

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1748/Del/2019
(Assessment Year: 2012-13)**

M/s. Beacon Higher Education Services Pvt. Ltd, S-40, 2 nd Floor, Vasant Square Mall, Plot No. A, Sector-B, Vasant Kunj, New Delhi (Appellant)	Vs. DCIT, Circle-4(2), Delhi
PAN:AAECB1283F	(Respondent)

Assessee by : Shri V. K. Agarwal, AR
Ms. Shweta Bansal, CA

Revenue by: Shri Kanv Bali, Sr. DR

Date of Hearing 28/03/2024
Date of pronouncement 14/06/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1748/Del/2019 for AY 2012-13, arises out of the order of the Commissioner of Income Tax (Appeals)-2, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 615/14-15 dated 10.01.2019 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.01.2015 by the Assessing Officer, DCIT, Circle-4(2), New Delhi (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal before us:-

"1. Under the facts and circumstances of the case, the CIT(A) has grossly erred on facts as well as in law in partially confirming the order passed by the Ld. AO which is ex-facie illegal, arbitrary and without jurisdiction being against the principles of natural justice and against the provisions of IT Act, 1961.

2. *The Id. CIT(A) has grossly erred on facts as well as in law in confirming the disallowance of interest expense amounting to Rs. 9,26,71,234/- and disallowance of processing fees amounting to Rs. 1,11,43,795/-.*
3. The Ground No. 1 is general in nature and does not require any specific adjudication.
4. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance of interest u/s 36(1)(iii) of the Act in the facts and circumstances of the instant case.
5. We have heard the rival submissions and perused the materials available on record. The assessee company was incorporated on 28.5.2010 and engaged in the business of providing higher education services and helps in the setting up and management of colleges, universities & executive education programs and establishing, supporting & providing management consulting services as well as financial assistance services to higher education institutions and also engaged in enabling the provision of high quality professional tertiary education including undergraduate, post graduate , executive and continuing education. The return of income for the Asst Year 2012-13 was filed by the assessee company on 29.9.2012 declaring loss of Rs 12,39,10,240/-. During the course of scrutiny assessment proceedings, the Id. AO observed that the assessee had taken loan from financial institution on which it had suffered interest on one hand and on the other hand, had resorted to interest free loans to its subsidiary company. Correspondingly, the interest paid on loans in the sum of Rs 9.26,71,234/- and loan processing charges of Rs 1,11,43,795/- was sought to be disallowed by the Id. AO on the ground that the borrowed funds were diverted for non-business purposes u/s 36(1)(iii) of the Act and assessment was completed accordingly. This action of the Id. AO was upheld by the Id. CIT(A).
6. It is not in dispute that the assessee had borrowed loan of Rs 75 crores from IFCI during the year under consideration. The assessee paid loan processing fees of Rs 1,11,43,795/- for the same to IFCI. The balance sheet of the assessee company as on 31.3.2012 & 31.3.2013 are enclosed in Pages 1 to

46 of the Paper Book. The Memorandum and Articles of Association of the assessee company is enclosed in Pages 59 to 78 of the Paper Book, from where the objects of the assessee company and its activities could be deciphered. The assessee advanced total funds of Rs 74.20 crores to its Subsidiary company M/s Great Learning Management Pvt Ltd (GLMPL). Out of this, a sum of Rs 7.64 crores was made as Equity Investment in GLMPL and Rs 66.56 crores was given as loan to GLMPL by the assessee company. The assessee had further advanced loans of Rs 14.99 crores to Sarva Siksha Samadhan Pvt Ltd and Rs 3.93 crores to Applied Higher Education & Development Trust. From the perusal of the Balance Sheet of the assessee, we find that the loans to Applied Higher Education & Development Trust of Rs 3.93 crores and Sarva Siksha Samadhan Pvt Ltd were given in the earlier years out of own funds and the borrowed funds were not utilized at all for the same. Hence there is no question of any interest disallowance proportionate to the said interest free loan. From the perusal of the Balance Sheet of the assessee, it is also found that the assessee company is having sufficient interest free funds to the extent of Rs 58.40 crores as on 31.3.2012 and Rs 53.56 crores as on 31.3.2011. Hence to this extent, it could be reasonably presumed that the interest free loans were given out of interest free funds available with the assessee company and hence there cannot be disallowance of any interest on borrowed funds thereon. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of CIT vs Reliance Industries Ltd reported in 102 taxmann.com 52 (SC) wherein it was held that interest free funds were available to assessee which were sufficient to meet its investment in subsidiaries, appellate authorities were justified in allowing the claim of deduction of interest. Hence there cannot be any disallowance of interest u/s 36(1)(iii) of the Act to the extent of availability of own funds with the assessee company.

7. As stated earlier, the total funds advanced by the assessee company to GLMPL (subsidiary company) was Rs 74.20 crores which comprises of equity investment of Rs 7.64 crores and loans of Rs 66.56 crores. Hence out of the total funds advanced to subsidiary company GLMPL during the year, the assessee had

sufficient own funds to the extent of Rs 20.86 crores (after adjusting the own funds for other interest free loans to other subsidiary company and Applied Health referred supra) and hence only for the balance amount of Rs 53.34 crores, the assessee has to explain whether the lending and investment made in subsidiary company was out of commercial expediency. The assessee by making equity investment of Rs 7.64 crores in GLMPL was able to obtain controlling interest of 52.31%. These facts are staring on us on plain perusal of the Balance sheet itself and hence cannot be disputed. The Id. AR before us submitted that GLMPL also carry the identical objects in its Memorandum of Association and hence the main objects of both assessee as well as GLMPL are exactly the same. Since GLMPL (subsidiary company) was engaged in identical objects with that of the assessee, the amounts advanced by the assessee company to its subsidiary would have to be construed only out of commercial expediency. The Id. AR further submitted that GLMPL out of funds received from the assessee , had in turn advanced funds to Great Lakes Institute of Management (GLIM) which is a section 25 company under the Companies Act 1956. The said section 25 company was working in the area of promoting higher education in the management field. It was a strategic investment by way of equity and loans made by GLMPL in GLIM to get associated with a very high quality education institution in higher education domain with a great potential to be one of the leading player in its category. Pursuant to this, GLIM became step down subsidiary of the assessee company and it gave the assessee an opportunity to get into an arrangement with GLIM to take care of its non-academic activities including admission services, program promotion services, career development and placement services , hostel infrastructure management services, student skill development services etc. This helped GLIM concentrate on its core academic activities and soon the results were visible to both the parties. The number of full time students in GLIM increased manifold due to its core concentration in core academic activities which is evident from the table below:-

<i>Financial Year</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>
<i>No of Full time Student s in GLIM</i>	<i>300</i>	<i>384</i>	<i>666</i>	<i>77</i>	<i>77</i>	<i>804</i>	<i>850</i>

8. Similarly, the assessee also got an opportunity to grow its business at a rapid pace with business from GLIM as evidenced from the following table:-

		(Rupees in Lacs)				
<u>Financial Year</u>	<u>Total Revenue</u>	<u>Total Operating Expenses</u>	<u>Interest and Processing Fee</u>	<u>Depreciation & Amortisation</u>	<u>Profit before Tax</u>	<u>Revenue from strategic investment</u>
2011-12	197	181	1038	146	-1168	
2012-13	816	320	980	174	-658	479
2013-14	2702	1339	810	174	379	2683
2014-15	2308	1316	563	375	54	2299
2015-16	2594	2131	237	516	-290	2566
2016-17	2304	1094	8	516	686	2286
2017-18	2848	1182		380	1286	2656
2018-19	1772	1228		377	167	1721

9. From the above table, it could be easily concluded that the assessee company pursuant to making the investment in GLMPL and GLIM (directly and indirectly), had been benefitted substantially by obtaining significant and major revenue from GLIM. This itself goes to prove that the amounts advanced by the assessee company to its subsidiary company was out of commercial expediency. In our considered opinion, the lending and investment was made in the subsidiary company only as a measure of commercial expediency. Once the investment and lending is for commercial expediency, there is absolutely no scope for making disallowance of interest u/s 36(1)(iii) of the Act. Reliance in this regard had been rightly placed by the Id. AR on the decision of the Hon'ble Supreme Court in the case of SA Builders Ltd vs CIT reported in 288 ITR 1 (SC). Hence we have no hesitation to hold that the loan borrowed from IFCI had been utilized only for the purpose of business by the assessee company.

10. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we hold that there cannot be any disallowance of interest on borrowed funds u/s 36(1)(iii) of the Act in the facts

and circumstances of the instant case. Accordingly, we direct the Id. AO to delete the disallowance of Rs 10.38 crores towards interest and processing fees and the grounds raised by the assessee are allowed.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 14/06/2024.

-Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 14/06/2024
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi