

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 182/Ind/2022
Assessment Year: 2010-11

ACIT/DCIT, Central-1, Bhopal	<u>बनाम/</u> Vs.	M/s.Bansal Construction Works, E-5, Tawa Complex, 3 rd Floor, Bittan Market, Bhopal
(Revenue / Appellant)		(Assessee / Respondent)
PAN: AAAFB8527B		

C.O.NO.02/Ind/2023
(Arising out of I.T.A.No. 182/Ind/2022)
Assessment Year: 2010-11

M/s. Bansal Construction Works, E-5, Tawa Complex, 3 rd Floor, Bittan Market, Bhopal	<u>बनाम/</u> Vs.	ACIT/DCIT, Central-1, Bhopal
(Assessee / Cross-Objector)		(Revenue / Respondent)
Revenue by	Shri Ashish Porwal, Sr. DR	
Assessee by	Shri Anil Khabya, CA	
Date of Hearing	05.09.2023	
Date of Pronouncement	11.09.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 11.04.2022 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal ["Ld. CIT(A)"], which in

turn arises out of assessment-order dated 23.12.2016 passed by learned DCIT, Central-I, Bhopal ["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2010-11, the Revenue has filed captioned appeal and the assessee has filed captioned cross-objection.

2. The grounds raised by parties are as under:

Revenue's appeal:

"On the facts and in the circumstances of the case, the Ld. CIT(A)-3, Bhopal has erred in:-

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 50,46,000/- made by AO in AY 2010-11 on account of interest free unsecured loan to sister concern despite having interest bearing funds.*

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that interest free unsecured loan advanced to sister concern has direct nexus with interest bearing borrowed fund."*

Assessee's Cross-objection:

"That the Ld. CIT(A) erred in not adjudicating grounds no. 1 & 2 of appeal memo. The CIT(A) ought to have declared that the proceeding of reassessment and order of reassessment were without jurisdiction and barred by limitation."

3. Heard the learned Representatives of both sides at length and case-records perused.

4. Brief facts leading to these matters before us are such that the assessee-firm filed return of income of relevant AY 2010-11 on 14.10.2010 declaring a total income of Rs. 3,19,09,150/-. Subsequently, on account of a search conducted upon assessee, the assessment was re-framed u/s 153A read with 143(3) on 31.01.2014 but at the same figure of Rs. 3,19,09,150/-. Yet again, the case was re-opened through notice dated 02.08.2016 u/s 148 and the assessment was completed u/s 147 read with section 143(3) vide order dated 23.12.2016 at a total income of Rs. 3,69,55,150/- after making a disallowance of interest expenditure to the extent of Rs. 50,46,000/-.

Aggrieved by order of re-assessment dated 23.12.2016, the assessee carried matter in first-appeal before CIT(A). During first-appeal, the assessee not only contested the merits of disallowance but also raised a legal ground of challenging the very proceeding of section 147 conducted by AO. The CIT(A) granted relief on merit and therefore did not adjudicate the legality ground raised by assessee. Now, both sides have come before us. While the revenue's appeal is assailing CIT(A)'s action of deleting addition on merit, the assessee's Cross-Objection is assailing the same order of CIT(A) for non-adjudication of legality ground. We start with Revenue's Appeal.

Revenue's Appeal:

5. At the outset, we may mention that the quantum involved in Revenue's appeal is only Rs. 50,46,000/-. Therefore, apparently it seems to be a case of low-tax effect and thereby Revenue's appeal appeared to be non-maintainable. But the Revenue has filed a report of AO dated 01.03.2023 mentioning that although the tax effect is Rs. 15,59,214/- but the case comes under Exception Clause in CBDT Circular No. 3/2018 dated 11.07.2018 read with Circular No. 17/2019 dated 08.08.2019 & Circular No. 23/2019 dated 06.09.2019 because the proceeding was conducted at the behest of "Revenue Audit Objection". The revenue has filed a copy of the memo of "Revenue Audit Objection" issued by auditor. Being so, both sides agree that the appeal is maintainable.

6. The revenue claims that the CIT(A) was not justified in deleting the disallowance of Rs. 50,46,000/- of interest expenditure made by AO.

