

आयकर अपीलीय अधिकरण
मंबई पीठ " ई "

श्री विकास अवस्थी. न्यायिक सदस्य एवं
श्री एम बालगणेश, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आअसं. 5795/मुं/2019 (नि.व. 2010-11)
ITA NO. 5795/MUM/2019(A.Y.2010-11)

M/s. Telestar Travels Pvt. Ltd.,
208, Mistry Court,
Dinshaw Wacha Road,
Mumbai 400 020.

PAN: AABCT-3101-D

..... अपीलार्थी /Appellant

बनाम Vs.

Asstt. Commissioner of Income Tax,
Circle-1(3)(2),
Room No.540, 5th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri P.P.Bhandari

प्रतिवादी द्वारा/Respondent by : Shri Pitta Samuel

सुनवाई की तिथि/ Date of hearing : 07/07/2022

घोषणा की तिथि/ Date of pronouncement : 07/07/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-3, Mumbai (in short 'the CIT(A) ') dated 02/08/2019 for the assessment year 2010-11.

2. The assessee in appeal has raised two grounds. In ground No.1 of appeal, the assessee has challenged reopening of assessment. The Id.

Authorized Representative for the assessee stated at Bar that he is not pressing ground No.1

In ground No.2 of appeal, the assessee assailed disallowance of interest Rs.14,70,521/- u/s. 36(1)(iii) of the Income Tax Act, 1961 [in short 'the Act'].

3. Shri P.P.Bhandari appearing on behalf of the assessee submitted that the assessee is engaged in the business of travel agency. The assessee with a view to expand its business activities made investments in the share capital of Rajscape Resorts Pvt. Ltd., a company engaged in the business of running hotels and resorts. The assessee had also advanced interest free loans aggregating to Rs.88,61,700/- to the said company in the preceding Assessment Years . During the period relevant to the assessment year under appeal, the assessee had advanced Rs.49.00 lacs. Thus, at the end of the Financial Year 2009-10 i.e. relevant to the Assessment Year 2010-11, the total advances to the said company were Rs.1,37,61,700/-. To support his submissions the Id. Authorized Representative for the assessee referred to the Balance Sheet as on 31/03/2010 at page 5 of the paper book. The Id. Authorized Representative of the assessee submitted that the assessee is having own interest free funds comprising of share capital Rs.65.00 lacs and Reserves and Surplus Rs.4.23 crores aggregating to Rs.4,88,06,908/-. Hence, own funds of the assessee are sufficient to take care of the investment made. In the facts of case, no disallowance of interest u/s. 36(1)(iii) is warranted. In support of his submissions the Id. Authorized Representative for the assessee placed reliance on the decision of Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities and Power Ltd., 313 ITR 340 and on the decision of Hon'ble Supreme Court of India in the case of CIT vs. Reliance Industries Ltd., 410 ITR 466.

4. Per contra, Shri Pitta Samuel representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee.

5. Both sides heard, orders of the authorities below examined. The short issue in present appeal for consideration is with respect to disallowance of interest expenditure u/s. 36(1)(iii) of the Act. The Assessing Officer made disallowance u/s. 36(1)(iii) in respect of interest free advances made by assessee to its group concern Rajscape Resorts Pvt. Ltd. during the financial year relevant to the Assessment Year under appeal. The Assessing Officer made addition of Rs.14,70,529/- by imputing interest @13% on the average value of opening and closing balance of the loan advanced to Rajscape Resorts Pvt.Ltd. The CIT(A) has upheld the findings of Assessing Officer.

6. The Id. Authorized Representative for the assessee has demonstrated before us from the Balance Sheet as on 31/03/2010 that the assessee is having sufficient own funds in the form of share capital, reserves and surplus to cover the amount advanced by the assessee to its group concern. It is relevant to mention here that out of total advances of Rs.1,37,6,1,700/- the assessee has advanced Rs.49.00 lacs during the period relevant to the assessment year under appeal. The Id. Authorized Representative for the assessee stated at Bar that in the preceding Assessment Years no disallowance u/s. 36(1)(iii) of the Act has been made on the interest free advances made by the assessee to the same group concern. The Hon'ble Apex Court in the case of CIT vs. Reliance Industries Ltd. (supra) has held that where interest free funds are available to the assessee which are sufficient to make investments in its subsidiaries, no disallowance u/s. 36(1)(iii) of the Act is warranted. Similar view has been expressed by Hon'ble Jurisdictional High Court in the case of CIT vs. Reliance

Utilities and Power Ltd. We find merit in ground No.2 of appeal by the assessee. The Assessing Officer is directed to delete the disallowance made u/s. 36(1)(iii) of the Act. In the result, the assessee succeeds on ground No.2 of the appeal.

7. The Id. Authorized Representative for the assessee stated at Bar that he is not pressing ground No.1 raised in the grounds of appeal. The same is dismissed, accordingly.

8. In the result, appeal by assessee is partly allowed.

Order pronounced in the open court on Thursday the 07th day of July, 2022.

Sd/-

Sd/-

(M. BALAGANESH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 07/07/2022
Vm, Sr. PS(O/S)

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai