribunal."

5. Similar principle was considered by the Hon'ble Madras High Court in the case of Commissioner of Income-Tax Vs. Hotel Savera reported in [1999] 239 ITR 795 (Madras), wherein the Hon'ble Madras High Court has considered the identical issue vide paragraphs no.8 & 9, as under:

"8. Further, there is no finding by the ITO or the AAC that the money borrowed has been spent for non-business purposes. The addition made by the ITO was on the basis that the money advanced to Savera Hotels (P) Limited

should carry notional interest of 10 percent and in that view he disallowed the amount of Rs.7,72,769. The AAC held that the advance to Savera Hotels (P.) Limited would have come proportionately out of the own funds as well as borrowed funds is not based on any principle of law. There is no finding even by the AAC that the money borrowed by the Assessee was actually diverted for non-business purposes. In the absence of any clear finding both the assessing authority and the finding of the appellate authority and in the absence of any such finding by the Tribunal, we have to hold that the ITO was not justified in disallowing the sum of Rs.72,769 or by the AAC a sum of Rs.30,063/-.

9. We hold that the Tribunal was correct in deleting the sum of Rs.30,063/- and it is also right in holding that no part of interest should be disallowed especially in the absence of any finding that the money borrowed was advanced to Savera Hotels (P) Limited, free of interest."

6. No contrary decision was brought to our notice by the learned senior Departmental Representative.

7. After hearing both the sides, we are of the view that the Assessee has more interest free loans available in the shape of share capital and reserves and surplus to the tune of Rs.11,08,79,343/- as against the interest free advances made to the group companies to the tune of Rs.3,37,82,106/-. Once this is the factual position and the Assessing Officer is unable to brief the nexus between the interest bearing loan

diverted towards the interest-free advances, no disallowance of interest expenses or no notional interest can be charged as interest income as in the present case. Hence, in the given facts, we delete the disallowance and allow the appeal of the Assessee.

8. In the result, the appeal of the Assessee is allowed.

Order pronounced in the court on 4th March, 2022 at Chennai.

Sd/-

(गिरीश अग्रवाल)

(GIRISH AGRAWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 4th March, 2022

IA, Sr. PS

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:** 1. ँ पीलर्षी/Appellant
2. प्रत्यर्षी/Respondent
3. आयकर आयुक्त (ं पील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभाणीय प्रतिनिधि/DR
6. गार्ड फार्डल/GF