

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 5353/Mum/2013 (A.Y. 2009-10)

DCIT, Range (OSD)-8(1),
Room No. 204, 2nd Floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

..... Appellant

Vs.

M/s Oryx Finance & Investment Pvt. Ltd.
Lok Bhavan, Lok Bharti Complex,
Marol Maroshi Road, Andheri(E),
Mumbai-400059

PAN: AAACO0662K

..... Respondent

Appellant by	:	Sh. Vijay Kumar Soni, Sr. DR
Respondent by	:	None
Date of hearing	:	10/05/2022
Date of pronouncement	:	05/08/2022

ORDER

PER GAGAN GOYAL, A.M:

This appeal by the revenue is directed against the order of Ld. Commissioner of Income Tax (Appeals) -17, Mumbai [hereinafter referred to as ('Ld. CIT(A)') dated 10.05.2013 for the Assessment Year (AY) 2009-10. The assessee has raised the following grounds of appeal:

"1. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.1,78,02,145 on account of accrued interest on debentures.

2. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in accepting the assessee's contention that the debentures stood redeemed against allotted flats ignoring the fact that (a) the flats were non-existent; and (b) the allotment of such non-existing flats were cancelled in the next financial year"

3. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.1,78,02,145 even though the assessee had failed to furnish any documentary evidence to show that it had waived the accrued interest or that no interest was intended to be charged by it,"

4. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.1,78,02,145 on account of accrued interest on debentures by wrongly accepting the assessee's contention that as per AS 9, the assessee company had rightly not offered income on uncertain or unrealizable collection of revenue without appreciating the fact that even though the assessee company was very much aware of the financial condition of its sister concern, viz. Lok Housing & Construction Ltd., it had subscribed to the debentures of the said sister concern and thus the transactions shown by the assessee were collusive and colourable."

The appellant prays that the order of the CIT (A) on the above grounds above set aside and that of the A.Q. be restored. "

2. Brief facts of the case are that the assessee the assessee filed its return u/s 139(1) on 21-09-2009, declaring a loss of Rs 37,460/-. Case was selected for scrutiny and notice u/s 143 (2) and 142(1) were issued. Assessee Company was engaged in the business of finance and investments.

3. During the assessment proceedings a fact emerged that M/s Lok Housing and Construction Co Ltd (LHCL) issued 3 lakhs secured debentures at the rate of 17.5% to GIC Mutual fund at a face value of Rs 100/- each amounting to Rs 3 cr. Vide agreement dated 30-03-1995 and 21-12-1996. These debentures were later on taken over by Canbank Mutual Fund on 12-05-2006.

4. On 03-04-2007(FY 2007-08), the assessee company purchased these debentures of M/s LHCL from Canbank Mutual Fund for a sum of Rs 6,77,09,950/- (Rs 3 cr. Principal amount +Rs 3.77,09,950/- as accrued interest) on the same terms and conditions as mentioned in agreements dated 30-03-1995 and 21-12-1996.

5. The assessee company was allotted flat no 202 in building no A3 by M/s LHCL vide its letter of allotment dated 15-03-2008 (FY 2007-08) at the cost of Rs 1,70,60,730/- against outstanding amounts payable by it against debentures. The assessee company vide its letter dated 05-11-2008(FY 2008-09) requested M/s LHCL to cancel the allotment of the abovementioned flat stating its inability to pay further sum due to personal problems.

6. In its books of accounts, on 15-03-2008 (the date on which flat was allotted by M/s LHCL) assessee company treated the debentures mentioned above as redeemed and, in the balance-sheet of the assessee the amount of debentures purchased from Canbank Mutual Fund is shown as interest free unsecured loans to M/s LHCL. On these transactions of redemption, the statutory auditor in para-3 of the annexure to the auditor's report remarked which read as under

"In our opinion the terms of these loans are prejudicial to the interest of the company."

7. It is pertinent to mention here that a man with commercial prudence will never enter into such type of transactions where the interest on debentures were never honoured and assessee itself brought the debentures from Canbank Mutual Fund at a principal price + unpaid accrued interest. It is further to be noted that the amount of accrued interest is in the form of negotiated figure between M/s

LHCL and debenture holder. It means amount of interest default was much higher than the figure of Rs 3.77 cr.

8. It clearly emanates from the record before us (that the assessee company and M/s LHCL are group companies and M/s LHCL was not in a good financial shape. Because of the poor financials it never served its interest service against debentures to any of the Mutual fund). As far as the modus operandi of the assessee (in terms of acquiring debentures, getting allotment of flat on 15-03-2008, redemption of debenture in FY 2007-08 and treating the same as interest free unsecured loan and writing a letter to M/s LHCL in FY 2008-09 for cancellation of flat allotted) is concerned have so many grey areas and creates a shade of doubt in the mind of any common man of prudence. No doubt facts findings emanate from the A.O.'s order is free from any ambiguity and we found no fault in his findings of fact.

9. Despite of the discussions and the facts mentioned (supra.) revenue has to pass a litmus test of "*loss to revenue*". As mentioned, (supra.) the transactions entered into between the assessee and its associate concern M/s LHCL are not at arm's length. But nowhere we found in the records before us that, to support M/s LHCL assessee deployed any interest-bearing funds on which assessee charged interest but hadn't earned any income or in this whole transaction assessee claimed any loss under any head of income. On the other hand, one fact emanates for M/s LHCL that they haven't charged any interest on the debentures/unsecured loans due towards assessee.

10. Until unless revenue built a case of loss in this transaction or/and diversion of interest-bearing funds to M/s LHCL, no case of grievance is made out by the revenue. There may be defaults as per the Companies Act or there may be a matter of financial impropriety against the stake holder of the company, but there is no loss to the exchequer

11. With these findings and remarks, we don't find any merit in the case of revenue hence ground no. 1-4 raised by the revenue are dismissed.

12. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 5th day of August, 2022.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 05/08/2022

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.

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)
ITAT, Mumbai