

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.3234/M/2022
Assessment Year: 2002-03**

M/s. Carol Info Services Ltd., Wockhardt Towers, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051 PAN: AAACW1299E	Vs.	The Deputy Commissioner of Income Tax-15(1)(2), Room No.483A, 4 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Nikhil Tiwari, A.R.
Revenue by : Shri Chetan Kacha, Sr. A.R.

Date of Hearing : 03 . 05 . 2023

Date of Pronouncement : 31 . 05 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Carol Info Services Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 27.10.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2002-03 on the grounds inter-alia that :-

“Disallowance of interest expenditure allegedly incurred on funds utilized for providing interest free loans and advances - INR 8,76,34,810/- (Tax effect INR 2,68,16,251/-)

1) *In the facts and circumstances of the case and in law, the CIT(A) erred in upholding the disallowance made by the AO in respect of interest expenditure of INR 8,76,34,810/- allegedly pertaining to deployment of interest bearing funds for grant of non- interest bearing loans/ advances.*

2) *In the facts and circumstances of the case and in law, the CIT(A) failed to appreciate that the interest free funds available with the appellant were sufficient for granting interest free loans and advances and therefore no disallowance of interest on borrowed funds was warranted.*

3) *In the facts and circumstances of the case and in law, the CIT(A) erred in ignoring settled judicial position laid down that in case own non interest bearing funds of the appellant are sufficient for making for making interest free loans and advances, a presumption could be drawn that such interest free loans and advances are made out of own funds of the appellant.*

4) *In the facts and circumstances of the case and in law, the CIT(A) erred in stating that no new evidence has been provided by the appellant to establish sufficiency of funds and that the balance sheet & financial statements were available with the AO (and the Tribunal in first round of proceedings) ignoring the clear direction of the Tribunal that the AO was specifically directed by the Tribunal to consider the issue of sufficiency of own funds with respect to interest free loans and advances.*

5) *Without prejudice, the CIT(A) erred in not appreciating the without prejudice submissions and workings made by the appellant that there were errors in calculation of disallowance of interest made by the AO and that the disallowance was excessive and that the disallowance ought to have been restricted as per without prejudice calculations submitted by the appellant.*

Disallowance of provision for doubtful advances INR 65,00,000/- (Tax effect INR 19,89,000)

6) *In the facts and circumstances of the case and in law, the CIT(A) erred in upholding the disallowance made by the AO in respect of provision for doubtful advances of INR 65,00,000/- in respect of advance granted to M/s Tahseel Hire Purchase Co. Ltd.*

Lack of sufficient opportunity of being heard

7) *In the facts and circumstances of the case and in law, the CIT(A) erred not appreciating that the assessment order was passed in undue haste and without providing the appellant sufficient opportunity of being heard in the matter.*

8) In the facts and circumstances of the case and in law, the CIT(A) erred in passing the order without providing the appellant sufficient opportunity of being heard and without granting any opportunity of personal hearing for clarifying any specific issues/ queries/ doubts existing in the mind of the CIT(A).

Relief Claimed

Your appellant prays that 1. The disallowance made in respect of interest expenditure of INR 8,76,34,810/- be deleted.

2. The disallowance of provision for doubtful advances of INR 65,00,000 be deleted. The appellant craves leave to amend or alter any of the above grounds or add a new ground, if and when necessary.”

2. This is the second round of litigation. In the first round the case was restored by the Tribunal to the file of the Assessing Officer (AO) to examine if the interest free funds available with the assessee are more than the amount of interest free advances.

3. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee company is engaged in the business of manufacturing of hospital products and biologically derived agri products. During the scrutiny proceedings the Assessing Officer (AO) noticed that the assessee has given loans/advances to M/s. Tahseel Hire Purchase Co. Ltd. and M/s. Tridoss Laboratories Ltd. and was called upon to explain as to why the interest @ 12.5% should not be added to its income. On failure of the assessee to file any explanation the AO computed the interest to the tune of Rs.8,76,48,310/- and thereby added the same to the return of income of the assessee.

4. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the disallowance. Then the assessee approached the Tribunal who has remitted the case back to the AO to examine if the interest free funds available with the

assessee are more than the amount of interest free advances then no disallowance is required to be made. Thereafter, again the assessee company has failed to avail of this opportunity and the AO proceeded to disallow interest on interest free loans and advances to the tune of Rs.8,76,48,310/- and thereby framed the assessment under section 143(3) of the Income Tax Act, 1961 (for short 'the Act').

5. The 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 with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the present appeal.

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. We have perused the order passed by the Ld. CIT(A) who has decided the appeal before him vide impugned order against the assessee without examining the audited financials relied upon by the assessee showing sufficient own interests free funds. For ready perusal operative part of the findings returned by the Ld. CIT(A) is as under:

"5.5 The other ground relates to the disallowance of interest on Interest free loans & advances of Rs.8,76,48,310/-. The Hon'ble ITAT TAX DEPARTMENT has restored the issue to the file of the AO to examine the interest free funds available with the appellant are more than the amount of interest free advances, then no disallowance is required to be made and directed accordingly.

The appellant referred to the financial statements for the year ended 31 Mar 2002. The fund position as per financial statements was given as below:

<i>Particulars (As on 31 March 2002)</i>	<i>Rs. In crores</i>
<i>Share capital</i>	<i>35.43</i>
<i>Reserves and surplus</i>	<i>321.70</i>
<i>Total own funds</i>	<i>357.13</i>
<i>Investments</i>	<i>133.54</i>
<i>Loans and advances</i>	<i>138.02</i>
<i>Total investments, loans and advances</i>	<i>271.56</i>
<i>Loan funds (secured plus unsecured)</i>	<i>219.92</i>

On the basis of above table, the appellant argues the total own funds of the appellant as on 31 Mar 2002 were Rs.357.12 crores (the financials are presented rupees in millions) comprising of share capital and reserves and surplus as against the investment, loans and advances totalling to Rs 271.56 lakhs. The appellant contends that it is abundantly clear that the own interest free funds of the appellant were far in excess of the investments, loans and advances made/held by the appellant. The appellant further argued that as per settled judicial precedents, in such event it must be presumed that the investments, loans and advances are made out of own funds of the appellant.

5.6 The AO observes that the appellant has not utilized the opportunity provided to it by substantiating its claim and failed to furnish details thereof showing that the interest free funds were available to it. Further from balance sheet it is noted that capital and reserves were only Rs.356 crores while fixed assets, investments and current assets were of Rs.439 crores and hence, no interest free funds were available to appellant for giving interest free loans/ advances.

5.7 It is seen that no new evidence has been provided by the appellant during these proceedings. The balance sheet and financial statements referred to by the appellant to argue its case were already before the AO and the same have been duly considered by him. These documents were also available before the Hon'ble ITAT. Had they been sufficient to conclude the availability of interest free funds with the appellant in excess of interest free advances, Hon'ble ITAT would not have restored the matter to the file of AO for examination of the matter. The appellant

clearly failed to assist the AO in examination of the said issue. In the light of the above, I find no infirmity in the order of the AO and hold that no interest free funds were available to the appellant to give interest free loans/advances. Therefore, the disallowance of Rs.8.76,48,310/- is sustained and confirmed. This ground also fails.”

8. When audited financials relied upon by the assessee has been brought on record before the Ld. CIT(A) as extracted in the preceding para, the Ld. CIT(A) was required to return the factual findings “if the assessee was having his own interest free funds so as to advance the interest free loans/advances to M/s. Tahseel Hire Purchase Co. Ltd. and M/s. Tridoss Laboratories Ltd.”. Rather the Ld. CIT(A) decided the appeal by returning cryptic finding that “no evidence has been provided by the assessee during the proceedings and that balance sheet and financial statements referred to by the assessee to argue its case were already before the AO and same have been duly considered by him. These documents were also available before the Tribunal. Had they been sufficient to conclude the availability of interest free funds with the assessee in excess of interest free advances the Tribunal would not have restored the matter to the file of the AO for examination of the matter.”

9. We have perused the financial statement of the assessee viz. balance sheet available at page 3 to 24 which shows that the assessee was having own funds to the tune of Rs.35,712 crores in the form of share capital reserves and surplus as against the investment, loans and advances total to the tune of Rs.27,156 lakhs thus the assessee was having own interest free funds for more than the investment, loans and advances made/held by the assessee. In these circumstances in view of the law laid down by the Hon’ble Bombay High Court in case of CIT vs. Reliance Utilities and Power

Ltd. (2009) 313 ITR 340 (Bom) it is to be presumed that the investments/loans and advances are made out of own interest free funds of the assessee. Thus the disallowance made by the AO and sustained by the Ld. CIT(A) is not sustainable in the eyes of law, however, subject to reappraisal/verification of financials of the assessee by the AO.

10. Resultantly, appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 31.05.2023.

**Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 31.05.2023.

* Kishore, Sr. P.S.

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

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.