

**आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH, CHENNAI**

**माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ **ITA No.670/Chny/2018**  
(निर्धारण वर्ष / **Assessment Year: 2011-12**)

<b>M/s. Hansa Estates P Ltd.</b> (Now known as M/s. Hansa Vision India P Ltd.) No. 605, 606, 2 <sup>nd</sup> Floor, Film Chamber Building Anna Salai, Chennai – 600 006.	<b>बनाम/ Vs.</b>	<b>DCIT</b> Corporate Circle -2(2), Chennai – 34.
<b>स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACH-1879-B</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Appellant by</b>	:	Shri N. Arjunraj (CA) for Shri S.Sridhar (Advocate) – Ld. AR
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	Ms. L. Jancy Elizabeth Rani (JCIT) – Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	30-06-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	13-07-2022

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2011-12 arises out of the order of learned Commissioner of Income Tax (Appeals)-13, Chennai [CIT(A)] dated 09.02.2018 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 19.03.2014. The grounds raised by the assessee read as under:

1. The order of The Commissioner of Income Tax (Appeals) -13, Chennai dated 09.02.2018 in I.T.A.No.57/CIT(A)-13/2011-12 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the disallowance of the claim of interest on the presumption of diversion of borrowed monies other than for business purposes in the computation of taxable total income without assigning proper reasons and justification.
3. The CIT (Appeals) failed to appreciate that the claim of interest expenses within the scope of section 36(1)(iii)/37(1) of the Act was correct and ought to have appreciated that the decision rendered in the immediately preceding Assessment Year was completely overlooked and brushed aside.
4. The CIT (Appeals) failed to appreciate that the presumption of diversion of borrowed monies other than for business purposes was wholly unjustified and further ought to have appreciated that the transaction with the Tiruvengadam Investments P Ltd was completely distorted, thereby vitiating the findings in last 3 paras (page no 5) of the impugned order.
5. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles of natural justice would be nullity in law.
6. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

As evident, the sole subject matter of appeal is interest disallowance u/s 36(1)(iii). Having heard rival submissions, our adjudication would be as under.

2. The assessee being resident corporate assessee is stated to be engaged in property development. During assessment proceedings, it transpired that the assessee made interest free advance of Rs.12.02 Cr. to its holding company i.e., M/s. Tiruvengadam Investments (P) Ltd., (TIPL). Out of the same, an amount of Rs.161.41 Lacs was paid as profit of Joint Venture. Accordingly, the differential of Rs.10,40,58,602/- was held to be interest free advance by the assessee to TIPL and Ld. AO invoked the provisions of Sec.36(1)(iii) to disallow the proportionate interest. The assessee defended the same on the ground that there was a joint venture agreement between the assessee and TIPL for development of Hansa Chitra Project. M/s TIPL was to provide the land which was to be developed by the assessee. The assessee was to pay the land cost as well as share of profit of joint venture. It was further

submitted that the amount which was paid over and above the joint venture profits was advanced out of surplus funds as available with the assessee. The funds were amalgam of funds and therefore, the advance could be presumed to be given out of surplus funds. However, rejecting the same, Ld. AO held that the assessee could not prove the commercial expediency of advances and the disallowance u/s 36(1)(iii) was attracted. The assessee paid interest at average rate of 18.53%. Applying the same to average advances, Ld. AO computed disallowance of Rs.158.41 Lacs and added the same to the income of the assessee. The disallowance, upon confirmation by Ld. CIT(A), is in further appeal before us.

3. Upon perusal of financial statements as placed on record, it could be seen that during this year, there is increase in reserves and interest-bearing secured loans to the extent of Rs.519.82 Lacs and Rs.350 Lacs respectively. As against this, the advances have increased by Rs.757.87 Lacs which would show that interest bearing funds have certainly been diverted for non-business purposes. The advances have been given by the assessee to its holding company and no commercial expediency of advances could be established by the assessee. The assessee was obligated to pay for land and share of profit only and no further amount. Under these circumstances, the disallowance u/s 36(1)(iii) has rightly been attracted. However, considering the fact that the funds available with assessee was amalgam of funds, a presumption could be raised that the advances were funded first out of surplus funds as available with the assessee and the remaining amount was funded out of interest-bearing loans. Keeping the same in mind, Ld. AO is directed to re-

compute the disallowance. The assessee is directed to provide a plausible working of the same.

4. The appeal stands partly allowed for statistical purposes.

Order pronounced on 13<sup>th</sup> July, 2022.

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 13-07-2022

EDN/-

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

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