

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D", MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
ITA No. 6939/Mum/2019 (A.Y. 2013-14)

ACIT-28(2),  
Room No. 307, 3<sup>rd</sup> Floor, Tower No.6,  
Vashi Railway Station Complex,  
Vashi, Navi Mumbai-400703

..... Appellant

Vs.

M/s Real Trade Technologies,  
F-07, D-02, Real Tech Park,  
Plot No.-39/02, Sector-10,  
Vashi, Navi Mumbai-400705.

**PAN: AAIFR4687C**

..... Respondent

Appellant by : Sh. T. Shankar (Sr. Ar.CIT)  
Respondent by : Sh. M. Subramanian (AR)  
Date of hearing : 12/04/2022  
Date of pronouncement : 07/07/2022

ORDER

**PER GAGAN GOYAL, A.M:**

This appeal by the Revenue is directed against the order of Ld. Commissioner of Income Tax (Appeals)-26, Mumbai [hereinafter referred to as 'the CIT (A)'] dated 26.08.2019 for the Assessment Year (AY) 2013-14. The Revenue has raised the following grounds of appeal:

*"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in deleting the disallowance of proportionate interest paid on borrowed capital amounting to Rs. 2, 12 40,434/- u/s 36(1) (iii) of the Act without appreciating that the assessee has not been able to establish the commercial*

*expediency necessitated advancing of interest free loans while the assessee had paid interest on the borrowed funds?*

*(2). The appellant prays that the order of the Ld.CIT (A) on the above grounds be reversed and that of the Assessing Officer be restored.*

*(3). The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”*

2. Brief facts of the case are that the assessee filed its return of income on 28-09-2013 declaring total income of Rs. 983120/-. The case was selected for scrutiny and notice u/s. 143(2) was issued and served on the assessee. Appellant is a partnership firm engaged in the business of construction and land development.

3. During the assessment proceeding, AO disallowed proportionate interest on interest free loan given to sister concern in the form of share capital/unsecured loan/advance. Appellant given 93.5 lacs to M/s Gami Properties Pvt. Ltd., M/s Kane Constructions 2.10 cr, Golden Falcon Pacific Ltd. Rs.8 cr. and M/s Om Shakti Enterprises Rs.1.37 cr. AO while relying in the case of S.A. Builder, (2007) 288 ITR 1 (SC) disallowed the interest paid on above mentioned advances given to sister concern interest free.

4. Aggrieved appellant approached the forum of first appellate authority i.e. Id. CIT (A)-26, Mumbai. During appellate proceeding, the appellant filed following submissions before the first appellate authority which summarized as under:

- *The Appellant had raised secured loan from M/s India bull Housing Finance Ltd. during financial 2007-08 and from Bombay Mercantile Co-op. Bank during financial year 2009-10 as term specifically to be used for construction of commercial building at Vashi (copies of the sanction letters are enclosed as Annexure - 1). There is outstanding balance of Rs.20, 60, 09,705/- payable to India bull Housing Finance Ltd. and Rs..2,51,86,939/- payable to Bombay Mercantile Co-op. Sank Ltd. as at 31-03-2013. These loans were term loan in nature and raised for specific purpose of construction and the Appellant was regular in payment as per schedule of repayment.*

*As these loans were for specific end use and couldn't be used for any other purposes but for construction.*

- *There was closing stock of Rs.30,33,43,772/- (working enclosed as Annexure-3) in the hands of The Appellant as at 31-03-2013, which was more than the outstanding total secured loans of Rs.23,11,96,644/- outstanding as at 31-03-2013 (details enclosed as Annexure -3). Accordingly the term loans raised by the Firm were lying in the Firm as stock in trade and the Firm is bound to pay interest on the same. The appellant has considered Rs.3, 35, 63,501/- in valuation of closing stock as 31.03.2013. The firm had paid a sum of Rs.4, 52, 15,499/- towards the interest to M/s India bull Housing Finance Ltd. and Bombay Mercantile Co-op Bank during A.Y. 2013-14 which are showing separately in the profit and loss account of the firm.*
- *During A, Y. 2013-14, The Appellant given advances of Rs. 17.39 crores (details enclosed in Annexure – 5), out of Rs. 232 crores were bearing interest end our client received interest of Rs.30, 26,301/- during the year. The balance advances of Rs.14.57 crores mainly Includes advances to;*
  - i. M/s Ken Construction Ltd. Rs.2.10 crores,
  - ii. M/s Golden Falcon Pacific Ltd Rs.8.01 crores (100% Subsidiary of Ken Construction Ltd.)
  - iii M/s Gami Properties Pvt Ltd Rs. 93.50 lacs,
  - iv. M/s Top Ten Electronics Rs. 13 lacs

***and others Rs.6.22 crores, which are being brought forward from earlier years and were given under commercial expediency and under the normal course of business. The source of these loans and advances were internal accruals of the Appellant and unsecured loans taken by the Appellant.***

- *The Assessing Officer mainly relied on the judgment in case of S.A. Builders (2007) 288 ITR 1 (SC). On the analysis of the judgments it can be clearly observed that the assessee borrowed the fund and give loan as interest free, the test in such case is really whether this was done on a measure of commercial expediency.*
- *In case of S.A Builders Ltd, Hon'ble Supreme Court clearly expressed in their order that "... the decision relating to section 37 of the Act will also apply to section 36(i)(iii) because in section 37 also the expression used is 'for the purpose of business' it has been consistently held in decisions relating to the section 37 that the expression 'for the purpose of business' includes expenditure voluntarily incurred for commercial expediency and it is immaterial if a third party also benefits thereby."*

*Further stated in the same order that "... The expression 'commercial expediency' is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as business expenditure if it was incurred on the ground of commercial expediency."*

*Further stated in the same order that ". It has been repeatedly held by this Court that the expression 'for the purpose of business' is wider in scope than that the expression 'for the purpose of earning profits' vide CIT vs. Malayalam Plantations Ltd. (1964) 53 ITR 140, CIT vs. Birla Cotton & Spinning Mills Ltd. (1971) 82 ITR 166 etc....*

*The Hon'ble Supreme Court also stated in the same order that, we agree with the view token by the Delhi High Court in CIT vs. Dalmia Cement (Bharat) Ltd. (2002) 254 ITR 377 that once it is established that there was nexus between the expenditure and the purpose of the business (which need not be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of Board of Directors and assume the role to decide how much is expenditure having regard to the circumstance of the case. No businessman can be to maximize its profit. The Income Tax Authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the transfer of the borrowed fund to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits.*

*Copy of the judgment is enclosed for reference n\$ Annexure-6.*

*Commercial expediency of the advances given to M/s Ken Construction Ltd. Rs.2.10 crores, M/s Gami Properties Pvt. Ltd. Rs.93.50 lacs, M/s Top Ten Electronics Rs.13 lacs and others Rs.74 lacs. In the Assessment Year 2021-12 was accepted by Hon'ble ITAT in their order dated 22-07-2016 quashing the order u/s 263 of the Act for assessment year 2011-12 in case of the Appellant as these are brought forward from A.Y. 2011-12. Copy of the order is enclosed for reference and record as Annexure - 4.*

- *On perusal of the ITAT order, your good-self will observe that ITAT has accepted all the Scans and advances given, in A.Y. 2011-12, by the Appellant to the extent of Rs...31, 75, 90,156/-, details of which is enclosed. in following years there is movement in the loans and advance given, mainly Loans given to M/s Ken Construction Ltd. received back and given to its subsidiary company M/s Golden Falcon Pacific Ltd- Overall It is important to note that there is reduction in the amount of loans and advances given as compare to assessment year 2011-12, which were accepted by ITAT. Party wise and year wise movement in loans and advances given is enclosed as Annexure-5, wherein the parties which are there since 2011-12 we highlighted.*
- *Further, it is very important to note that the Appellant has already considered interest paid to India Bull Housing finance and Bombay Mercantile Bank, sum of Rs.3,35,63,501/- in valuation of closing stock (working enclosed as Annexure-2), which means the amount debited to Profit & loss account has already been credit in Profit and Loss account resulting into no claim of interest expense u/s 36(1)(iii) of the Act, paid to India Bull and Bombay Mercantile Bank to the extent of Rs.3,35,63,501/-. Under such circumstance nothing can be disallowed for these interests.*

5. Ground Nos. 1 and 2 are interrelated, hence disposed of by common finding.

6. Considering the submissions of the assessee, Id.CIT (A) observed as under:

*"....addition of Rs.2,12,40,434/- as disallowance of proportionate interest paid on borrowed capital which is utilized for non business purposes. The AO in his order observed that the Assessee has claimed interest of Rs.4,52,15,499/- paid to the unsecured loan providers and not shown any interest income received (except interest of Rs.30,26,301/- received from Mahendra C. Jain) from those persons to whom the loans and advances were given. The balance sheet of the Assessee reveals that the Assessee is having negligible own fund of Rs.5, 58, 87,082/- and is heavily depending upon borrowed funds. On the other hand the Assessee has made investments in shares application of Ken Construction Ltd. of Rs.2,10,00,000/-, M/s Shri Gami Properties Pvt. Ltd of Rs.93,50,000/-, Golden Falcon Pacific Ltd. of Rs. 8,00,75,000/- and M/s Om Shakti Enterprises of Rs.1,37,00,000/-.,The Assessee has not derived any benefit from investment in above companies but has paid substantial interest on loans amounting to Rs.4,52,15,499/-. The AO in his order relied on decision of jurisdictional High Court in the matter of Crescent Organics (P) Ltd (49 Taxmann.com 12B) where it was held that interest on borrowed capital utilized for investment in a foreign company was not in course of assessee's business and claim for deduction u/s 36(1)(iii) of the I. T. Act has been rejected and S. A Builders (2007) 288 ITR (SC) where it has been held that interest free loans/advances can be allowed to sister concern when commercial expediency require to do so. It is not the business of the assessee to lent money and the assessee has not been able to establish that the commercial expediency necessitated advancing of interest free loans while the assessee has paid interest on the borrowed funds. Hence, the claim of deduction u/s 36(1)(iii) was to be restricted and only the advances given to M/s Top Ten Electronics (sister concern) of Rs.13,00,000/- and a sum of Rs, 11,00,000/- given to M/s Gami Properties P Ltd. (sister concern) were to be excluded while making the disallowances. The AO disallowed a sum of Rs.2,12,40,434/-/- u/s 36(1)(iii) of the I.T. Act, 1961,*

*7.1 On going through [he submissions by the Appellant thoroughly, it is clear that the interest is paid on the terms loans which were utilized for construction purposes and there is closing stock in The hands of the Appellant which are valued more than the banks loans outstanding. It is further observed that a sum of Rs.3,35,63,501/- is included in the valuation of closing stock by the Appellant, which means a sum of Rs. 3,35,63,501/- out of Rs. 4,52,15,499/-is not claimed by the appellant u/s. 36(1)(iii) of the I.T. Act.*

*7 2. Further, the Hon'ble ITAT. "D" Bench, Mumbai vide ITA No 2929/Mum/2016 dated 22.07.2016 in Appellant's own case for A.Y 2010-11 on similar facts, while disposing the appeal against order u/s 263, held that the advances given to M/s Ken*

*Construction Ltd., M/s Gami Properties P. Ltd. and other parties were for commercial expediencies and the order passed by the Ld. Pr. CIT for disallowing the proportionate interest is not sustainable in law.*

7.3 While going through the balance sheet and other details filed by the Appellant it is observed that the Appellant is having own capital of Rs 5,58,87,082/- and interest free borrowing and the terms loans on which the interest was paid were raised much before the interest free loans and advances of Rs. 14,32,59,540/- were granted." The AO has not brought any fact on record which establishes the link between the terms loans on which interest paid were raised and used for giving interest free loans or advances. Out of the interest free loans or advances, major parties are covered and allowed by the Hon'ble ITAT (supra) by holding that the same are given under commercial expediency. Further, the Appellant has already included as sum of Rs. 3,35,63,501/- in closing stock and there is no deduction claimed u/s. 36(1)(iii) of the Act to this extent by the Appellant.

7. We have heard the rival submissions and considered the order of the AO, findings of the Id. CIT(A), submissions of the appellant before both the stages and particularly the Paper Book filed. The chronology of loans given to sister concerns vis a vis utilization of secured loans and its consequent treatment in the figure of closing stock of the appellant, substantiates the argument of the appellant.

8. We have carefully gone through the order of the ITAT mentioned (supra) in assessee's own case vide page no. 37 to 49 of the Paper Book. Para 10, 11 & 12 specifically dealt with the issue under consideration. We do not find any infirmity in the order of the Id. CIT(A) and ITAT's order mentioned (supra). Hence, ground no.1 & 2 of the appeal taken by Revenue are not sustainable in the given factual position.

9. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 7<sup>th</sup> day of July, 2022.

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 07/07/2022

SK, Sr.PS

**Copy 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**