

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH  
DELHI**

**BEFORE: SHRI KUL BHARAT, JUDICIAL MEMBER  
&  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.6721/Del/2019  
(Assessment Year :2016-17)**

Ms/ Brahmaputra Finlease Pvt. Ltd. A-7, Mahipalpur, Brahmaputra House New Delhi 110037	Vs.	Assistant Commissioner of Income Tax, Central Circle- 15, New Delhi Mumbai
<b>PAN/GIR No. AAACK 3691 G</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Ms. Monika Agarwal, Adv.
Revenue by	Shri Kanv Bali, Sr. DR
<b>Date of Hearing</b>	<b>13/04/2023</b>
<b>Date of Pronouncement</b>	<b>18/04/2023</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.6721/Del/2019 for A.Y. 2016-17 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-XXVI, Delhi in appeal No.10170/18-19 dated 13.06.2019 (hereinafter referred to as Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 23.12.2018 by the Id. Assistant Commissioner of Income Tax, Central Circle-15, Delhi (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the disallowance of interest in the sum of Rs. 8,32,459/- in the facts of circumstances of the case.

3. We have heard rival submissions and perused the materials available on record. The Id. AO observed that the assessee company was incorporated on 14.12.1994 with the main object to lend money and negotiate loans of every description, and shall not do any banking business. The Id. AO observed that the assessee had debited a sum of Rs. 1,18,79,501/- towards interest paid on unsecured loans in its P & L account. The assessee also had received interest income of Rs. 1,10,56,045/- on loans and advances given by it. The Id. AO observed that assessee is engaged in the business of lending and hence it could not have earned lesser interest income than the interest paid on the loans borrowed. In other words, the Id. AO observed that assessee had diverted borrowed funds for advancing interest free loans to certain parties and accordingly proceeded to disallow excess interest paid in the sum of Rs. 8,23,459/- (1,18,79,501 - 1,10,56,045) in the assessment. This action of the Id. AO was upheld by the Id. CIT(A).

4. The Id. AR before us placed on record the consistent stand taken by it with regard to claim of deduction towards interest expenditure as well as offer of interest income in various years and filed the following tabulation:-

Sr. No	AY	Interest claimed if any (Rs.)	Interest Received	Disallowance if any (Rs./	Assessment u/s	Remarks
1	2009-10	449,075	410,466	Nil	143(3)/153A	—
2	2010-11	Nil	20,03,328	Nil	143(3)/153A	—



assessee. The assessee would be free to decide the rate of interest to be charged on its lending to each party. In the instant case, there is absolutely no dispute that the borrowings made by the assessee were utilised for the purpose of business of lending by the assessee. The only grievance of the revenue is that the interest income received on the loans advanced is less than the interest paid on its borrowing, thereby leading to disallowance of excess interest paid in the sum of Rs. 8,23,459/-. This action of the revenue is not justified in the eyes of law. Once the borrowing is utilised for the purpose of business by the assessee, the interest paid on such borrowing would be squarely eligible for deduction u/s. 36(1)(iii) of the Act, irrespective of the fact whether assessee had received interest at lower rate than its borrowing rate or received nil interest. This aspect is very well settled by the decision of Hon'ble Supreme Court in the case of Reliance Industries Ltd. and S.A Builders Ltd. In any case, the issue in dispute squarely covered by the decision of this Tribunal in assessee's own case for the assessment year 2014-15 in ITA no. 1207/Del/2015 dated 29.08.2018 wherein it was held as under:-

*8. After hearing both the sides and on perusal of the relevant material on record, I find the Assessing Officer disallowed an amount of Rs.5,39,940/- u/s 36(1) (iii) on the ground that the assessee has diverted its interest bearing funds as loans and advances to sister concerns and others without charging of any interest. I find the Id. CIT(A) sustained the addition made by the Assessing Officer, the reason of which has already been reproduced in the preceding paragraph. It is the submission of the Id. counsel for the assessee that since the net owned funds of the assessee company is much more than the interest free funds advanced to sister concerns and others, therefore, no disallowance is called for u/s 36(1) (iii). I find some force in the above argument of the Id. counsel for the assessee. It is an admitted fact that nothing has been brought on record that any specific interest bearing borrowed funds has been diverted by the assessee to the related parties from whom no interest has been charged. since the net owned funds of the assessee company in the instant case is much more than the interest free advances given to related parties and since the Revenue has not brought on record any specific instance of interest bearing borrowed funds being diverted to the related parties free of interest, therefore, I am of the considered opinion that no disallowance u/s 36(1)(iii) is called for. The Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities and*

*Power Ltd. reported in 313 ITR 340 has held that if there are funds available both interest free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest free funds generated or available with the assessee company, if the interest free funds were sufficient to meet the investment. Various other decisions relied on by the Id. counsel for the assessee in the synopsis and Paper Book also support its case that where the assessee is having sufficient owned funds which is more than the interest free funds given or advanced to related parties and the assessee is maintaining a common bank account and the Revenue has not proved with any evidence that any interest bearing fund has been diverted to sister concerns or related parties without charging any interest then provisions of section 36(1)(iii) is not applicable. I, therefore, hold that the Id. CIT(A) in the instant case was not justified in sustaining the addition. I, therefore, set-aside the order of the Id. CIT(A) and direct the Assessing Officer to delete the addition.*

8. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we direct the Id. AO to delete the disallowance of interest in the sum of Rs. 8,23,459/-. Accordingly the grounds raised by the assessee are allowed.

**9. In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on 18/04/2023.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 18/04/2023

NV, sr.ps

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Delhi.
4. CIT
5. DR, ITAT, Delhi
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Delhi