

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाललेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.2411/Kol/2019
Assessment Year: 2014-15

ACIT, Circle-2(1), Kolkata.....Appellant

vs.

M/s BIP Developers Pvt. Ltd.....Respondent

Ground Floor, Building
Beta Bengal Intelligent
Park, Block-EP & GP,
Sector-V, Salt Lake City,
Kolkata- 700091.
[PAN: AABCB6203A]

Appearances by:

Smt. Ranu Biswas, Addl. CIT, appeared on behalf of the Appellant.

Shri A. K. Tibrewal, FCA, appeared on behalf of the Respondent.

Date of concluding the hearing : September 13, 2022

Date of pronouncing the order : October 12, 2022

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 20.08.2019 of the Commissioner of Income Tax(Appeals)-1, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The Revenue in this appeal has taken the following grounds of appeal:

"1. That the Ld. CIT(A) has erred on the facts and in the circumstances of the case and on law by granting relief amounting to Rs.3,17,02,256/- to the assessee u/s 36(1)(iii) of the Act without going into the merits and thereby disregarding the fact that the assessee has not discharged its onus to establish the business expediency, to incur expenditure on interest expenses on a loan utilized for investment in shares of a subsidiary company and admittedly to increase its net worth.

2 That the Ld. CIT(A) has erred on facts and circumstances of the case by admitting the plea of ignorance by the assessee company and thereby not considering the decision of its entirety of Hon'ble Supreme Court in the case of M/s Goetze India Ltd.

3 The appellant craves the leave to make any addition, alteration, modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings.”

2. At the outset, the ld. counsel for the assessee, inviting our attention to the above grounds of appeal, has submitted that the sole issue involved in this appeal is relating to the disallowance of interest expenses u/s 36(1)(iii) of the Income Tax Act in respect of the utilization of the funds for investment in shares of the subsidiary company. The ld. counsel has further submitted that the issue is squarely covered by the decision of the Coordinate Kolkata Bench of the Tribunal in the assessee's own case for immediately preceding year i.e. assessment year 2013-14 vide order dated 18.12.2019 passed in ITA No.1366/Kol/2019. The relevant part of the said order of the Tribunal for the sake of ready reference is reproduced as under:

“6. The only contention raised by the ld. DR before us is that the case of the assessee of commercial expediency behind the incurring of interest expenditure in question was not substantiated by any documentary evidence and the ld. CIT(A) accepted the case of the assessee without considering this vital aspect.

7. The learned counsel for the assessee, on the other hand, strongly supported the impugned order of the Ld. CIT(A) giving relief to the assessee on the issue under consideration and submitted that the detailed submission made by the assessee in support of its case on this issue during the course of appellate proceedings before the ld. CIT(A) may be taken into consideration while deciding this issue.

8. We have considered the rival submissions and also perused the relevant material available on record. As submitted on behalf of the assessee before the ld. CIT(A), the interest expenditure in question was incurred by the assessee in respect of the borrowed funds which were utilised for making investment in shares of its subsidiary company namely, M/s. Bengal Intelligent Parks Pvt. Ltd. As further explained on behalf of the assessee company, M/s. Bengal Intelligent Parks Pvt. Ltd. was also engaged in the similar business as that of the assessee of development, construction and leasing of commercial properties. Reliance was placed by the assessee on the decision of Hon'ble Bombay High Court in the case of Reliance Communications Infrastructure Ltd. (supra) wherein investment was made by the assessee company in its subsidiary company and since both the assessee and subsidiary company were engaged in a similar business of providing telecommunication services, it was held that the funds were deployed as a matter of commercial expediency and to further the business of the assessee. Accordingly interest paid on the borrowed funds utilised for making an investment in subsidiary company was held to be an allowable expenditure by the Hon'ble Bombay High Court by relying on the decision of Hon'ble Supreme Court in the case of S.B. Builders Ltd.

(supra) wherein it was held that no disallowance of interest could be made u/s 36(1)(iii) of the Act as the investment in wholly owned subsidiary was commercially expedient.

9. In the present case, the commercial expediency of the interest expenditure in question was duly established by the assessee and on appreciation of the relevant facts of the case of the assessee as well as keeping in view the decision of the Hon'ble Supreme Court in the case of S.A. Builders (supra) as well as the decision of Hon'ble Bombay High Court in the case of Reliance Communications Infrastructure Ltd. (supra), the claim of the assessee for the interest expenditure was allowed by the Ld. CIT(A). We, therefore, find no merit in the contention of the ld. DR that the claim of the assessee for interest expenditure was allowed by the ld. CIT(A) without considering the vital aspect of commercial expediency. In our opinion, when the relevant borrowed funds were utilised by the assessee company for making investment in its subsidy engaged in the same business, the business purpose of the investment as well as its commercial expediency was duly established and the interest paid by the assessee on the borrowed funds was allowable as deduction u/s 36(1)(iii) as held *inter alia* by the Hon'ble Supreme Court in the case of S.A. Builders (supra) as well as by the Hon'ble Bombay High Court in the case of Reliance Communications Infrastructure Ltd. (supra). In that view of the matter, we find no infirmity in the impugned order of the ld. CIT(A) allowing the claim of the assessee for interest expenditure and upholding the same, we dismiss this appeal filed by the Revenue."

3. The ld. DR could not rebut that the facts and issue involved are identical and the same are covered by the aforesaid decision of the Tribunal.

4. In view of the above discussion, the facts being identical in the earlier assessment year and the issue being covered by the aforesaid decision of the Coordinate Kolkata Bench of the Tribunal, we do not find any reason to interfere with the order of the CIT(A).

5. In the result, the appeal of the Revenue stands dismissed.

Kolkata, the 12th October, 2022.

Sd/-

**[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य /Accountant Member**

Sd/-

**[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य /Judicial Member**

Dated : 12.10.2022

RS

I.T.A. No.2411/Kol/2019
Assessment Year: 2014-15
M/s BIP Developers Pvt. Ltd.

Copy of the order forwarded to:

1. ACIT, Circle-2(1), Kolkata
2. M/s BIP Developers Pvt. Ltd
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True Copy//

By Order

Assistant Registrar
I.T.A.T, Kolkata Benches, Kolkata.