

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.3049/Bang/2018
Assessment Year : 2014-15
ITA No.781/Bang/2019
Assessment Year : 2015-16

M/s Bestride Consultancy Pvt. Ltd., Level 12, UB Towers, UB City, 24, Vittal Mallya Road, Bengaluru-560 001. PAN : AAECB 1062 G	Vs.	The Income Tax Officer, Ward-1(1)(3), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri K.R Pradeep, Advocate & Ms. Girija
Revenue by	:	Shri Priyadarshi Mishra, Addl.CIT (DR)

Date of hearing	:	24.05.2022
Date of Pronouncement	:	20.07.2022

ORDER

Per Laxmi Prasad Sahu, Accountant Member :-

These two appeals by the assessee against the separate order of CIT(A)-1, Bengaluru order dated 21.08.2018 and 25.02.2019 for the Assessment Years 2014-15 and 2015-16 respectively.

2. First, we are taking assessment year 2015-16. The effective grounds raised by the assessee is as under:-

“1. The authorities below erred in disallowing interest expenses amounting to Rs.27,94,519/- (the only issue raised in the assessment year 2014-15 is also same except for the figures).

2. The authorities below erred in disallowing manpower cost amounting to Rs.88,19,232/-."

3. The sole effective grounds raised by the assessee for the assessment year 2014-15 is as under:-

"The authorities below erred in disallowing interest expense of Rs.63,32,055/-manpower cost amounting to Rs.88,19,232/-."

4. The brief facts of the case are that the assessee company is engaged in some consultancy services and during the year it received interest income. The assessee company is a subsidiary of M/s Bangalore Beverage Ltd., and M/s United Breweries Holdings Ltd., is the ultimate holding company of the assessee. The assessee filed return on 29/9/2015 declaring nil income under normal provisions after set off of brought forward losses and book profit u/s 115JB of the Act was shown at Rs.1,90,42,995/-. The case was selected for scrutiny and statutory notices were issued to the assessee. During the course of assessment proceedings, the AO has observed that the interest bearing loans taken by the assessee has been utilized for the purpose of interest free loans and after examining the details, the interest expenses amounting to Rs.27,94,519/- was disallowed and added back to the total income of the assessee. Further, he observed that the assessee has incurred manpower cost amounting to Rs.1,13,82,597/- and similar expenditure was also incurred during the previous financial year was only Rs.25,63,365/-. The assessee filed details with regard to the increase in manpower cost of two persons viz., Shri Harish Bhat and Shri T.R Venkatdri and both were appointed during the period for providing consultancy services exclusively to the UB groups. The AO observed from the entire submissions that the assessee has not provided the details of services rendered by these two employees. Accordingly, for want of details

and comparing to the previous year's expenditures, he disallowed the expenses to the tune of Rs.88,19,232/- as excess claim made towards the expenses for reducing the taxable profits and added back into the total income of the assessee.

5. Feeling aggrieved from the order of the AO, the assessee filed appeal before the CIT, who confirmed the order of the AO.

6. Aggrieved by the order of the CIT(A), the assessee is before Income Tax Appellate Tribunal.

7. The Id.AR reiterated the submissions made before the lower authorities and further submitted that the loan taken from M/s Sagar International, a proprietorship concern of Shri Mulraj P Mody, who is one of the Director of the assessee company. The TDS has also been made on the interest payment which is reflected in form No.26AS and said loan was utilized in the payment of United Breweries (Holdings) Ltd., [UBHL]. The unsecured loan taken from UBHL was interest free and deposit made in LKP Finance Ltd., was of Rs.37,03,00,000/-. From the said deposit, the assessee earned interest income of Rs.2,20,12,744/-, In this regard, he tried to reconcile the said figure from the HDFC Bank current account No.05230310002323 which is placed on the page 2 of the paper book and he further submitted that there was no misutilization of funds which was interest bearing. In the bank statement, he referred to various dates of transaction made and also the income-tax return filed by the Shri Mulraj P Mody and the same was also produced before the AO. He also relied on the decision of M/s India Cements Ltd., Vs. CIT. He has filed paper book containing 1 to 37 pages

8. On the other hand, the Id.DR relied on the order of the lower authorities and submitted that the assessee is unable to correlate the

transactions made during the year with regard to interest bearing funds. He also submitted that the deposit made in LKP Finance and closing balance are the same, therefore, it is clear that the borrowed funds were not utilized for earning income. It is also further observed that there is increase in loan paid to related parties from 335.15 crore to Rs.348.54 crores to the extent of Rs.13.39 crores and no interest charged to the related parties to whom the money was given on interest free. Hence, it is clear that the interest bearing funds was utilized for the purpose of giving interest free loans. Therefore, authorities below have rightly disallowed the claim of the assessee.

9. We have heard the rival submissions and carefully considered the same along with the order of the authorities below as well as the documents referred to and relied on before us during the course of the hearing. We observe that the assessee has earned interest income amounting to Rs.2,20,12,744/- which has been credited into the profit and loss account as interest income and has debited towards interest on borrowings of Rs.63,32,055/-. Further it has been observed that during the impugned assessment year the assessee has taken loan of Rs.10 crores from M/s Sagar International, a proprietorship concern of Shri Mulraj P Modi who was one of the Directors and 3 crores were repaid during the impugned assessment year. As per financial statement, it is also clear that the borrowed funds have not been utilized for the investments in LKP Finance Ltd., since opening and closing balance reflects the same figure. It has been further observed that there is increase in the loan from UBHL to the extent of Rs.13.39 crores and on further perusal of long term loan schedule no.7 there is increase of 13.39 crores which is interest free loans and advances. Further, during the course of arguments, the ld.AR drew our attention to the paper book pg no.2 which is the copy of HDFC Bank current account and ld.AR of the assessee was tried to reconcile that the particular interest

bearing funds have been returned to the UBHL but he produced the bank statement only. From the bank statement, it cannot be ascertained that the funds have been utilized for refunding to the UBHL. At this moment, considering the fact that the assessee has not produced copy of ledger accounts and any confirmation from the party, considering the totality of the facts and circumstances of the case we think it to send back to the assessing officer for the verification the raised by the assessee before us, and the assessee is directed to establish/substantiate before the AO that the particular interest bearing funds have not been utilized for the purpose of interest free loans.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Now let us take Ground No.4 for the assessment year 2015-16

11. During the course of asst. proceedings for the asst. year 2015-16, the AO observed that the assessee has taken man power cost of Rs.1,13,82,597/- as on 31.3.2015 and Rs.25,63,365/- as on 31/3/2014. During the course of asst. proceedings, the AO asked the assessee to provide the details of the payments made towards retainership fee to Mr.A Harish Bhat and Mr. TR Venkatadri along with their appointment letters and nature of services rendered. The assessee submitted that these 2 persons were employed for a limited period of 1 year and as per terms and conditions, the services of these two employees were exclusively rendered for UB group. The details of manpower cost submitted is as under:-

Sl. No.	Particulars	Amount Rs.
1	Retainer ship	1,06,81,896
2	Transportation	2,90,000

3	Vehicle Maintenance-repairs	2,45,000
	Total	1.13,16,896

12. From the above terms and conditions of appointment, the AO observed that the nature of services rendered by them is not mentioned and the addresses of the persons were also not mentioned in the appointment letters. The expenditure incurred upon these 2 employees were higher side when their services is not utilized for generating revenue by providing services to others due to the exclusivity clause mentioned therein and financial accommodation provided to its holding company by way of hiring these 2 persons exclusively at its services. Therefore, the AO restricted to the claim made for previous year i.e 2014-15. At Rs.25,63,365/- and the balance of Rs.88,19,232/- was held to be excess claim made towards expenses to reduce the taxable profits and accordingly added back to the total income of the assessee.

13. Aggrieved from the order of the AO, the assessee filed appeal before the CIT(A), after considering submissions, confirmed the order of the AO.

14. Aggrieved from the order of the CIT(A), the assessee is before this Tribunal.

15. The Id.AR reiterated submissions made before the lower authorities and submitted that the AO without giving proper reasons, restricted the expenditure to Rs.88,19,232/-. He submitted that these 2 persons were employed to provide management consultancy services to UBHL group companies and the assessee received Rs.1,19,52,284/- towards management consultancy fee. Therefore the expenditure incurred by the company is justified.

16. On the other hand, the Id.DR relied on the lower authorities and submitted that the nature of services to be rendered by these 2 employees

was not given before the authorities below and in the appointment letter the address of the employees are also not mentioned. Merely deducting TDS is not a sufficient evidence in rendering the services, therefore, authorities below were justified to disallow the claim of the expenditure to the extent of Rs.88,19,232/-, hence the order of the authorities should be upheld.

17. We have heard the rival submissions and carefully considered the same along with the order of the authorities below as well as the documents referred to and relied on before us during the course of the hearing. We observe from the accounts that the assessee company has credited Rs.1,19,52,284/- towards management consultancy services but the details of the nature of services rendered by these 2 employees has not been submitted before the lower authorities. The ld. AR has filed paper book containing page no. 1-37 the appointment letter is attached but before us, the ld.AR could not produce the nature of services rendered by these 2 employees. We further observe that similar expenditures were incurred during the previous asst. year i.e for assessment year 2014/15 and nothing was credited under the head management consultancy fees and the assessee has incurred expenditure. The AO has accepted the revenue generated and restricted the addition to the extent which is incurred over and above from in the previous assessment year. The AO has accepted the revenue generated towards management consultancy fees but the assessee has not filed any agreement made with the UB holding company Ltd. with regard to the nature of services to be provided. Even before us the ld. AR could not file any documentary evidence for justifying any services rendered by them. On perusal of the assessment year 2014-15 the assessee has incurred the similar nature of expenditure but no any revenue has been received. During the impugned assessment year the assessee has received consultancy income which has been credited into profit and loss account and the

manpower cost has also been increased by Rs.88,19,232/-. Before us, the assessee is not furnished any nature of services rendered by these two employees to whom the amount has been paid. No doubt, for earning income the expenditure is required to be incurred by the assessee. Considering the totality of the facts and circumstances of the case, we restrict to the disallowance from the total expenditure to the extent of 50%. Accordingly, the assessee gets benefit of Rs.44,09,616/-.

18. In the result, this issue is partly allowed.

19. Since the issue involved in ground no.3 for the assessment year 2014-15 is being identical and similar to the facts and circumstances of case and also in line with the decision of the assessment year 2015-16, we remit back this issue also to the file of AO.

20. In the combined result, the appeal of the assessee for the assessment year 2014-15 is allowed for statistical purposes and the appeal of the assessee for the assessment year 2015-16 is partly allowed for statistical purposes.

Order pronounced in court on 20th day of July, 2022

Sd/-

(BEENA PILLAI)
Judicial Member

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated, 20th July, 2022

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation
.....
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
.....
8. Date on which the file goes to the Bench Clerk
.....
9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant
Registrar for signature on the order
.....
12. The date on which the file goes to dispatch section
for dispatch of the Tribunal Order
.....
13. Date of Despatch of Order.
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