

- (i) Rs.7,25,09,930/- towards excess of interest expenditure on unsecured/ bank loans;
- (ii) Rs.1,33,17,919/- towards brokerage/commission; and,
- (iii) Rs.56,401/- towards bank charges.

3. The brief facts necessary for the disposal of the appeal may be stated thus—

That the respondent-assessee is the promoter of Shreepati Group of companies, AOPs & LLPs, which is engaged in the business as a developer and builder and allied activities. The income of the respondent-assessee consists of 'income from salary', 'income from house property', 'income from capital gains', 'profit and gains of business and profession' and 'income from other sources'.

4. The respondent-assessee had filed his Return of Income (RoI) for assessment year 2016-17 on 17.10.2016 declaring a total income of Rs.29,94,110/-. The case was selected for complete scrutiny and a notice under Section 143(2) r.w.s. 142(1) of the Income Tax Act, 1961 ('the Act' for short) was issued, to which the respondent-assessee filed a response.

5. The Assessing Officer after considering the submissions of the assessee completed the assessment making the aforesaid additions towards excess of interest expenditure claimed on unsecured/bank loans, brokerage/commission and bank charges.

6. Feeling aggrieved, the assessee carried the matter in appeal before the CIT(A). It was, *inter-alia*, contended on behalf of the assessee before the CIT(A) that the additions could not have been made mainly on the ground that there

were no circumstances on record showing that there was any diversion of funds obtained by the respondent-assessee on interest and the Assessing Officer could not have placed himself in the armchair of the assessee, questioning the commercial expediency. It was thus contended that the impugned additions made were not justified.

7. The CIT(A) after considering the submissions, has deleted the additions made, which is the subject matter of challenge in this appeal at the instance of the Revenue.

8. A perusal of the impugned order passed by CIT(A) will show that the CIT(A) has relied upon an earlier decision of this Tribunal in respect of assessee's own case for assessment year 2015-16 (ITA No. 5064/Mum/2018 decided on 13.07.2020). The CIT(A) after extensively reproducing the findings recorded by this Tribunal in the aforesaid appeal has thereafter concluded in para 6.4 that the facts as obtaining in the present case are identical to the facts in respect of assessment year 2015-16. In that view of the matter, the appeal came to be allowed.

9. We have heard the learned CIT-DR for the appellant and the learned counsel for the respondent-assessee. With their assistance we have gone through the record.

10. It is submitted by the learned CIT-DR that the Assessing Officer after perusal of the record and by a well-reasoned order had made the addition only to the extent of difference of interest amount paid to banks and the relatives and interest income received. It is thus submitted that the view taken by the Assessing Officer is a plausible view emanating from the circumstances on

record. It is pointed out that the disallowance has been limited to Rs.7,25,09,930/-, which order could not have been interfered with by the learned CIT(A). It is submitted that the respondent-assessee has failed to demonstrate that the financial assistance availed of on interest has been utilized for the purpose of business and that there is no diversion. It is submitted that Section 36(1)(iii) of the Act essentially frowns upon the diversion of interest laden funds for non-business activity, which is an aspect which would depend upon the facts and circumstances of each case and will have to be established in respect of each assessment year. It is thus submitted that the CIT(A) was in error in placing a blanket reliance on assessee's own case for assessment year 2015-16.

11. The learned counsel for the respondent-assessee, on the contrary, has supported the impugned order. It is submitted that the CIT(A) has rightly considered the decision of the Tribunal in assessee's own case for assessment year 2015-16, particularly when the CIT(A) found that the facts for the year under consideration are identical. It is thus submitted that the CIT(A) after examining the facts as obtaining in the present case has proceeded to abide by the decision of the Tribunal for the earlier period in the assessee's own case. It is submitted that in a case where the assessee has sufficient interest free funds available, then the presumption is that the interest free advances or advances at lower rate of interest are made out of such interest free funds and not out of interest laden funds/overdrafts. Reliance in this regard is placed on the decision of Hon'ble Bombay High Court in the case of *Reliance Utilities and Power Ltd., 313 ITR 340 (Bom.)*. It is submitted that from the records produced before the Assessing Officer it is sufficiently established that the assessee had sufficient interest free funds available so as to meet the amount which has been advanced

to related and unrelated parties. The learned counsel for respondent-assessee in this regard has referred to the statement of funds available as on 31.03.2016 as well as the details of loans given on interest basis for financial year 2015-16 as under:-

Sr.No.	Particulars	Amount (Rs.)
1	<u>Interest-free funds available</u>	
(a)	Capital Account of the appellant (excluding profit on revaluation of assets)	54,74,90,773
(b)	Unsecured Loans taken from relatives, corporates and others	47,88,74,997
(c)	Deposits	51,25,00,000
	Total interest-free funds available	1,53,88,65,770
2	<u>Interest-bearing funds available</u>	
(a)	Secured loans from Banks and others	25,23,37,495
(b)	Unsecured Loans taken from corporates and others	1,66,66,17,915
	Total interest-bearing funds available	1,91,89,55,410
	Total Funds available	3,45,78,21,180
1	Fixed Assets (excluding profit on revaluation)	52,58,70,597
2	Investment in shares and others	12,41,06,309
3(a)	Interest-free loans and advances given	1,01,90,48,922
3(b)	Interest-bearing loans and advances given	1,56,72,11,398
4	Deposits	1,78,409
5	Net Current Assets	22,14,05,545
	Total Funds Applied	3,45,78,21,180

With reference to the same, it is submitted that the assessee had total interest free funds of Rs.153,88,65,770/- and the interest free loans and advances given are to the extent of Rs.101,90,48,922/-. It is submitted that the reliance placed by the Assessing Officer on the decisions of Hon'ble Bombay High Court in *Phaltan Sugar Works Ltd. vs CWT, 208 ITR 989 (Bom.)* and *Phaltan Sugar Works Ltd. vs CIT, 215 ITR 582 (Bom)* are misplaced as the said decisions have been overruled by the Hon'ble Supreme Court in *S.A. Builders Ltd. vs Commissioner of*

Income Tax (Appeals), 288 ITR 1 (SC). He, therefore, submitted that the impugned order does not call for any interference.

12. We have carefully considered the rival circumstances and the submissions made. It is now well-settled that where an assessee has a pool of funds comprising of both interest free and interest laden funds, the advance made to subsidiaries, family, friends or relatives are presumed to be made out of such interest free funds, provided the interest free funds available are sufficient to meet the amount of such advances. It is also well settled that the Assessing Officer cannot question the commercial wisdom/expediency. In other words, the Assessing Officer cannot place himself in the armchair of the assessee. The only aspect which would normally enter into the consideration of the Assessing Officer is whether the interest free funds available are sufficient to meet the interest free advances or advances at a lower rate of interest. It can thus be seen that it would essentially be an exercise of examination of the facts pertaining to the particular assessment year. To that extent, the learned CIT-DR is right that an omnibus reliance cannot be placed in such a case on the previous decision in the assessee's own case inasmuch as the question about the availability of sufficient interest free funds as well as the nature and extent of the advances made during the relevant period would be a question of fact relevant to the said period. However, on perusal of order passed by the CIT(A), we find that the CIT(A) has recorded a specific finding that the facts obtaining in the year under consideration are identical to the facts for assessment year 2015-16 in respect of which there is already an order passed by the Tribunal in assessee's favour deleting the addition made towards excess of interest expenditure.

13. In that view of the matter, we have made an attempt to examine the facts and have found on the basis of the statements as reproduced above that even

under the year under consideration, assessee had sufficient interest free funds so as to cover the advances made on interest to related parties except in case of Shreepati Build Infra Investment Ltd. where the rate of interest is said to be 9%. For all other related parties, the interest rate charged is 12%. Insofar as Shreepati Build Infra Investment Ltd. is concerned, the promoter is shown to be a shareholder/Director. In respect of two unrelated parties, Jitendra F. Jain and New India Roadways, the advance is made at 9% p.a. The other two additions relating to brokerage, commission and bank charges are consequential in nature. Since we have deleted interest disallowance, both these additions are liable to be deleted. Upon careful perusal of the records and the impugned order passed by the CIT(A), we do not find that a case for interference is made out. The appeal is accordingly dismissed.

14. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 16/04/2024.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Mumbai; Dated : 16/04/2024

SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai