

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “H”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2018/M/2003
Assessment Year: 1998-99**

M/s. Kargil Holding Pvt. Ltd., (Now merged with Nirma Ltd.), Nirma House, Ashram Road, Ahmedabad- 380 009 PAN: AAACK4645G	Vs.	Dy. Commissioner of Income Tax, Central Circle-2(2), Aayakar Bhavan, Ashram Road, Ahmedabad- 380 009
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Mitali Gopani, A.R.
Revenue by : Dr. Samuel Pitta, D.R.

Date of Hearing : 07 . 10 . 2022
Date of Pronouncement : 16 . 12 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Kargil Holding Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 17.01.2003 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 1998-99 on the grounds inter-alia that :-

“1. In law and in facts and circumstances of the Appellant's case, the learned Commissioner of Income-tax (Appeals), Mumbai has erred in points of law and facts.

2. *In law and in the facts and circumstances of the Appellant's case, the learned Commissioner of Income-tax (Appeals), Mumbai has grossly erred in confirming disallowance of interest expenses Rs.7,12,274/-*

3. *In law and in facts and circumstances of the Appellant's case, the learned Commissioner of Income-tax (Appeals), Mumbai has grossly erred in charging of interest u/s. 234B of I.T. Act.*

4. *In law and in facts and circumstances of the Appellant's case, the learned Commissioner of Income-tax (Appeals), Mumbai has grossly erred in charging of interest u/s. 234C of I.T. Act.*

5. *Your appellant reserves the right to add, alter, amend all or any of the above grounds of appeal as may be advised from time to time.”*

2. Briefly stated facts necessary for adjudication of the issues at hand are : assessee is into the business of reselling of Nirma detergents, toilet soap, tooth paste etc. The assessee company is also an investment company holding 25% share in Nirma Ltd. amounting to Rs.200 Lakhs. During the year under assessment the assessee has claimed dividend income from Nirma Ltd. to the tune of Rs.50,01,625/-. Assessing Officer (AO) noticed interest expenditure in the current year at Rs.7,58,304/- as against Rs.38,83,802/- in the preceding years. The assessee has shown sale in the current year at Rs.1,814 Lakhs (Rs.340 Lakhs in the preceding year) against which, apart from the purchases, administrative and general expenses of Rs.85 lakhs has been shown for the current year. The assessee was called upon to explain the reason for increasing in selling expenses during the year under assessment. The assessee claimed dividend under section 10(33) of the Income Tax Act, 1961 (for short 'the Act'). The AO noticed interest expenses for the year under consideration to the tune of Rs.7,39,453/- which comprises as interest paid to the group company as under:

Nirma Industrial Ltd.	Rs.2,24,774/-
Nirma Ltd.	Rs.4,87,500/-
	Rs.7,12,274/-

3. Declining the contentions raised by the assessee, the AO proceeded to hold that since the interest expenses claimed by the assessee are same in both the years i.e. A.Y. 1997-98 and year under consideration i.e. 1998-99 he has disallowed the expenses of Rs.7,12,274/- and thereby treated dividend income as exempt under section 10(33) of the Act to the tune of Rs.42,89,351/-.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved the assessee has come up before the Tribunal by way of filing present appeal.

5. This appeal pertains to A.Y. 1998-99 and was instituted in the Tribunal vide ITA No.2018/M/2003, but this appeal was dismissed twice on account of non prosecution by the assessee and was subsequently restored and now it is being disposed of on merits.

6. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

7. At the very outset, the Ld. A.R. for the assessee contended that not even a single penny has been incurred by the assessee

company on account of interest expenses and took us to the profit & loss account of the company available at page 7 of the paper book along with relevant schedule 14 available at page 17 of the paper book.

8. We have perused the balance sheet and schedule 14 available at page 12, 13 & 17 respectively. As per balance sheet assessee was having sources of funds to the tune of Rs.3,22,35,223/- as on 31.03.1998 (Rs.20,00,000/- share capital + reserves & surplus Rs.71,60,633/- + unsecured loan of Rs.50,74,589/-). When we peruse the schedule 14 we find that the assessee has recorded administrative & general expenses as under:

Administrative & General Expenses

Service Charges	-	Rs. 50,000
Selling Expenses	-	Rs.6,373,527
Payment to Auditors – Audit Fees	-	Rs. 2,500
Rates & Taxes	-	Rs. 149,387
Other Expenses	-	Rs.1,925,321
Preliminary Expenses	-	Rs. 3,981

9. When the assessee has brought on record all the financials showing sufficient surplus funds at its disposal and all these documents were brought before the AO as well as Ld. CIT(A) as is evident from page 1 to 3 of the paper book vide letter addressed to the Ld. CIT(A) explaining facts as to acquiring the shares in A.Y. 1988-89, dividend received on these shares and has categorically pleaded that the acquisition of shares were made out of its own share capital and not against the borrowed funds.

10. Perusal of balance sheet of the assessee company, profit & loss account of the assessee company as on 31.03.1989 available at page 6 & 7 of the paper book, the date of acquiring shares in

question the assessee has total funds at its disposal of Rs.2,00,50,000/- and investment was of mere Rs.2,00,00,000/-. So the assessee was having sufficient own funds at the time of acquiring the shares in financial year 1988-89. In these circumstances no disallowance on account of interest expenses is sustainable in the eyes of law.

11. However, at the same time, we are of the considered view that under section 14A of the Act when the assessee company has earned dividend income of Rs.50,01,625/- during the year under assessment, administrative expenses for the purpose of investment and its follow up must have been incurred. So we find Rs.1,00,000/- as expenses incurred by the assessee for earning the dividend income as fair and reasonable one. So we direct the AO to disallow Rs.1,00,000/- as expenses to earn dividend income during the year under assessment subject to verification of the financials relied upon by the assessee.

12. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16.12.2022.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 16.12.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.