

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.355/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2013-14)

&

आयकर अपील सं./ ITA No.356/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2014-15)

DCIT Central Circle-2(1) Chennai-34.	बनाम/ Vs.	M/s. Agni Estates & Foundations Pvt.Ltd, 76, Temple Towers, North Mada Street, Mylapore, Chennai-600 004.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACA-7990-C		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri D. Hema Bhupal (JCIT)- Ld. DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri R. Vijayaraghavan (Advocate)-Ld.AR

सुनवाई की तारीख/ Date of Hearing	:	11-10-2023
घोषणा की तारीख / Date of Pronouncement	:	20-10-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by revenue for Assessment Years (AY) 2013-14 & 2014-15 arises out of common order passed by learned Commissioner of Income Tax (Appeals)-19, Chennai, [CIT(A)] on 31.01.2023 in the matter of separate assessments framed by the Ld. Assessing Officer [AO] u/s 143(3) of the Act. The facts as well as issues are common. The grounds raised by revenue in AY 2013-14 read as under:-

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The Ld.CIT(A) erred in deleting the addition of Rs.2,04,45,076/- made towards disallowance of interest on borrowed capital u/s.36(1)(iii) proportional to amount advanced to sister concerns.

2.1 The Ld.CIT(A) relied on the Supreme court decision in the case of S.A.Builders Ltd Vs CIT and another 288 ITR 1(SC) in deleting the disallowance of interest made u/s.36(1)(iii) , in which it was held that the interest on amount lent to sister concerns out of interest bearing funds is allowable only if it was done as a measure of commercial expediency (i.e) for the purpose of business. But the assessee in the instant case has demonstrated neither before the assessing officer nor before the Commissioner of Income tax(Appeals) the commercial expediency involved in advancing loans to sister concerns out of interest bearing funds.

2.2 The Ld.CIT(A) erred in holding that the expenditure incurred by the assessee in the form of interest is wholly and exclusively for the purpose of business though the assessee fails to prove that the borrowed capital has been utilized for carrying out his business.

3. The Ld.CIT(A) erred in deleting the addition of Rs.1,79,93,880/- made towards disallowance of sponsorship expenses u/s.37(1).

3.1 The Ld.CIT(A) failed to appreciate that the expenses incurred by the trust in running the college such as function and celebration expenses, stationery etc are for the purpose of trust related activities and assessee being a closely related group concern claimed such expenses as promotional expenses through sponsorship agreement on 04/04/2013 with retrospective effect.

3.2 The Ld. CIT(A) erred in failing to appreciate that the assessee has not conclusively proved that the sponsorship fee paid has been wholly and exclusively incurred for the purpose of business, hence the assessing officer has rightly disallowed 100% of the expenditure on record note book & stationery and 50% of expenditure on other expenses incurred by the trust out of sponsorship fee paid by the assessee in the hands of the assessee.

For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

As is evident, two issues fall for our consideration viz. i) Interest disallowance u/s.36(1)(iii); (ii) Disallowance of business expenses u/s.37(1).

2. The Ld. Sr. DR assailed the findings given in the impugned order and pleaded for restoration of assessment as framed by Ld. AO. The Ld. Sr. DR submitted that the assessee could not demonstrate that at the time of making investments, it had free surplus funds available with it to make the investments. On the issue of disallowance of sponsorship

expenses u/s 37(1), the Ld. Sr. DR submitted that the expenditure was not incurred wholly and exclusively for the purpose of assessee's business. The Ld. AR, on the other hand, drew our attention to various documents placed in the paper book and relied on many case laws on the issue of interest disallowance u/s.36(1)(iii). The Ld. AR also submitted that the assessee had sufficient own funds to make the investments and therefore, a presumption could be drawn that investments were out of interest free funds available with the assessee. Reliance has been placed on the decision of Hon'ble Supreme Court in the case of **CIT Vs. Reliance Industries Ltd. (102 Taxmann.com 52)**. The Ld. AR further submitted that expenditure u/s.37(1) was incurred for business promotion of the assessee and therefore, the same are allowable expenditure. Having heard rival submissions and upon perusal of case records, our adjudication would as under.

Assessment Proceedings

3. Interest disallowance u/s 36(1)(iii)

3.1 This disallowance stem from the observation of Ld. AO that the assessee advanced interest free funds to its group concerns to the extent of Rs.1101.06 Lacs as against the fact that it had borrowings of Rs.2887.39 Lacs and debited interest expenditure of Rs.536.17 Lacs. The loans so advanced were not connected to assessee's business and the business expediency of the same could not be established by the assessee. Accordingly, Ld. AO computed proportionate disallowance u/s 36(1)(iii) for Rs.204.45 Lacs.

3.2 During appellate proceedings, the assessee, inter-alia, submitted that the advances were out of commercial expediency and relied on the

case of Hon'ble High Court of Madras in **CIT Vs. M. Ethurajan (273 ITR 95)** and also on the decision of Hon'ble Apex Court in the case of **S.A. Builders Ltd. (288 ITR 1)**. Considering these judicial decisions, Ld. CIT(A) deleted interest disallowance for both the years against which the revenue is in further appeal before us.

3.3 Before us, Ld. AR has drawn our attention to the financial statements of the assessee and submitted that own funds far exceeded the advances made by the assessee. Therefore, no such disallowance could have been made by revenue as per ratio laid down by Hon'ble Supreme Court in the case of **CIT Vs. Reliance Industries Ltd. (102 Taxmann.com 52)**. The Ld. AR further submitted that in such a case, unless nexus of borrowed funds vis-à-vis advances made by the assessee is established by Ld. AO, a presumption would arise in assessee's favor that the advances were made out of interest-free funds available with the assessee. The Ld. AR also supported the findings rendered in the impugned order.

3.4 Upon perusal of assessee's financial statements, it could very well be seen that the interest-free funds available with the assessee in the shape of share capital and reserves & surplus far exceeds the short term loans and advances adduced by the assessee. The assessee uses mixed funds. In such a case, a presumption would arise in assessee's favor that the advances were made out of interest-free funds available with the assessee and the onus would be on Ld. AO to justify the impugned disallowance. We find that no such exercise has been carried out by Ld. AO and therefore, it was to be presumed that funds were advances first out of interest free funds available with the assessee. The

cited case law of Hon'ble Supreme Court in the case of **CIT Vs. Reliance Industries Ltd. (supra)** duly supports this view. Another finding rendered by Ld. CIT(A) is that the funds were advanced out of commercial expediency. The said finding remains uncontroverted before us. The Hon'ble Supreme Court in the case of **S.A. Builders Ltd. (288 ITR 1)** held that once nexus was established between the expenditure and the purpose of the business, which need not necessarily be the business of the assessee itself, revenue could not disallow the claim assuming what was reasonable. Therefore, on the facts and circumstances, we concur with the adjudication of Ld. CIT(A) and dismiss the ground raised by the revenue, in both the years.

4. Disallowance u/s 37(1)

4.1 The assessee claimed sponsorship expenses of Rs.280 Lacs. It was submitted that M/s Vels Srinivasa College of Engineering and Technology had proposed for rebranding of its name. The college had accepted the proposal of renaming it as AGNI College of Technology. The brand AGNI was being promoted by the assessee in the society by this way. The college had spent a lot on its branding campaign and a part of it was sponsored by the assessee. Thus, it was a form of brand building for the assessee. The assessee produced sponsorship agreement and also the copies of invoices to support its submissions.

4.2 The Ld. AO, upon perusal of agreement, observed that as per contractual terms, Agni College of Technology (ACT) was to use the logo of the assessee company in all its promotional campaigns in any form of advertisement and the cost of such sponsorship would be Rs.250 Lacs for every financial year starting from financial year 2012-13 for 5 years.

This fee was to be spent by the college for the promotional activities. The assessee also furnished evidences and also filed expenses break-up of promotional expenditure as under: -

1.	Functions and celebration expenses	3741994
2.	Advertisement expenses	6323047
3.	Promotional expenses	290248
4.	Record note and other stationery item	10767350
	Total	21122639

The Ld. AO observed that the amount was spent by the college on functions / celebration expenses, advertisement expenses, promotional expenses, record note and other stationery items. The Ld. AO further observed that the said expenditure, being regular nature of expenditure for a college, could not be termed as sponsorship expense for printing logo on its books. With respect to the other items also, it could not be properly adduced that the entire amount was spent towards promoting the assessee company, which has a distinctly different business line with that of the college.

4.3 The requirements of Sec.37(1) were that the expenditure is incurred wholly and exclusively for the purposes of the business and this condition was not satisfied in the present case. The expenses of record note and other stationery item was merely an after-thought which was evidenced by the post-dated agreement with retrospective effect. Therefore, this expenditure was disallowed in full.

4.4 In respect of the other three heads of expenditure also, there was no conclusive proof that the same was wholly spent for the purpose of assessee's business, even though the same could have been a part of

its promotional activities. Therefore, 50% of these three items was allowed and remaining amount was disallowed.

4.5 During appellate proceedings, the assessee, inter-alia, submitted that it was developing lots of projects in the areas of Perubakkam, Prungudi, Kazhipattur on OMR which catered to the needs of prospective flat buyers. The promotion activities on the college located in that area would be a big promotional activity and expected to benefit the organization's business objectives.

4.6 Accepting these submissions of the assessee, Ld. CIT(A) observed that in the present case, the only dispute was whether the expenditure incurred was incurred to promote the business or not. On examination of sponsorship agreement between the assessee and Sri Balaji Charitable and Educational Trust who was operating the college, would show that Agni college of Technology (ACT) was to use the logo of the assessee in all its promotional campaigns in any form of advertisement. The cost of such sponsorship was pegged at Rs.2.50 Crores per financial year for 5 years. The Ld. AO called for the evidences for the actual spending of the sponsorship fees given by the assessee as per the agreement along with the financials of the Trust which was duly furnished. The trust college was using the logo of the assessee company on all the stationery items and record note as per the agreement. Therefore, the expenses were related to business promotion of the assessee company and hence, allowable expenditure. Regarding 50% disallowance of other expenditure, Ld. CIT(A) observed that all these expenditures were part of assessee's business activities. The Ld. AO did not corroborate that the expenses was not incurred or not paid. The only reason for disallowance

was on the ground that there was no conclusive proof that the expenditure was wholly spent for the purpose of assessee's business. However, the assessee paid the amount to the trust college who incurred the same as per the agreement. Therefore, the assessee would be eligible to claim the deduction of the same. Finally, the impugned disallowance was deleted against which the revenue is in further appeal before us.

4.7 After going through assessment order as well as appellate order, we find that the assessee has paid sponsorship fees in terms of an agreement to carry out business promotional activities. As per the terms of the agreement, Sri Balaji Charitable and Educational Trust was to carry out various sponsorship activities in assessee's name as sponsor against yearly payment of Rs.2.50 Crores. The payment is backed by the agreement and invoices and the revenue has no material to doubt the same. The assessee has also furnished the details of actual expenditure incurred on business promotion activities. In such a case, it was not open for Ld. AO to question the commercial wisdom of the assessee as to how the business was to be promoted. The assessee's logo has been used on stationary items and other record books which would be used by large number of students and enhance the image of the assessee in the minds of the parents of the students. Similarly, there is no basis to arrive at a conclusion that 50% of other expenditure was to be considered as an expenditure qualifying the test laid down u/s 37(1). There is no material whatsoever to reach such a conclusion. The case law of Hon'ble High Court of Madras in the case of **MRF Ltd. (128 Taxmann.com 21)** duly supports our view. In this decision, it was observed by Hon'ble

Court that it was not for Ld. AO to decide what would be good for the assessee in promoting its business and therefore, decision cannot be arrived at by the Assessing Officer based on his own personal perceptions and it should be left to the decision of the assessee, who is the best person, who knows that what would be best for his business activity. Therefore, concurring with the adjudication of Ld. CIT(A) in the impugned order, we dismiss the corresponding grounds in both the years.

Conclusion

5. Both the appeals stand dismissed.

Order pronounced on 20th October, 2023

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :20-10-2020

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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF