

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND
SHRI S.S.GODARA, JUDICIAL MEMBER**

ITA No.	A.Y.	Appellant	Respondent
921/Hyd/19	2014-15	DCIT, Circle-2(1), Hyderabad	M/s.Ind Bharath Power Gencom Limited, Hyderabad [PAN: AABCI4616A]
922/Hyd/19	2014-15	DCIT, Circle-2(1), Hyderabad	M/s.Ind Bharath Power Infra Limited, Hyderabad [PAN: AABCK3883B]
923/Hyd/19	2015-16		

For Assessee : Shri Samuel Nagadesi, AR
For Revenue : Shri Rajendra Kumar, CIT-DR

Date of Hearing : 08-02-2022
Date of Pronouncement : 21-03-2022

ORDER

PER S.S.GODARA, J.M. :

These Revenue's three appeals for AYs.2014-15 & 2015-16 arise from the CIT(A)-11, Hyderabad's order(s); all dated 28-12-2018 passed in appeal Nos.407, 408 & 374 / 2017-18, 2016-17 / 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']; respectively.

Heard both the parties and case files perused.

2. We notice at the outset that these Revenue's appeals suffer from delay of seven days stated to be attributable to the reasons mentioned in the petition/affidavit and on account of no objection from assessee's side. This delay stands condoned therefore.

3. The Revenue's sole substantive grievance in first and foremost AY.2014-15; appeal in ITA No.921/Hyd/2019 and former identical grievance canvassed in the latter twin assessment years' appeals herein challenges correctness of the CIT(A)'s action deleting Section 36(1)(iii) involving varying sums. We note that the CIT(A)'s identical detailed discussion deleting the impugned interest disallowance in lead AY.2014-15 reads as follows:

4.0) Ground nos. 1 and 4 are general in nature which do not require specific adjudication. Ground no.2 deal with the addition made with regard to disallowance of interest expenditure claimed. The AO stated that the assessee company has given interest free loans to the related parties, as under:-

- a) Arkay Energy (Rameswaram) Ltd
- b) Ind Barat Energies (Maharashtra) Ltd
- c) Dharmasala Hydro Power Ltd
- d) Ind Barath Energies (Thoothukkudi) Ltd
- e) Ind Barat Power Infra Ltd
- f) Ind Barat Power (Konkan) Ltd
- g) Srlba Seabase Private Ltd

The total amount of short term loans and advances advanced to the above group concerns as on 31.03.2014 was Rs.3,13,41,291/-. 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 which 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.7,98,24,082/-.

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 of 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 life 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 (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.

4. Learned CIT-DR vehemently contended during the course of hearing that the Assessing Officer had rightly disallowed the impugned interest sums after having found the assessee to have made interest free advances to its sister concerns without involving any "commercial expediency". The assessee's case on the other hand places strong reliance on the CIT(A)'s foregoing detailed discussion deleting the impugned disallowance.

5. We have considered rival contentions. It is made clear that there is no dispute at all about the fact that the assessee had indeed advanced its interest free loans to its sister concerns. Learned counsel had sought to highlight before us that not only the CIT(A)'s findings take into consideration, the relevant judicial precedents (*supra*), but also the fact that the assessee's sister concerns are engaged in the similar business.

We find no reason to accept either parties' foregoing submissions in entirety. There could be hardly any issue about the settled legal proposition that interest free advances made to sister concerns are indeed allowable as a business deduction provided the same involve the element of commercial expediency. We however, note that there is neither any cogent supportive material filed by the assessee either before the Assessing Officer the same or the CIT(A) has examined this aspect as he has merely followed the relevant case law (*supra*) without adverting to the relevant facts. That being the case, we deem it appropriate to restore the instant first and foremost issue raised in all the three instant Revenue's appeals back to the Assessing Officer to examine the commercial expediency element in assessee's interest free advances as per law within three effective opportunities of hearing in consequential proceedings. It is made clear that the assessee shall be very much at liberty to raise all factual and legal pleas; if so advised in consequential proceedings. This Revenue's first instant grievance is allowed for statistical purposes in above terms in all these assessment years.

Its appeal ITA No.921/Hyd/2019 for AY.2014-15 raising all this sole issue succeeds for statistical purposes.

6. The Revenue's identical latter substantive grievance in the remaining twin appeals ITA Nos.922 & 923/Hyd/2019 for AYs.2014-15 and 2015-16 seeks to revive Section 14A r.w. Rule 8D disallowance involving varying sums. Suffice to say it has come on record that the assessee has not derived any exempt income in either of the assessment years. We note in this backdrop that their lordships in CIT Vs. Chettinad Logistics Pvt. Ltd., [80 taxmann.com 221] (Madras); , CIT Vs. Corrttech Energy Pvt. Ltd., [223 Taxman 130] (Guj); and Cheminvest Ltd., Vs. CIT (2015) [378 ITR 33] (Del) hold that Section 14A read with Rule 8D applies only in relation to an assessee's exempt income and not otherwise. It is an admitted fact that the assessee has not derived any exempt income in the relevant previous year. We therefore sustain the order of CIT(A) under challenge for this precise reason alone.

No other ground has been pressed before us.

Revenue's appeals ITA Nos.922 and 923/Hyd/2019 are treated as partly allowed for statistical purposes in foregoing terms.

7. To sum-up, Revenue's first appeal ITA No.921/Hyd/2019 is treated as allowed for statistical purposes and the latter two appeals ITA Nos.922 & 923/Hyd/2019 are partly allowed for statistical purposes in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 21^s March, 2022

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER
Hyderabad, Dated: 21-03-2022

TNMM

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Copy to :

1.The Deputy Commissioner of Income Tax, Circle-2(1), Hyderabad.

2.M/s.Ind Bharath Power Gencom Limited, #115/1 & 115/29, Sampras Corporate Capital, 6th Floor, Sheraton Towers, Financial District, Nanakramguda, Gachibowli, Hyderabad.

3.M/s.Ind Bharath Power Infra Limited, #115/1 & 115/29, Sampras Corporate Capital, 6th Floor, Sheraton Towers, Financial District, Nanakramguda, Gachibowli, Hyderabad.

4.CIT(Appeals)-11, Hyderabad.

5.Pr.CIT(Central)-Hyderabad.

6.D.R. ITAT, Hyderabad.

7.Guard File.