

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI**

**BEFORE JUSTICE (RETD.) C V BHADANG, HON'BLE PRESIDENT &  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA NO.798/MUM/2024  
Assessment Year 2016-17**

M/s. Vora Financial Services Private Limited,  
081, 806, 8<sup>th</sup> Floor, Elite Square,  
274, Perin Nariman St.Bazar Gate,  
Fort, Mumbai – 400 001  
PAN:AAACV-1975-E

- Appellant

Vs.

Deputy Commissioner of Income Tax,  
Circle – 2(3)(1), Mumbai,  
Aaykar Bhavan, M.K. Road,  
Mumbai – 400 020

- Respondent-

Appellant by : Shri K.Gopal/Ms.Neha Praranjpe  
Respondent by : Ms. Rajeshwari Menon

Date of Hearing : 04/06/2024  
Date of Pronouncement : 20/06/2024

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER :**

The assessee has filed this appeal challenging the order dated 21-12-2023 passed by learned CIT(A), NFAC, Delhi and it relates to the assessment year 2016-17.

2. The assessee has raised two issues, viz.,

(a) disallowance of interest expenditure under section 36(1)(iii) of the Act and

(b) disallowance made under section 14 A of the act.

At the time of hearing, the learned AR did not press the ground relating to disallowance made under section 14A of the Act. Accordingly the said ground is dismissed as not pressed.

3. The surviving issue relates to the disallowance of proportionate interest expenditure of 28.94 lakhs attributable to interest free loans and advances given to M/s Sunil Capital and Securities P Ltd. The facts relating to the above said issue are set out in brief. The assessee is engaged in the business of trading in shares and securities. The AO noticed that the assessee has incurred interest expenditure of 3.11 crores. He also noticed that the assessee has advanced loans to the tune of 5.52 crores to a sister concern named M/s. Sunil Capital and Securities Private limited and did not charge interest thereon. The AO took the view that the loan given to the above said concern is a case of diversion of interest bearing fund and accordingly he disallowed proportionate interest expenditure of 28.94 lakhs. The learned CIT(A) also confirmed the same. Hence the assessee has filed this appeal before the tribunal.

4. We heard the parties and perused the record. The case of the assessee is that the amount was advanced to M/s Sunil Capital and Securities Private limited in connection with the business transactions of purchase and sale of shares. Hence the assessee did not charge any interest on the amount so advanced, since it was a commercial transaction. In support of the above said submission, the learned AR drew our attention to pages 48, 49 and 100 in the paper book filed by the assessee. These pages contain copies of the Ledger account of "Sunil Capital and Securities Private limited" in the books of the assessee as well as the Ledger account copy of the assessee in the books of the above said concern. He submitted that these ledger accounts copies placed at pages 48 & 49, which relate to the year under consideration, would show that the transactions entered between the parties related to purchase and sale of shares during the year under consideration. Inviting our attention to page number 100 of the paper book, the learned AR submitted that the this ledger account copy contains the transactions of subsequent years also and it will show that the assessee has purchased shares in the subsequent years, out of outstanding balance due to the assessee. Accordingly the learned AR submitted that the transactions

entered by the assessee with M/s. Sunil Capital and Securities Private limited are in the nature of business transactions. Further, the amount advanced by the assessee has been squared off in the subsequent years either by way of purchase of shares or by way of return of balance money. Accordingly he submitted that the money was advanced to the above said concern on commercial consideration and hence the assessing officer was not justified in making disallowance of proportionate interest expenditure.

5. The learned DR, on the contrary, relied on the orders passed by the tax authorities. He further submitted that the submissions made by Ld A.R do not find place in the assessment order and hence these factual aspects requires verification at the end of the assessing officer.

6. We heard rival contentions and perused the record. On the scrutiny of the pages 48, 49 and 100 of the paper book, we noticed that the amount advanced by the assessee have been adjusted against shares purchased by the assessee. Hence, prima facie, the submission of the learned AR appears to be correct. There should not be any dispute that the question of diversion of fund will not arise in respect of business transactions, since they are entered on account of commercial considerations. However, as rightly pointed by learned DR, these submission of the assessee requires verification at the end of the assessing officer, since we notice that these submissions were not properly placed before the assessing officer. Further the Ledger account copies furnished by the assessee, in our view, also require examination by the assessing officer. Accordingly, we set aside the order passed by learned CIT (A) on this issue and restore the same to the file of the assessing officer for examining it afresh by duly considering the Ledger account copies and also any other information/explanations that may be furnished by the assessee. After affording adequate opportunity of being heard to the assessee, the AO may take appropriate decision in accordance with the law.

7. In the result the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 20<sup>th</sup> June, 2024.

Sd/-

[Justice (Retd) C V Bhadang]  
President

Mumbai, Date : 20<sup>th</sup> June, 2024

VM.

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "F" Bench, Mumbai
- 5) Guard file

Sd/-

(B.R. Baskaran)  
Accountant Member

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai