

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI
BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.1773/Del/2020
(ASSESSMENT YEAR 2015-16)**

M/s MG Finvest Pvt. Ltd. 98, Old Rohtak Road Shahzada Bagh Industrial Area New Delhi-110 035 PAN-AAFCM 2931E	Vs.	Income Tax Officer Ward-16(1) New Delhi
(Appellant)		(Respondent)

Assessee by	Sh. Akhilesh Kumar and Sh. Arun Kumar, Advs.
Department by	Sh. Alok Bhura, Sr.DR

Date of Hearing	12/10/2023
Date of Pronouncement	20/10/2023

ORDER

PER M. BALAGANESH AM:

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)-Delhi-36, [hereinafter referred to as 'Ld. CIT(A)'] in DIN & Order No: ITBA/APL/S/250/2020-21/1027803755(1) dated 26/08/2020 against the order passed by Income Tax Officer, Ward-16, New

Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act (hereinafter referred to as 'the Act') on 28/12/2017 for the Assessment Year 2015-16.

2. The assessee has raised one original ground and one additional ground. The issue raised in the original ground is challenging the confirmation of disallowance of interest of Rs.79,37,461/-.

3. We have heard the rival submissions and perused the materials available on record. The assessee company is having business to acquire securities or investment in projects. The Ld. AO observed that assessee had debited a sum of Rs.79,37,461/- on account of interest payment. The Ld. AO observed that in the balance sheet of the assessee, the assessee company has given interest free advances to the tune of Rs.54.61 Crores and, accordingly, concluded that the same was given out of borrowed funds. Consequently, the Ld. AO disallowed the interest of Rs.79,32,461/- in the assessment. This assessment of the Ld. AO was upheld by the Ld. CIT(A).

4. At the outset, we find that the assessee is having sufficient interest free advances which is reflected in the balance sheet itself to the tune of Rs.281.08 Crores as on 31.03.2015, whereas the interest free advances given is only to the extent of Rs.54.61 Crores. Hence, it could be safely presumed that the interest free advances given were out of the interest free funds available with the assessee and hence, there is no usage of borrowed funds for making interest free advances. Accordingly, there cannot be any disallowance of interest. Our view is further fortified by the decision of Hon'ble Supreme Court in the case of *CIT vs. Reliance Industries Ltd.* reported in 410 ITR 466 (SC). The Ld. DR placed on record a decision of Hon'ble Jurisdictional High Court in the case of *Punjab Stainless Steel Industries v. CIT*, reported in 324 ITR 396 (Delhi) in support of the argument of the Revenue. We have gone through the said decision and in that case there was a categorical finding that interest free advances were extended out of the borrowed funds and not out of any credit balance available with that assessee. On those facts, disallowance was confirmed by the Hon'ble High Court. This decision, in our considered opinion is factual distinguishable with the assessee herein, as in the assessee's case, the assessee had

given the details before the Ld. AO that it had sufficient interest free funds in its kitty which is evident from the tabulation referred by the Ld. AO himself in his assessment order. In any case, we find that issue in dispute is already covered by the decision of Hon'ble Supreme Court referred (supra). Accordingly, original grounds raised by the assessee are hereby allowed.

6. We find that the assessee vide letter dated 28/01/2023 has raised the additional ground stating that the Ld. AO had not allowed set off of brought forward losses which was claimed as per the Income Tax Return while computing the income of the assessee. This was omitted to be raised as a ground by the assessee before the Ld. CIT(A) and that is why the same had come in the form of Additional Ground. The Ld. AR drew our attention to page 59 of the PB containing the Income Tax Return wherein a sum of Rs.27,65,529/- was clearly mentioned as total loss to be carry forward to subsequent years in the relevant column Schedule CFL of the ITR. Despite this fact being reflected in the ITR, the Ld. AO has chosen not to set off the same with the income computed on the assessee. There is no finding given by the Ld. AO in his assessment order with regard to the carry forward losses. Hence, in

the interest of justice, we feel with this additional ground deserves to be admitted and the same is restored to the file of the Ld. AO to decide the same in accordance with law.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20th October, 2023.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 20/10/2023

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI