

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.438/Bang/2018
Assessment Year: 2013-14

M/s. Bangalore Beverages Ltd. Level 12, UB Towers, UB City 24, Vittal Mallya Road Bangalore 560 001  <b>PAN NO : AADCB4445L</b>	<b>Vs.</b>	ITO Ward-1(1)(3) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA No.294/Bang/2019
Assessment Year: 2015-16

M/s. Bangalore Beverages Ltd. Level 12, UB Towers, UB City 24, Vittal Mallya Road Bangalore 560 001  <b>PAN NO : AADCB4445L</b>	<b>Vs.</b>	ACIT (OSD) Ward-1(1)(3) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri K.R. Pradeep, A.R. & Smt. Girija, A.R.
<b>Respondent by</b>	:	Ms. Neera Malhotra, D.R.

<b>Date of Hearing</b>	:	04.05.2023
<b>Date of Pronouncement</b>	:	25.05.2023

**O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

These two appeals by assessee for the assessment years 2013-14 & 2015-16 emanated from the order of CIT(A)-1 dated 30.10.2017

and 28.11.2018 respectively. Certain issues in these appeals are common, which are clubbed together heard together and disposed of for the sake of convenience.

2. With regard to ground Nos.2,3,4 & 5 in ITA No.294/Bang/2019 for the assessment year 2015-16 were not argued before us. Hence, these grounds are dismissed as not pressed.

3. Next common ground in both these appeals is with regard to addition on the issue of interest said to be agreed on loans amounting to Rs.179,50,18,919/- and Rs.302,53,20,841/- for the assessment years 2013-14 & 2015-16 respectively. Facts are common in both the appeals only changes in figures.

4. The Id. A.R. narrated the facts as follows:

That the assessee during the previous year has earned an interest income of Rs.85,14,48,065/- and incurred an interest expenditure of Rs.119,36,75,303/-. The total amount of loan outstanding as on 31.03.2013 is as under:

Sl No.	Name	Total Amount outstanding as on 31.03.2013	Interest Received
1	Kingfisher Airlines Limited	1747,32,15,238	85,14,48,065 (till October 2012)
2	Margosa Consultancy Pvt Ltd	82,50,13,085	---
3	Redect Consultancy Pvt Ltd	411,15,55,691	---
	Total	2240,97,84,014	85,14,48,065

4.1 With respect to loan advanced to M/s. Kingfisher Airlines Limited (KFA), interest was charged till October 2012. Thereafter the company requested for waiver of interest on loans from the assessee in view of its suspended business operations of the airlines since

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October 2012. The request letters from KFA dated 12.10.2012 & 20.03.2023 are at PB-1 pages 8 to 10. The waiver of interest was communicated by the assessee to KFA vide letter dated 25.03.2013. Similarly, M/s.Margosa Consultancy requested for waiver vide letters dt.20.10.2012 and 21.03.2013 and the waiver for full year was communicated by the assessee vide letter dt. 21.03.2013. M/s.Redect Consultancy also requested for waiver vide letters dt.20.10.2012 & 21.03.2023 and the waiver for full year was communicated by the assessee vide letter dt. 21.03.2013. Upon communication of the waiver decision, a new agreement has come into existence wherein no interest has been charged. On this factual background the AO ignoring the clinching facts issued a show cause notice dt.03.03.2016 proposing to make the addition. The assessee filed point wise reply dt.22.03.2016 against the show cause notice, the contents are extracted hereunder for ready reference:

*“This has reference to your show cause notice F.No. TI-40/ITO, W-(1)(1)/2015-16 dated 3.3.16 regarding the above.*

- 1) ***“Para 1.1.3 –It is clear from the above tables showing the loans taken from various parties, interest paid, loans given to various parties and interest charged that the assessee company which is in the business of finance has borrowed money on interest but has advances the money to its related parties and also others without charging interest or charging interest at low rates resulting incurring losses.”***

*We would like to inform that the company advanced the loans to Kingfisher Airlines Ltd.(KFA), Redect Consultancy Ltd. (Redect) and Margosa Consultancy Ltd.(Margosa) and had charged interest to them. On a perusal of the assessment records for AY 12-13, this fact will be evident.*

*In AY 13-14, interest was charged to KFA till October 2012 amounting to Rs.85.14 crs after which interest was waived from KFA as explained below. In the case of Redect and Margosa interest was waived for AY 13-14 as explained below.*

*Hence, it is submitted that it is not so that Bangalore Beverages Ltd. (BBL) had borrowed money on interest but has advanced money without charging interest or charging interest at low rates.*

- 2) ***“Paras 1.1.5 – Therefore, in view of the above facts leading to the conclusion that the interest bearing funds have been used to provide interest free loans or low interest loans and the provisions of section 40A(2)(b) of the Income Tax act, I am of the considered opinion that interest chargeable on the loan given to M/s. Kingfisher Airlines Ltd. be charged till 31/3/2013 and added to the returned income. You are requested to submit your explanation or objection to this proposed disallowances and additions.”***

*We would like to inform you that interest to KFA was charged till October 2012 amounting to Rs.85.14 crs. Thereafter KFA had requested for waiver of interest on loans (vide their letters dated 12.10.12 and 20.3.13- copies enclosed) in view of the suspension of operations of its airlines. After considering the same, in the Board Meeting of company dated 21.3.13, it was decided to waive the interest from October 2012 till KFA is recapitalized and resumes normal operations. Accordingly, interest from October 2012 has been waived. A copy of the letter dated 25.3.13 addressed to KFA intimating the waiver is enclosed.*

*In view of the aforesaid, it is submitted that the company charged interest to KFA till October 2012 and did not use the interest bearing funds to provide interest free loans or low interest loans. The waiver took place only in October 2012 and it would be wrong to add interest chargeable on the loan given to KFA till 31.3.13, since the waiver was done based on business commitment.*

- 3) ***Para 1.1.6 - Also since interest has been charged on the loans given to entities mentioned at serial number 2 to 4 of table in para 1.1.2, the proportionate interest expenses be disallowed from the interest expenses claimed***

*Sl. nos. 2 to 4 pertains to Margosa Consultancy Pvt. Ltd., Redect Consultancy Pvt. Ltd. and Bestride Consultancy Pvt. Ltd.*

***Margosa Consultancy Pvt. Ltd and Redect Consultancy Pvt. Ltd.***

*Margosa and Redect (vide their letters dated 20.10.12 and 21.3.13 – copies enclosed) has intimated the company that the loans availed by them were utilized by them to fund the operations of KFA. KFA had approached Margosa and Redect to waive of the interest on the loans extended to KFA in view of suspension of operations of KFA. Margosa and Redect has further intimated that it would not be possible for them to pay interest to BBL unless interest is collected from KFA. In view of the same, Margosa and Redect had requested for interest waiver on the loans extended to them by BBL.*

*After considering the same, in the Board Meeting of company dated 21.3.13, it was decided to waive the interest from Margosa and Redect for FY 12-13.*

*Accordingly, interest for FY 12-13 has been waived. Copies of the letters dated 21.3.13 addressed to Margosa and Redect intimating the waiver is enclosed.*

*In view of the aforesaid, it is submitted that the company did not use the interest bearing funds to provide interest free loans or low interest loans. The waiver was done based on business commitment and it would be wrong to add interest chargeable on the loan given to Margosa and Redect till 31.3.13.*

**Bestride Consultancy Pvt. Ltd.**

*We would like to inform you that inadvertently we had submitted that BBL had given loan to Bestride. In fact, BBL has received a loan from Bestride.*

*BBL (vide their letters dated 20.10.12 and 21.3.13 – copies enclosed) had intimated Bestride that the loans availed from them were utilized to fund the operations of KFA. KFA had approached BBL to waive of the interest on the loans extended to KFA in view of suspension of operations of KFA. BBL further intimated to Bestride that no interest from KFA has been received. In view of the same, BBL requested for interest waiver on the loans extended to them by Bestride.*

*After considering the same, in the Board Meeting of Bestride dated 21.3.13, it was decided to waive the interest from BBL for FY 12-13..*

*Accordingly, interest for FY 12-13 has been waived by Bestride. A copy of the letter dated 21.3.13 addressed to BBL by Bestride intimating the waiver is enclosed.*

- 4) “Para 1.1.7 – In this regard, you are requested to furnish the complete details of computation of interest charged on loans given and loans taken, detailed ledgers of all lenders and entities to whom loans had been advanced. Failing which interest will be computed on the closing balances available in the financial statements.”**

*As required we are enclosing the following –*

- i) Ledger extract of KFA in the books of BBL*
- ii) Ledger extract of Margosa in the books of BBL*
- iii) Ledger extract of Redect in the books of BBL*
- iv) Ledger extract of Bestride in the books of BBL*
- v) Ledger extract of SWBL in the books of BBL*
- vi) Ledger extract of Citicorp Finance India Ltd. in the books of BBL*
- vii) Ledger extract of DNA Networks in the books of BBL*
- viii) Ledger extract of Pinvest Investments & Enterprises Pvt. Ltd in the books of BBL*
- ix) Ledger extract of Sunstar Hotels & Estates Pvt. Ltd. in the books of BBL*
- x) Ledger extract of United Breweries (Holdings) Ltd. in the books of BBL*
- xi) Ledger extract of Wave Industries in the books of BBL*
- xii) Ledger extract of Utkal Distilleries Ltd. in the books of BBL*

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- xiii) *Ledger extract of McDowell Holding Ltd. in the books of BBL*  
xiv) *Ledger extract of SICOM in the books of BBL.*

*Regarding interest payable to SWBL, Pinvest Investments & Enterprises Pvt. Ltd., Sunstar Hotels & Estates Pvt. Ltd. and United Breweries (Holdings) Ltd., we submit as under –*

**SWBL** – *The amount o/s as on 31.3.13 was Rs.55,03,079/- represents the interest on the loan taken by BBL. A loan of Rs.11 crs was taken in FY 11-12 and the principal amount of Rs.11 crs was repaid in FY 11-12.*

*Accordingly, there was no further interest payable to SWBL*

**Pinvest Investments & Enterprises Pvt. Ltd., Sunstar Hotels & Estates Pvt. Ltd. and United Breweries (Holdings) Ltd.(UBHL)** - *The loans taken by BBL from Pinvest, Sunstar and UBHL were given to KFA for its operations. The operations of KFA got suspended in October 2012. In view of the financial situation, KFA did not pay interest to BBL. In such a situation, BBL had requested for waiver of interest on the loans received from these 3 parties.*

*In view of BBL's request, Pinvest and Sunstar waived the interest for FY 12-13. UBHL waived the interest from October 12. BBL letters dated 20.10.12 and 21.3.13 to Pinvest and UBHL, letters from Pinvest dated 22.3.13, Sunstar and UBHL dated 22.3.13, are enclosed.*

*Thus, there is no reason to compute interest on the closing balances.''*

4.2 The Id. A.R. submitted that the AO ignoring the above submissions decided to make an addition by invoking Section 40A(2)(b) and proposed to make addition to the extent of interest not charged which is calculated by the AO in para 4.11 of the assessment order. Thus, she submitted that the addition is on the premise that interest has been waived. Such a reasoning is not tenable since section 40A(2)(b) can be applied only for interest paid to related parties and not in the case of interest waiver. Income not booked in the books of accounts is not amenable for disallowance u/s 40A(2)(b) of the Act. Section 40A(2)(b) can be invoked only to disallow interest claimed in the return of income. Thus, she submitted that the reasoning of the AO to make disallowance is clearly erroneous. The appeal filed by the assessee before the CIT-A remained unsuccessful

as the CIT-A largely relied on the assessment order and the version of the AO and rejected the written submissions filed by the assessee. The written submissions filed by the assessee before CIT-A dt. 09.10.2017 are extracted hereunder:

*“The assessee during the previous year has earned an interest income of Rs.85,14,48,065/- and incurred an interest expenditure of Rs.119,36,75,303/-. The total amount of loan outstanding as on 31.03.2013 is as under:*

<i>Sl No.</i>	<i>Name</i>	<i>Total Amount outstanding as on 31.03.2013</i>	<i>Interest Received</i>
<i>1</i>	<i>Kingfisher Airlines Limited</i>	<i>1747,32,15,238</i>	<i>85,14,48,065(till October 2012)</i>
<i>2</i>	<i>Margosa Consultancy Pvt Ltd</i>	<i>82,50,13,085</i>	<i>---</i>
<i>3</i>	<i>Redect Consultancy Pvt Ltd</i>	<i>411,15,55,691</i>	<i>---</i>
	<i>Total</i>	<i>2240,97,84,014</i>	<i>85,14,48,065</i>

*With respect to loan advanced to M/s. Kingfisher Airlines Limited (KFA), interest was charged till October 2012. Thereafter the company requested for waiver of interest on loans from the assessee in view of its suspended business operations of the airlines since October 2012. As a prudent businessman on the basis of commercial expediency, the assessee by way of a Board resolution at the meeting held on 21.03.2013 authorized to waive interest on all loans extended by the assessee to the company w.e.f 01.10.2012 and accorded for reversal of interest charged from 01.10.2012 to 31.12.2012.*

*With respect to the loans advanced to M/s.Margosa Consultancy Pvt Ltd and M/s. Redect Consultancy Pvt Ltd, these companies also intimated the assessee their inability to pay interest as they had inturn lent the moneys to M/s.Kingfisher Airlines. Thus by way of a Board resolution at the meeting held on 21.03.2013, the assessee waived the interest on loans of these companies for the financial year 2012-13. Thus factually and legally the assessee was not entitled to receive any interest. In the absence of right to receive any interest no income can be said to have arisen or accrued to the assessee. Such a view is also supported by the Accounting Standards issued by ICAI on this issue. Likewise, the assessee had taken loans from M/s.United Breweries (Holdings) Ltd [UBHL], M/s.Pinvest Investments & Enterprises Pvt Ltd (Pinvest) and M/s.Sunstar Hotels & Estates Pvt Ltd (Sunstar) which were given by*

*the assessee to KFA for its operations. On para materia reasoning the assessee requested for waiver of interest on loans from these three companies vide its letters dated 20.10.2012 and 21.03.2013. In view of assessee's request, UBHL waived interest from October 2012 and Pinvest & Sunstar waived the interest for the financial year 2012-13. The Board resolutions in respect of the same were passed on 21.03.2013. In support of the above, the assessee has given an elaborate reply dt.22.03.2016 to the AO providing all the requisite information, details and evidences (Copy of the reply dt.22.03.2016 is enclosed as Annexure 1 & copy of board resolutions are enclosed as Annexure 2). In spite of this the AO chose to make the disallowance for the reasons mentioned in para 4.4 to 4.10 of the assessment order.*

*The AO failed to consider the reply of the assessee objectively. The intention of the assessee to waive the interest is unequivocal given into consideration the financial stringency of the parties. When the loan is itself doubtful of recovery, receipt of interest is much less possible. It has also been held by various courts that the decision to waive off loan or interest should be taken on the basis of commercial expediency and should be taken before the end of the accounting year. Both the conditions being met by the assessee, the arbitrary and high pitched addition made by the AO requires to be deleted. The explanation offered by the assessee is supported by the decisions of various courts mentioned hereunder:*

*1) CIT vs Neon Solutions Pvt Ltd – Bom HC – 387 ITR 667 (Annexure 3)*

*“ Taxability—Notional Interest on debentures—Mercantile system of accounting—Assessee in 2003 subscribed to 2% nonconvertible unsecured debentures of Rs.42 crores issued by one of its group companies 'M'— 'M' in response to demand for interest from Assessee requested waiver of interest on debentures as it were facing financial difficulties—Waiver of interest on debentures was approved—Board of Directors of Assessee also passed Resolution to waive interest on debentures of 'M' and also duly informed same to 'M'—In two assessment years under ;consideration, AO made addition of Rs.84 lakhs each being 2% interest on Rs.42 crores of debentures by Assessment Orders passed U/s 143(3)—AO held that waiver of interest for six year period (2004 to 2010) by board resolution as produced was not believable—CIT(A) upheld orders of AO for both subject assessment years—Tribunal by impugned order held that even in mercantile system of accounting, an item would be regarded as accrued income only if there was certainty of receiving it and not when it had been waived—Tribunal held that in spite of following mercantile system of accounting, Assessee was entitled not to bring notional interest on debentures subscribed by it to tax—Held, provisions of Section 145(1) were subject to mandate of ASI which also prescribed that 'Accounting policies adopted by assessee should be such so as to represent true and fair view of state of affairs of business, profession or vocation in financial statements prepared and presented on basis of such accounting policies—In name of compliance with s 145(1), it could not*

*be open to anyone to force adoption of accounting policies which result in distorted view of affairs of business—Therefore, even under mercantile method of accounting, and, on peculiar facts of instant case, assessee was justified in following policy of not recognizing these interest revenues till point of time when uncertainty to realize revenues vanished—Tribunal referred to fact that various resolutions which were passed by company as well as communication exchanged between parties would establish on facts that interest had been waived—There was no reason to disbelieve resolution passed by Assessee for waiving interest—Company 'M' had amalgamated with Assessee which would also establish that debentures issuing company was in serious financial difficulties which was incidentally group company of Assessee—Also prior to AY 200708 no addition was sought to be made by Revenue on account of notional interest—View taken by Tribunal in impugned order was possible view—Revenue's Appeal dismissed accordingly*

2) *H.P.Mineral & Industrial Development Corpn. Vs. CIT – HP HC - 302 ITR 120 (Annexure 4)*

*“11. Keeping in view the aforesaid law especially the judgments of the apex Court in the cases of State Bank of Travancore (supra) and Shiv Prakash Janak Raj & Co. (P) Ltd. (supra) the decision to waive off loan or interest should be taken on the basis of commercial expediency and should be taken before the end of the accounting year.*

*13. It is obvious that the decision must be taken immediately after the previous year. In this case the decision to waive off the loan was taken at a much later stage. The resolution to waive off the loan was passed after the income had already accrued. Once the income had accrued the passing of resolution after the close of the accounting year would be of no consequence. The decision to waive off the interest should have been taken during the accounting year or prior thereto. The concept of real income would not apply in such a case. If the debt had become bad the deduction can be claimed only in compliance with the provisions of the Act and the rules. Once the provisions of the Act were applicable and the income had already accrued the concept of real income cannot be brought into use to defeat the provisions of the Act.”*

3) *Madhu Sudan Dalmia vs. ACIT – ITA 524/Kol/2013 – Kolkata ITAT (Annexure 5)*

*“4.....In view of the above proposition of law laid down by Hon'ble Calcutta high Court, the waiver of interest before the year end cannot be treated as income in the given facts and circumstances of the case. Accordingly, we delete the addition and allow this issue of assessee's appeal.”*

*The ratio decidendi emanating from the above decisions are that the assessee is within its rights to waive the interest so long as the same is done before the end of the previous year relevant to the assessment year by following due procedure if any*

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*prescribed in law. The amounts for the previous year should reflect the entries for waiver if interest has already been charged. The assessee has met the requisite conditions for waiver in all respects. The AO has erred in refusing to rely on these decisions in making the disallowance which is clearly not as per law and hence the action of the AO requires to be set aside by deleting the addition.*

*Further the notional income as is calculated by the AO cannot be brought to tax in the absence of any specific provisions under the IT Act authorizing to do so. Section 5 of the IT Act talks of income received, accrued or arisen. No other type of income is liable for tax. Notional interest as considered by the AO is neither earned nor received by the assessee. The assessee is a stranger to such income. Consequently the addition based on notional interest has no legs to stand and requires to be deleted.”*

4.3 The Id. CIT-A while holding in favour of the revenue has held in para 6 as under:

*“...Hence, I am of the view that the AO, for the reasons recorded in the assessment order, is justified in charging the interest advances during the year amounting to Rs.179,50,18,919. The case laws relied in by the appellant are not applicable to the facts of the case as the appellant has a dual standard when it comes to debit the interest expenditure paid to the related concerns on the amounts borrowed which were ultimately used to advance to KFA Ltd., vis-à-vis not recognizing the interest income on similar advances made directly or indirectly to KFA Ltd, by it. Accordingly, the grounds of appeals of the appellant are dismissed.”*

4.4 The Id. A.R. submitted that the argument of the Ld. DR that waiver ought to have been supported by a revised agreement and not merely a board resolution is untenable as in this case besides the board resolution the relevant parties have been also communicated the new understanding through letters mentioned supra. Thus, the objection of the DR stands met. He submitted that in this case as can be seen from 1.10.2012 to 31.03.2013 neither any interest has been charged nor interest has been paid. Most of the transactions both in borrowing and lending are within the related parties. Hence there is no net impact on the assessee warranting interference from the revenue. Thus, the allegation that assessee has followed double/dual standards is factually incorrect since neither any interest is charged

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or nor paid. Further the objection of the ld. DR that efforts have not been made to recover is not a relevant objection as the assessee has not claimed write off of a bad debt and in this case it is only waiver of interest on borrowing and lending in view of the proven dismal financial situation which establishes even to a bare eye that nothing would be recoverable even if interest is charged and paid. Such an exercise would be an exercise in futility. Further she submitted that as per the law on the write off of debt as explained by the Supreme Court in T.R.F Ltd vs CIT (323 ITR 397), it is enough if the debt is written off in the books and it is not necessary for the assessee to establish that the debt in fact has become irrecoverable. The AO cannot question once the write off of debt is established. The charging of interest and waiver thereof is a matter of commercial expediency which should be best left to the esteemed discretion of the business person as held in Supreme Court in S.A.Builders Ltd vs CIT(Appeals) & Anr (288 ITR 1). In view of this the disallowance made by invoking section 40A(2)(b) is clearly untenable. Further the disallowance is not even justifiable as the addition is only a notional income which the assessee had no right to enforce after the waiver. It is an established law that nothing is liable to tax when neither income is accrued nor received nor is there a right to receive. There is no provision under the Income tax Act to tax notional income.

4.5 In view of the above, the ld. A.R. requested that the addition on the issue of interest income be deleted in the interest of justice and equity.

4.6 Further, he relied on order of the Hyderabad bench in the case of Satyam Federation Engineering Services in ITA No.431 &

432/Bang/2015 for the assessment years 2005-06 & 2010-11 dated 30.11.2015, wherein held as under:

*“18. We have heard the arguments of both the parties and perused the material on record as well as the orders of revenue authorities. From the above, it may be perceived that assessee has not charged any interest to AE as well as non-AE entities. Moreover, the TPO has considered only the account receivable of AE without considering the account payable to AEs. It is pertinent to note that account payable to AE and its affiliates are Rs. 28,58,98,204 compared to account receivables from AE and its affiliates of Rs. 26,88,97,856. We find that the account payables are more than the account receivables from AE. Hence, charging of notional interest does not arise. Therefore, we are inclined to remit the issue back to the file of DRP to give their findings clearly in this matter after going through the material available on record and give their findings according to the provisions of the Income-tax Act.”*

5. The ld. D.R. submitted that in the interest expenditure booked by the assessee, it is seen that on the total amount borrowed outstanding as on 31.3.2013 amounting to Rs. 2188.38 crore, majority of the amount is shown as borrowed from the related parties of the assessee from UB group like UB Holdings Ltd of Rs 1828.33 Crores, Waive Industries Rs. 190 crore, United Breweries Rs. 1828.3 crore, Mc Dowell Holdings Rs. 20.50 crore, Utkal Distilleries Ltd Rs. 50.43 crore on which an amount of Rs. 149,36,75,303 interest has been (incurred and debited to the P&L Account) paid to related parties of the assessee. From the above

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facts, it is clear that the assessee has waived the interest on the advances made to Margosa Consultancy (P) Ltd and Redect Consultancy (P) Ltd., on the ground that the same were advanced to KFA Ltd., and not recognized the interest on direct advances to the KFA on the ground that KFA has gone bankrupt and thus not recognizing the interest on advances made directly or indirectly to KFA Ltd. However, at the same time while charging interest on loans received from the related parties, the whole of which has been lent to KFA Ltd directly or indirectly through related parties, it has not waived the interest payable by the assessee on the same borrowings. This is a double standard method adopted by the assessee. If at all going by the logic with which the assessee is arguing that there is a strong case for not recognizing the interest income, then, on the same logic it should not be paying the said interest on its borrowals from the related and unrelated parties as the entire amount has been advanced to the KFA Ltd. Hence, the ld. D.R. was of the view that the AO, for the reasons recorded in the assessment order, is justified in charging the interest advanced during the year amounting to Rs. 179,50,18,919/-. The ld. D.R. argued that the case laws relied on by the assessee are not applicable to the facts of the case as the assessee has a dual standard when it comes to debit the interest expenditure paid to the related concerns on the amounts borrowed which were ultimately used to advance to KFA Ltd., vis-a-vis not recognizing the interest income on similar advances made directly or indirectly to KFA Ltd, by it. Accordingly, the grounds of appeals of the assessee were dismissed by the ld. CIT(A).

6. We have heard the rival submissions and perused the materials available on record. In the case, in the assessment year 2013-14 the assessee has taken and charged interest as follows:

During the year under consideration the assessee has paid interest of Rs.119,36,75,303/- on the loans borrowed from related parties and other lenders.

Sl. No.	Name of the lender	Total amount borrowed outstanding as on 31/03/2013	Interest paid
1.	Citicorp Finance India Limited	42,69,99,128	96,63,406
2.	Related parties (SW Finance Co. Ltd)	55,03,079	
3.	DNA Networks	3,00,00,000	27,00,000
4.	Pinvest Investments & Enterprises Pvt Ltd	20,00,00,000	
5.	Sunstar Hotels & Estates Pvt Ltd	32,86,00,000	
6.	Related parties (United Breweries (Holdings ) Ltd	1828,33,88,589	82,01,58,905
7.	Wave Industries	190,00,00,000	22,80,00,000
8.	Utkal Distilleries Ltd	50,43,00,000	6,35,12,942
9.	McDowell Holdings Limited	20,50,70,767	3,13,49,689
10.	SICOM		3,82,90,361
<b>Total</b>		<b>2188,38,61,563</b>	<b>119,36,75,303</b>

6.1 Similarly, the company has advanced loan in this assessment year as follows:

Sl. No.	Name of the lender	Total amount outstanding as on 31/03/2013	Interest received	Remarks
1.	Kingfisher Airlines Limited	1747,32,15,238	85,14,48,065	Till October, 2012
2.	Margosa Consultancy Pvt Ltd	82,50,13,085		
3.	Redect Consultancy Pvt Ltd	411,15,55,691		
<b>Total</b>		<b>2240,97,84,014</b>	<b>85,14,48,065</b>	

6.2 It is clear from the above tables that the assessee company has totally taken loans of Rs.2188,38,61,563/- from various entities and has paid interest of Rs.119,36,75,303/-. The assessee company has advanced a sum of Rs.2240,97,84,014/- which is more than the amount of money borrowed by the assessee but charged only a sum of Rs.85,14,48,065/- which is much lesser than the amount of interest paid on borrowed funds.

6.3 The assessee company is into the business of financial services and as prudent businessman, it should charge higher rate of interest not only to cover its interest payouts on borrowed money but also to cover its expenses/overheads and above all, to make some profit. But, as seen from the above, the assessee has interest payouts of Rs.119,36,75,303/- against interest receipts of Rs.85,14,48,065/- and has incurred direct loss of Rs. 34,22,27,238/-.

6.4 Similarly, in the assessment year 2015-16 assessee has advanced loan as follows:

Sl.No.	Name	Total amount outstanding as on 31.3.2013	Interest received	Remarks
1	Kingfisher Airlines Ltd.	1747,32,15,238	85,14,48,065	Till October, 2012
2	Margosa Consultancy Pvt. Ltd.	82,50,13,085	Nil	Nil
3	Redect Consultancy Pvt. Ltd.	411,15,55,691	Nil	Nil
Total		2240,97,84,041	85,14,48,065	

Outstanding loans:

Sl.No.	Name	Total amount outstanding as on 31.3.2013	Interest received	Remarks
1	Kingfisher Airlines Ltd.	1747,32,15,238	Nil	Nil
2	Margosa Consultancy Pvt. Ltd.	82,50,13,085	Nil	Nil
3	Redect Consultancy Pvt. Ltd.	411,15,55,691	Nil	Nil
Total		2240,97,84,041		

6.5 As discussed in earlier para, the assessee has not charged interest on advances made by assessee in this assessment year though assessee has paid certain interest to the party from whom it has taken advances. The contention of the assessee that even interest is booked in the books of accounts as receivable taken up in the books of accounts. Hence, no interest has been booked in the books of accounts of the assessee and correspondingly Board Resolution has been passed not to account the interest receivables in the books of accounts of the assessee and accordingly it has not been offered for taxation. It is admitted fact that assessee has been following mercantile system of accounting and Accounting Standard-9 issued by Institute of Chartered Accountants of India (ICAI) is applicable to the assessee's case. Accounting Standard 9 details with recognition of income following paragraph:

"9. ....The following paragraphs, viz., Paragraphs-4, 5, 7, and 9 to 12 of AS-9 would be relevant for the purpose of the present appeal:-

*"Definitions*

4. *The following terms are used in this Statement with the meanings specified:*

4.1 *Revenue is the gross inflow of cash, receivables or other*

*consideration arising in the course of the ordinary activities of an enterprise from the sale of goods, from the rendering of services, and from the use by others of enterprise resources yielding interest, royalties and dividends. Revenue is measured by the charges made to customers or clients for goods supplied and services rendered to them and by the charges and rewards arising from the use of resources by them. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration.*

*4.2 Completed service contract method is a method of accounting which recognises revenue in the statement of profit and loss only when the rendering of services under a contract is completed or substantially completed.*

*4.3 Proportionate completion method is a method of accounting which recognises revenue in the statement of profit and loss proportionately with the degree of completion of services under a contract. Explanation*

*5. Revenue recognition is mainly concerned with the timing of recognition of revenue in the statement of profit and loss of an enterprise. The amount of revenue arising on a transaction is usually determined by agreement between the parties involved in the transaction. When uncertainties exist regarding the determination of the amount, or its associated costs, these uncertainties may influence the timing of revenue recognition*

*7. Rendering of Services*

*7.1 Revenue from service transactions is usually recognised as the service is performed, either by the proportionate completion method or by the completed service contract method.*

- (i) Proportionate completion method—Performance consists of the execution of more than one act. Revenue is recognised proportionately by reference to the performance of each act. The revenue recognised under this method would be determined on the basis of contract value, associated costs, number of acts or other suitable basis. For practical purposes, when services are provided by an indeterminate number of acts over a specific period of time, revenue is recognised on a straight line basis over the specific period unless there is evidence that some other method better represents the pattern of performance.*
- (ii) Completed service contract method—Performance consists of the execution of a single act. Alternatively, services are performed in more than a single act, and the services yet to be performed are*

*so significant in relation to the transaction taken as a whole that performance cannot be deemed to have been completed until the execution of those acts. The completed service contract method is relevant to these patterns of performance and accordingly revenue is recognised when the sole or final act takes place and the service becomes chargeable.*

9. *Effect of Uncertainties on Revenue Recognition*

9.1 *Recognition of revenue requires that revenue is measurable and that at the time of sale or the rendering of the service it would not be unreasonable to expect ultimate collection.*

9.2 *Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, e.g., for escalation of price, export incentives, interest etc., revenue recognition is postponed to the extent of uncertainty involved. In such cases, it may be appropriate to recognise revenue only when it is reasonably certain that the ultimate collection will be made. Where there is no uncertainty as to ultimate collection, revenue is recognised at the time of sale or rendering of service even though payments are made by instalments.*

9.3 *When the uncertainty relating to collectability arises subsequent to the time of sale or the rendering of the service, it is more appropriate to make a separate provision to reflect the uncertainty rather than to adjust the amount of revenue originally recorded.*

9.4 *An essential criterion for the recognition of revenue is that the consideration receivable for the sale of goods, the rendering of services or from the use by others of enterprise resources is reasonably determinable. When such consideration is not determinable within reasonable limits, the recognition of revenue is postponed.*

9.5 *When recognition of revenue is postponed due to the effect of uncertainties, it is considered as revenue of the period in which it is properly recognised.*

10. *Revenue from sales or service transactions should be recognised when the requirements as to performance set out in paragraphs 11 and 12 are satisfied, provided that at the time of performance it is not unreasonable to expect ultimate collection. If at the time of raising of any claim it is unreasonable to expect ultimate collection, revenue recognition should be postponed.*

11. *In a transaction involving the sale of goods, performance should be regarded as being achieved when the following conditions have been*

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*135 fulfilled: (i) the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership; and (ii) no significant uncertainty exists regarding the amount of the consideration that will be derived from the sale of the goods.*

*12. 12. In a transaction involving the rendering of services, performance should be measured either under the completed service contract method or under the proportionate completion method, whichever relates the revenue to the work accomplished. Such performance should be regarded as being achieved when no significant uncertainty exists regarding the amount of the consideration that will be derived from rendering the service.”*

6.6 The main plea of the assessee before us is that even interest is accrued, it cannot be recovered. The parties are not in a position to pay the interest receivable. However, it cannot escape from the payment of interest to the parties from whom it has been borrowed. Hence, the interest receivable is not booked in the books of accounts of the assessee. As discussed earlier in a mercantile system of accounting revenue is recognized on accrual basis as per the agreement entered by the assessee with the parties to whom loan has been advanced. Accrual of interest is the most important fact under the receipt of the interest income. When there is no due or modification of agreement through which the money has been advanced the interest accrued on the basis of said agreement to be recorded in the books of accounts of the assessee and it cannot be modified by a Board resolution. In the case of assessee, no such modification of the agreement of advancing loans has been done. The assessee on its own not recognized the interest income though it was agreed with the assessee as per the loan agreement. The assessee take support from Board resolution where they taken decision not to recognized the income. Being so, it is not tune with the AS-9 which is more concerned with the true and fair view of the

state of affairs of the business of the assessee and also in conformity with the mercantile system of accounting as prescribed in section 145 of the Act.

6.7. The relevant statutory provisions regarding method of accounting under the Act, have to be first seen. Sec.145 of the Act (prior to its amendment by the Finance Act, 2014 w.e.f. 1.4.2015 applicable in the present case) deals with **Method of accounting** and it reads thus:

*“Sec.145: Method of Accounting: (1) Income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.*

*(2) The Central Government may notify in the Official Gazette from time to time Accounting standards to be followed by any class of assessees or in respect of any class of income.*

*(0) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or Accounting Standards as notified under sub-section (2) have not been regularly followed by the Assessee, the Assessing Officer may make an assessment in the manner provided in section 144.*

6.8. Vide Notification No. 9949, dated 25-1-1996 [(1996) 130 CTR (St) 33], Accounting Standard I relating to disclosure of accounting policies and Accounting Standard II relating to disclosure of prior period and extraordinary items and changes in accounting policies had alone been notified as Accounting Standards to be followed by an Assessee and no other accounting standard has been notified.

6.9 AS-9 has not been notified u/s 145 of the Act. There may be a contention of the assessee that AS-9 has not been notified u/s 145 of the Act, hence, does not have statutory force. In our opinion, assessee follows mercantile system of accounting and AS-9 trapping of both cash system and mercantile system and it has to be followed while recognizing the income of the assessee when assessee is following the mercantile system of accounting, which is prescribed by section 145 of the Act. Further, the AO is empowered and bound to compute the income of the assessee in accordance with section 145 of the Act, which is the mercantile system of accounting. There is no dispute that under mercantile system of accounting, the income of the assessee has been accrued and only the assessee failed to record the same in the books of accounts of the assessee though it was accrued. Therefore, the claim of assessee is not based on any sound accounting system or section 145 of the Act. The assessee has made one more contention before us that in assessment year 2013-14, the AO invoked the provisions of section 40A(2)(b) of the Act, which is applicable only to the payment and not to the receipts. According to the assessee, the AO has recorded in para 4.2 of his order for the assessment year 2013-14 as follows:-

*“4.10 Therefore, in view of the above facts leading to the conclusion that the interest bearing funds have been used to provide interest free loans or low interest loans and the provisions of section 40A(2)(b) of the Income tax Act, I am of the considered opinion that interest chargeable on the loan given to M/s. Kingfisher Airlines limited be charged till 31/03/2013 and interest chargeable from other two borrowers be charged for the entire year and added to the returned income. The waiver of interest chargeable from borrowers cannot be allowed under Income Tax Act.”*

6.10 In our opinion, this is only a passing remark. We have to see the substance over the form and mentioning of wrong provision cannot be fatal. In other assessment year 2015-16 the AO has not mentioned anything about section 40A(2)(b) of the Act. In view of

the above discussion, we dismiss this ground in both the appeals of the assessee.

7. Next ground in ITA No.438/Bang/2018 in assessment year 2013-14 is with regard to addition towards consultancy fee of Rs.60,00,000/- as unexplained expenditure u/s 69C of the Act.

7.1 In this regard, the ld. A.R. submitted that the AO issued a notice seeking details of consultancy charges paid which was duly replied vide reply letter dt.22.03.2016 by the assessee. However, the AO chose to disallow the same for the reasons mentioned in the assessment order extracted as under:

*"5.1 It is observed that the assessee has debited a sum of Rs.60,00,000/- under the head "Consultancy Fees" in the profit and loss account for the year 2012 — 13. The assessee was asked to furnish the nature and details of this expenditure. The assessee has not responded to the show cause notice issued on 03/03/2016. However, the assessee **has filed a reply dated 22/03/2016** wherein the assessee has failed to substantiate its claim **of expenditure and merely** stated that it is paid to SREI infrastructure Limited. **The nature of consultancy, whether TDS has been done or not, invoice etc have not been submitted to establish** genuineness of **the** expenditure. Therefore, the expenditure claim of Rs.60,00,000/- is treated as unexplained expenditure under section 69C of the Income Tax Act, 1961."*

7.2 The ld. A.R. submitted that the said disallowance is unsustainable, arbitrary and ought not to have been done. Invoking section 69C of the Act is incorrect. In this case expenditure is already reflected in the books of accounts and the sources are explained as out of the regular bank accounts. The expenditure is part of the regular books of accounts and not unexplained by any stretch of imagination. Thus, she submitted that invoking section 69C of the Act is unwarranted and requires to be deleted.

8. The ld. D.R. submitted that the AO has discussed the same in para 5 of the assessment order wherein the assessee has not

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replied to AO's question to understand the nature of the said expenditure being revenue and connected to the business of the assessee. It has simply stated in its reply that the said expenditure was paid to SREI Infrastructure Ltd. Apart from this, neither any explanation on the exact nature and business exigency was established / proved by the assessee. In these proceedings also, no effort was made to establish or rebut the findings of the AO that there was explanation from the assessee. The arguments taken here in this appeal are very general without there being any content in the direction discussed above. No additional evidence was either produced to explain the nature of the said transaction. Further, the ld. D.R. submitted that necessary information that the said payment suffered TDS together with the purpose/ nature of the payment has not been furnished. In the absence of the same, the AO is justified in invoking Section 69C of the Act and in disallowing the expenditure. Accordingly, the ld. D.R. stated that this ground of appeal was dismissed by the ld. CIT(A).

9. We have heard the rival submissions and perused the materials available on record. Before the lower authorities, the assessee has said that expenditure was paid to SREI Infrastructure Ltd. and no further details have been furnished. Even before us, the assessee reiterated the arguments made before the lower authorities. In our opinion, it is appropriate to remit the issue to the file of AO with direction to assessee to establish that the expenditure is wholly and exclusively incurred for the purpose of business. With this observation, we remit the issue to the file of AO for fresh consideration.

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10. In the result, the appeal filed by the assessee in ITA No.438/Bang/2018 is partly allowed for statistical purposes and the appeal of the assessee in ITA No.294/Bang/2019 is dismissed.

Order pronounced in the open court on 25<sup>th</sup> May, 2023

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 25<sup>th</sup> May, 2023.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**