

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : A : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.287/Del/2020  
Assessment Year: 2016-17

ACIT,  
Circle-5(1),  
New Delhi.

Vs. Blue Coast Hotels Ltd.,  
415-417, Antriksh Bhawan,  
22, KG Marg,  
New Delhi.

PAN: AAACM0037G

(Appellant)

(Respondent)

|                       |   |   |
|-----------------------|---|---|
| Assessee by           | : | Shri Ved Jain, Advocate &<br>Shri Aman Garg, CA |
| Revenue by            | : | Shri P. Praveen Sidharth, CIT, DR               |
| Date of Hearing       | : | 16.01.2023                                      |
| Date of Pronouncement | : | 17.03.2023                                      |

ORDER

PER C.M. GARG, JM:

This appeal filed by the Revenue is directed against the order of the CIT(A)-2,  
New Delhi, dated 21.10.2019, for Assessment Year 2016-17.

2. The Revenue has raised the following grounds of appeal:-

"1. Whether on the facts and in the circumstances of the case and in law, whether the Ld CIT(A) has erred in not appreciating the fact that there was no commercial expediency due to which the assessee had granted interest free loans to its subsidiaries and bore the burden of interest for their sake.

2. Whether on the facts and in the circumstances of the case and in law, whether the Ld CIT(A) has erred in deleting the addition of rs.10,20,24,116/- made u/s 14A of the IT Act, 1961 without appreciating the facts mentioned by the AO for disallowing such amount on the

*account of expenditure incurred in relation to income not includible in total income.*

*3. The appellant craves leave to modify, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

3. Apropos ground No.1, the Id. CIT-DR, supporting the action of the AO, submitted that in the present case, interest free funds have been granted to the subsidiaries and there was no commercial expediency involved at all. The Id. CIT-DR submitted that the subsidiaries were enjoying interest free funds and the assessee was bearing the burden of interest for their sake which is against the provisions of section 36(1)(iii) of the Income-tax Act, 1961 (for short, 'the Act'). Therefore, the AO was right in making disallowance of interest by taking the rate of interest as 12% per annum. The Id. CIT-DR submitted that the Id.CIT(A) has granted relief to the assessee without any basis, therefore, the impugned first appellate order on this count may be set aside and the order of the AO may be restored.

4. Replying to the above, the Id. Counsel of the assessee submitted that the assessee has incurred interest expenditure of Rs.17.92 crores, but, has not claimed interest expenditure as deduction from AY 2016-17 except a small amount of interest on car loan of Rs.79,707/- and this fact is clearly discernible from the computation of income where the assessee has made disallowance of Rs.18.34 crores u/s 43B of the Act. The Id. Counsel submitted that the Id.CIT(A) has granted relief to the assessee on sustainable basis as the assessee has not claimed any interest. Therefore, the first appellate order may kindly be upheld on this count. The Id.CIT(A) has relied on the orders of his predecessor for AYs 2012-13, 2013-14 and 2014-15. The Id. Counsel for the assessee lastly submitted that the assessee owned interest free funds of Rs.116.63 crore which was more than the amount advanced by the assessee, i.e.,

Rs.4.64 crore to its subsidiaries, therefore, even on merits no disallowance is called for.

5. On careful consideration of the rival submissions, first of all, I note that the Id.CIT(A) has granted relief to the assessee with the following observations and findings:-

*"6.3 During the year, the appellant has given interest free advance to its two subsidiary companies- Blue Coast Hospitality Ltd and Gold Joy hotel Pvt Ltd. These are 100% subsidiary of the appellant and are in the same line of business. It has been claimed that the advance was given for expansion of appellant's business in hospitality industry. The purpose of loan was explained as expansion of appellant's business and was clearly in the nature of business expenditure. There was commercial expediency for advancing the interest-free loan. The AO has disputed the business nexus or commercial expediency of the loan mentioning that the subsidiaries are enjoying interest-free funds while the assessee is bearing the burden of interest for their sake. On this ground, he disallowed interest @12%.*

*6.4 During the appellate proceedings, the appellant has filed a copy of appellate orders of CIT(A)deciding this issue- advancing of the same loans to the same parties, in appellant's favour in A.Ys 2012-13, 2013-14 and 2014-15. The CIT(A) has held the purpose of loans to these two parties as utilisation of funds for business purposes in the light of Supreme Court decisions in the cases of SA builders vs CIT 288 ITR 1 and Hero Cycles vs CIT 63 Taxman.com 308.*

*6.5 The issue being the same, is covered by the appellate decisions of my predecessor in three assessment years and is, accordingly, followed. The ground is allowed."*

6. In view of the above, the main basis for granting relief to the assessee is the orders of the Id. First appellate authority for preceding three assessment years, i.e., AYs 12-13, 2013-14 and 2014-15 wherein it was held that the loans to the two subsidiaries was given for the business purpose and it was allowed by following the judgement of the Hon'ble Supreme Court in the case of *SA builders vs CIT (supra)* and *Hero Cycles vs CIT (supra)*. It is also pertinent to note that the Id.CIT-DR has not

controverted a very important fact that the assessee has incurred expenditure on interest amounting to Rs.17.92 crores as per pages 18 and 30 of the assessee's paper book. Further, from page 2 of the assessee's paper book i.e., computation of income, it is clearly discernible that the assessee has made disallowance u/s 43B of the Act amounting to Rs.18,33,54,268/- which includes the said interest amount of Rs.17.92 crores. This fact also get support from the entry made by the assessee in Form No.3CD available at pages 32-42 of the assessee's paper book. In such a situation, when the Revenue has allowed claim of the assessee during the preceding three assessment years considering the fact of commercial expediency, then, the Id.CIT(A) cannot be held as unreasonable and unjustified in following the orders of his predecessors. It is a peculiar factual position of present AY 2015-16 that the assessee, in fact, not claimed any expenditure on interest except interest on car loan of Rs.79,707/-. Therefore, being unable to see any valid reason to interfere with the findings arrived at by the Id.CIT(A), we uphold the same. Accordingly, ground No.1 of the Revenue is dismissed.

7. Apropos ground No.2, the Id. CIT-DR, supporting the assessment order, submitted that the AO was right in making disallowance u/s 14A of the IT Act r.w.r. 8D of the IT Rules by making proper working as per the provisions of the Act. The Id.CIT-DR vehemently pointed out that the Id.CIT(A) has deleted the addition without any basis. Therefore, the impugned first appellate order may kindly be set aside and the order of the AO may be restored.

8. Replying to the above, the Id. Counsel of the assessee submitted that undisputedly, no exempt income has been earned by the assessee during the year

under consideration, therefore, no addition could have been made in the hands of the assessee u/s 14A of the Act r.w.r 8D of the Rules. The Id. Counsel also placed reliance on a number of judgements including the judgement of the Hon'ble jurisdictional High Court of Delhi in the case of *Cheminvest Ltd. vs. CIT (2015) 378 ITR 22* and recent judgement of the Hon'ble jurisdictional High Court in the case of *PCIT vs. Crystal Crop Protection Pvt. Ltd. 2022 (7) TMI 1162*.

9. On careful consideration of the above rival submissions, we note that the AO has made disallowance solely relying on CBDT Circular No.05/2017 dated 11.02.2014. The Hon'ble jurisdictional High Court of Delhi in the case of *PCIT vs. IL &FS Energy Development Company Ltd. (2017) (8) TMI 732* held that the court is not persuaded that in view of the Circular of the CBDT dated 11.02.2014, the decision of the Hon'ble jurisdictional High Court in the case of *Cheminvest Ltd. (supra)* requires reconsideration. Therefore, being unable to see any ambiguity, perversity or any other valid reason to interfere with the findings of the Id. CIT(A), we uphold the same. Consequently, this ground of the Revenue being devoid of merits is also dismissed.

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

Order pronounced in the open court on 17.03.2023.

Sd/-

(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Dated: 17<sup>th</sup> March, 2023.

dk

Sd/-

(C.M. GARG)  
JUDICIAL MEMBER

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi