

**आयकर अपीलिय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ' A ' Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member**  
**AND**  
**Shri Laliet Kumar, Judicial Member**

ITA No.1596/Hyd/2018		
Assessment Year: 2014-15		
Bindu Vayu Urja Private Limited, Hyderabad.  PAN : AAECB4583E  (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle 1(2), Hyderabad.    (Respondent)
ITA 1683/Hyd/2018		
Assessment Year 2014-15		
Dy. Commissioner of Income Tax, Central Circle 3(1), Hyderabad.   (Appellant)	Vs.	Bindu Vayu Urja Private Limited, Hyderabad.  PAN : AAECB4583E  (Respondent)
Assessee by:		Shri K.C. Devdas
Revenue by:		Shri Rajendra Kumar, CIT-DR
Date of hearing:		22.02.2023
Date of pronouncement:		24.03.2023

**ORDER**

**Per Laliet Kumar, J.M.**

These two appeals filed by the assessee and the Revenue, respectively, are directed against the order of Commissioner of Income Tax (Appeals) – 1, Hyderabad dated 22.05.2018 for the assessment year 2014-15.

2. The Assessee has raised the following grounds :

*"1. The learned CIT ( appeals) has erred in law and in the facts and circumstances of the case in holding that the Assessing Officer is correct in taking the stand of deemed interest in the case where the appellant is paying differential rate of interest , and consequently, partly confirming the disallowance of interest u/s 37(1) on the inter corporate deposit given by the assessee company to its parent company by directing the Assessing Officer that " the advance to sister concern to be taken as Rs.69,20,32,601 instead of Rs.177,20,32,601".*

*2. The learned CIT ( appeals) ought to have appreciated that the loans obtained by the assessee company were fully utilized for the purpose of Projects of the Company, that the Inter corporate deposit of Rs. 69,20,32,601 was made out of the surplus funds of the company, that there is no nexus between the borrowed funds and the Inter corporate deposits, and hence no disallowance of interest can be made.*

*3. The learned CIT ( appeals) ought to have noted that inter corporate deposits were made by the assessee during the course of business and out of commercial expediency and hence no disallowance of interest can be made u/s 37(1) or under any other sections of the Act.The Ld. CIT(Appels) erred both in law and on facts of the case in granting relief to the assessee."*

2.1 The Revenue has raised the following grounds :

*"1. Whether on the facts and circumstances of the case, and in law, the Ld. Commissioner of Income Tax(A) erred in deleting the disallowance made on proportionate interest on advances given to sister concerns without appreciating the fact that no prudent business concern will retain its investments with the same investor as ICD bearing no interest that result in unwanted business loss to the assessee concern which otherwise could have positive income?*

*2. Whether on the facts and circumstances of the case, and in law, the Ld. Commissioner of Income Tax(A) erred in deleting the disallowance made on proportionate interest on advances given to sister concerns without appreciating the fact that the company in its business prudence would not have lent interest bearing funds as ICD to its parent company as it would jeopardize the business interest of assessee company to earn a genuine profit.*

*3. Whether on the facts and circumstances of the case, and in law, the Ld. Commissioner of Income Tax(A) erred in deleting the disallowance made on proportionate interest on advances given to sister concerns without appreciating the fact that assessee has not taken this plea before AO and accordingly CIT(A) ought not have considered fresh evidences/submissions under rule 46A without giving opportunity to AO to examine the issue of assessee to conclude having surplus investments which h otherwise could have been used for clearing costly advances.*

2.2. The additional ground raised by the Revenue reads as under :

*“The ld. CIT(A) erred in taking into cognizance the Inter Corporate deposit agreement dated 11.01.2012 between M/s. Bindu Vayu Urja Private Limited and M/s. Mytrah Energy (India) Limited’ filed before the ld. CIT(A) without providing an opportunity to the Assessing Officer under Rule 46A as no such agreement has been filed before the Assessing Officer during the course of assessment proceedings.”*

3. Facts of the case, in brief, are that assessee is a firm company engaged in the business of installation and operation of wind mills. The assessee filed its return of income for A.Y. 2014-15 on 19.11.2014 declaring a loss of Rs.20,48,17,687/- under normal provisions and Rs.1,82,28,423/- under the provisions of section 115JB of the Act. Subsequently, the case was selected for scrutiny under CASS. Thereafter, notice u/s 143(2) and 142(1) of the Act were issued on various dates calling information. In response to the notices issued, the assessee furnished the information. Based on the information given by the assessee and on the information available on record, Assessing Officer completed the assessment inter alia by making certain disallowances and thereby determined the total income at a loss of Rs.1,21,73,407/-.

4. Feeling aggrieved with the order of Assessing Officer, assessee carried the matter before Id.CIT(A), who granted partial relief to the assessee.

5. Feeling aggrieved with the order of Id.CIT(A), both the assessee and Revenue are now in appeal before us.

6. At the outset, Id.DR had submitted that the Id.CIT(A) while granting relief to the assessee had relied upon the documents and the submission made by the assessee on 21.01.2017 along with which the Inter Corporate deposit agreement dated 11.01.2012 between M/s. Bindu Vayu Urja Private Limited and M/s. Mytrah Energy (India) Limited was filed by the assessee.

6.1. Ld.DR had drawn our attention to page 103 of the paper book filed by the assessee wherein the following request was made by the assessee before the Id.CIT(A) vide letter dt.21.01.2017.

“.....

*Respected Sir/Madam*

*Sub: Rule 46A— production of Additional Evidence before CIT- Appeals in case of Bindu Vayu Uria Private Limited.*

- A. *We wish to inform that the Company could not produce the following evidences for the Assessment Year 2014-15 at the time of assessment proceedings before Dy. commissioner of Income Tax — 1(2):*
1. *Downsizing letter dated 09Th May 2013 from IDFC that downsizing of the project from estimated 18.9.MW to 12.6 MW and scaling of the equity in the Company by the Holding Company to 384 Crores.*

2. *Corrected Statement of Fund flow for the AY 2013-14 of the Company showing details / amounts of ICDs given to Holding Company and the closing balance Of ICD which is as follows:*

A.	<i>Interest Free</i>	<i>Rs 108,71,00,000</i>
B.	<i>Interest bearing</i>	<i>Rs. 68,49,32,601</i>
	<i>Total</i>	<b><i>Rs. 177,20,32,601</i></b>

*The above closing balance of Rs. 177,20,32,601/- tallies with Notes to the financial statements for the year ended 31.g march 2014 of the Company — No.2.20 — Ill — amounts due from related parties — Holding Company. — Rs. 177,20,32,601/,*

- B. *Due to the above documents, not readily available with the Company at the time of assessments, the employee(s) of Company newly joined could not correctly understand the requirements of documents during assessments. Moreover, as the DCIT- 1(2) did not specifically ask for the above documents and the Company could produce fund flow summary only on estimate basis, the corrected statement is now produced.*

*Commissioner of Income Tax Appeals —1 under rule 46A of the Income Tax Act 1961 with request and prayer for permitting producing / admitting the above additional evidence, to the taken-on record for the Appeal being submitted hereunder.”*

6.2 It was submitted by the ld. DR that the ld.CIT(A) had decide the whole issue on the basis of the submission and the documents filed by the assessee in the form of additional evidence without confronting the copies of the said additional evidence to the Assessing Officer.

7. Per contra, ld. AR had submitted that the above said documents were financial documents and were available on record. Ld. AR further submitted that there is no error in the order passed by the ld.CIT(A).

8. We have heard the rival submissions and perused the material on record. Undoubtedly, the ld.CIT(A) in Para 5.4 had granted part relief to the assessee based on the letter dt.21.01.2017 filed by the assessee before the ld.CIT(A). In our view as and when any additional document is filed before the ld.CIT(A), it is the bounden duty of the ld.CIT(A) to seek the remand report from the Assessing Officer and grant an opportunity to rebut the evidences filed by the assessee. This principle has been duly acknowledged in the Income Tax Rules, 1962 in Rule 46A which provides that as and when the ld.CIT(A) is taking on record any evidence and decides the issue based on the documents / evidence filed by the assessee in support of its case, it is the duty of the ld.CIT(A) to confront the said document to the Assessing Officer. In the present case, needful was not done by the ld.CIT(A). Therefore, in our view, it will be appropriate if both the appeals are remanded back to the file of ld.CIT(A) to decide all the issues afresh after affording due opportunity of hearing to the assessee and the Assessing Officer. Hence, we are remanding back the matter to the file of ld.CIT(A) along with the additional ground raised by the Revenue. As we have remanding back the case to the file of ld.CIT(A), hence, we have not adjudicated the other grounds raised by the Revenue and the

assessee in their respective appeals. In the light of the above, both the cross appeals are allowed for statistical purposes.

9. In the result, both the appeals of assessee and Revenue are allowed for statistical purposes.

Order pronounced in the Open Court on 24<sup>th</sup> March, 2023.

<b>Sd/-</b> <b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 24<sup>th</sup> March, 2023.  
***TYNN/sps***

Copy to:

S.No	Addresses
1	M/s. Bindu Vayu Urja Private Limited, 8 <sup>th</sup> Floor, Q-City, Survey No.109, Gachibowli, Nanakramguda Valley, Serilingampally Mandal, Hyderabad.
2	DCIT, Central Circle 3(1), Hyderabad. / DCIT, Circle 1(2), Hyderabad.
3	PCIT – 1, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*