7. The AO has passed following assessment-order:

"7.0. DISALLOWANCE OF INTEREST EXPENSES:

7.1 On perusal of the records, it is observed that the assessee firm had given unsecured loan of amount Rs. 3,62,69,594/- to the sister concern company of M/s. Bansal Extraction Pvt.Ltd. Shri Anil Bansal and Shri Sunil Bansal who each has profit ratio of

32.5 % in the assessee firm had also substantial interest in the M/s. Bansal Extraction Pvt.Ltd. In this company each person has 50% equity share. The assessee firm has debited the interest amount of Rs. 50,46,398/- in profit and loss account, therefore, it is clear that the assessee firm had given interest free loan of Rs. 3.62 crore to the sister concern Company and was just to shift the interest of the newly established company to a well established assessee firm which is flagship concern of the Bansal Group. In view of the above,, the assessee has debited in profit and loss account the amount of bank interest of Rs. 50,46,398/-.

7.1 Vide show-cause notice u/s 142(1) of the Income-tax Act, 1961, dt. 22.08.2016 , the assessee was show-caused as to why the interest of Rs. 50,46,398/- should not be disallowed and added back to its total income for assessment year 2010-11.

7.2 Vide reply dt. 29.08.2016, the assessee submitted as under :-

Xxx xxx xxx

7.3 The reply of the assessee has been considered and same is not acceptable as there is no doubt that the assessee is having interest bearing funds and at the same time, it has given interest free unsecured loans to its sister concern.

7.4 In the light of above facts & discussion, interest amounting to Rs. 50,46,000/- is disallowed & added to the total income of the assessee."

8. During first-appeal, Ld. CIT(A) passed following order:

*"4.1.4 In the instant case, the Ld. AO has basically invoked provisions of section 36(1)(iii) of the Act by merely stating that interest free unsecured loan of Rs. 3,62,69,594/- was given to sister concern whereas it had claimed interest expenses of Rs. 50,46,000/-. No other reason has been given for making such disallowance by the Ld. AO in para 7.3 of the assessment order wherein it has been mentioned that "The reply of the assessee has been considered and same is not acceptable as there is no doubt that the assessee is having interest bearing funds and at the same time, it has given interest free unsecured loans to its sister concern." Thus, Ld. AO failed to prove any nexus between interest free unsecured loan given to sister concern and interest bearing funds. Any material in support of finding in the assessment order has not been brought on record by the Ld. AO. On the contrary, I find huge non interest bearing funds of Rs. 5,35,95,873/- under the head Capital and Rs. 2,68,07,586/- under the head Current Liabilities were available to the appellant to advance interest free loan to sister concern. The appellant has mixed type of fund i.e. interest bearing and non-interest bearing. In the circumstances, the judgment of Hon'ble Bombay High Court in the case of **CIT***

vs. Reliance Utilities and Power Limited (2009) 313 ITR 340 can be applied in the instant case wherein it has been held as under:-

"10. If there be interest free funds available to an assessee sufficient to meet its investment and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest free funds available. In our opinion the Supreme Court in East India Pharmaceutical Works Ltd (Supra) had the occasion to consider the decision of the Calcutta High court in Woolcombers of India Ltd.(supra) where a similar issue had arisen. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in Woolcomber's case (supra) the Calcutta High Court had come to the conclusion that the profits were sufficient to meet the advance tax liability and the profits were deposited in the overdraft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumptions, there was sufficient material and the assessee had urged the contention before the High Court. **The principle therefore would be 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 fund generated or available with the company if the interest free funds were sufficient to meet the investments.**"

Similar view was taken by Hon'ble Supreme Court in the case of **CIT vs. Reliance Industries Ltd., (2019) 102 taxmann.com 52(SC)** wherein it was held as under:-

"In so far as the first question is concerned, the issue raises a pure question of fact. The High Court has noted the finding of the Tribunal that the interest free funds available to the assessee were sufficient to meet its investment. Hence, it could be presumed that the investments were made from the interest free funds available with the assessee. The Tribunal has also followed its own order for assessment year 2002-03.

In view of the above findings, we find no reason to interfere with the judgment of the High Court in regard to the first question. Accordingly, the appeals are dismissed in regard to the first question."

In view of the above judicial pronouncements, inference can be safely drawn that interest free unsecured loan advanced by appellant to sister concern was given out of own fund and not out of borrowed fund. The case of the appellant is squarely covered by the above decisions. Thus, the Ld. AO was not justified in disallowing interest of Rs. 50,46,000/- and therefore, the same is deleted. The appeal on this ground is allowed."

9. During hearing before us, Ld. DR re-iterated the order of AO. On the other hand, Ld. AR for assessee re-iterated the order of CIT(A). Ld. AR submitted that the AO has made disallowance for the sake of making addition in assessment-order without giving any thought to the financials of assessee. To demonstrate a serious infirmity in AO's action, Ld. AR carried us to Page No. 1 of the Paper-Book where a Ledger A/c of sister concern to whom loan has been given (M/s Bansal Extraction & Exports Pvt. Ltd.) is filed. Ld. AR showed that the loan of Rs. 3,62,69,654/-, mentioned by AO in assessment-order, is just an year-end balance but the assessee has given loan in parts on as many as 20 occasions spread during the year. Ld. AR submitted that the AO has virtually made a disallowance of entire interest expenditure of Rs. 50,46,398/- claimed by assessee in profit and loss account. Ld. AR supported the order of CIT(A) in stronger terms. He carried us to the Balance-Sheet of assessee filed in the Paper-Book at Page No. 2 to demonstrate that the CIT(A) has used correct figures for making analysis of assessee's financials and thereby giving relief to assessee; his action must be upheld.

10. We have considered rival submissions of both sides and perused the record carefully. On perusal of Para No. 7.3 of assessment-order, it is manifest that the AO has made disallowance on the footing only that the assessee has taken interest-bearing funds but given interest-free loans to its sister concern. But, however, neither the AO has mentioned the nexus of interest-free loans having been given out of interest-bearing funds taken nor he has considered the overall picture of financials of assessee. Thus, the order of AO completely lacks the analysis of financials of assessee and yet

the AO has made disallowance. On the other hand, Ld. CIT(A) has found that the assessee was having non-interest-bearing (i.e. interest-free) funds of Rs. 5,35,95,873/- in the form of share-capital (+) Rs. 2,68,07,586/- in the form of current liabilities. The CIT(A) has also noted that the assessee was having mixed funds i.e. interest-bearing as well as interest-free. Thus, the CIT(A) has considered the overall picture of Balance-Sheet of assessee which shows sufficient interest-free funds available with the assessee. Apparently, the assessee's own capital of Rs. 5,35,95,873/- itself is more than the impugned loan of Rs. 3,62,69,594/- made to the sister concern. The figures used by CIT(A) corroborates with the Balance-Sheet. It, therefore, appears that the view taken by CIT(A) is in line with the judicial rulings mentioned by him in his order. Even during hearing, Ld. DR for revenue, though dutifully supported the assessment-order and opposed first-appeal order but he could not neither show the strength in assessment-order nor any infirmity in the order of first-appeal. Therefore, we do not find any sufficient reason to interfere in the order of CIT(A). The same is, therefore, upheld and revenue's appeal is dismissed.

Assessee's Cross-Objection:

11. In Cross-Objection, the assessee has challenged the legality of assessment-order and re-opening of assessment-proceeding u/s 147. This grievance was also raised by assessee in first-appeal before CIT(A) whereupon the CIT(A) adjudicated as under:

"4.2....Since, the appellant has got relief as per the foregoing paras, these grounds of appeal have not been adjudicated separately as these grounds become purely academic in nature."

12. During hearing before us, Ld. AR for assessee prayed that if the Bench upholds the CIT(A)'s action of deleting the disallowance on merit and agrees to dismiss the Revenue's Appeal, the assessee would not be pressing Cross-Objection. Since we have already dismissed Revenue's Appeal in foregoing

paragraphs, we accept the prayer of assessee. Being so, the Cross-Objection is dismissed as prayed for.

13. Resultantly, the Revenue's appeal as well as Assessee's Cross-objection are dismissed.

Order pronounced in the open court on 11.09.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 11.09.2023.

CPU/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*