

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.224/Chny/2024  
निर्धारण वर्ष/Assessment Year: 2013-14

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| M/s.EH Building Consultancy-<br>Pvt. Ltd.,<br>1C, 1 <sup>st</sup> Floor, 88/4,<br>Gowri Chitra Garden Complex,<br>Arcot Road, Chennai-600 026.<br>[PAN: AABCE 8062 E]<br>(अपीलार्थी/Appellant) | v. | The ACIT,<br>Corporate Circle-2(1),<br>Chennai.<br>(प्रत्यर्थी/Respondent) |
| अपीलार्थी की ओर से/ Appellant by   | :  | Shri Harsha Vardan, Adv.   |
| प्रत्यर्थी की ओर से /Respondent by   | :  | Shri P. Sajit Kumar, JCIT  |
| सुनवाईकीतारीख/Date of Hearing  | :  | 04.07.2024   |
| घोषणाकीतारीख /Date of Pronouncement  | :  | 21.08.2024   |

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 08.01.2024 for the Assessment Year (hereinafter in short "AY") 2013-14.

2. The only grievance that has been raised before us is against the action of the Ld.CIT(A) confirming the action of the AO disallowing interest of Rs.25,95,810/- on account of diversion of interest-bearing funds towards low interest-bearing loans.



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**3.** The brief facts are that the assessee company filed its return of income for AY 2013-14 on 01.10.2013 declaring total income of Rs. NIL and reflected business loss of Rs.51,74,593/-. Later, the case of the assessee was selected for scrutiny and the AO, *inter alia*, noted that assessee has showed the sources of funds which included long term borrowings of Rs.5,77,90,006/- and that the assessee has received interest of Rs.37,44,000/- @ 8.51% on loan advanced to M/s.Info Drive Software Ltd., to the tune of Rs.4,40,00,000/-. The AO also noted that the assessee has paid interest of Rs.51,69,043/- to creditors @15-18% whereas, it received interest @ 8.51% from M/s.Info Drive Software Ltd. Therefore, the AO asked the assessee to explain '*as to why*' proportionate interest (*out of total interest debited to P & L A/c*) relevant to amount advanced at low interest rates be not disallowed, as having been diverted for non-business purpose. And the AO having noted that the assessee has taken loans on higher rate of interest and advanced at a lower rate of interest which according to him, was diversion of funds at low interest rates which are not for the benefit of the assessee, he disallowed a sum of Rs.22,95,810/- as under:-

| Party                               | Loan Outstanding | Interest paid | Rate | Interest allowed | Interest Disallowed |
|-------------------------------------|------------------|---------------|------|------------------|---------------------|
| Martech Peripherals P Ltd           | Rs. 1,60,00,000  | Rs.45,77,261  | 15%  | Rs. 25.93,791    | Rs.19.83,480        |
| Anandram Developers Private Limited | Rs. 50,00,000    | Rs, 5,91,782  | 15%  | Rs. 2,79,452     | Rs. 3,12,330        |



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4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who confirmed the same.

5. Aggrieved, the assessee is in appeal before this Tribunal.

6. We have heard both the parties and perused the material available on record. Before us, the Ld.AR submitted that the assessee had a total long-term borrowing of Rs.5,77,90,006/-. And out of which Rs.2,10,00,000/- are interest-bearing loans, and that out of Rs.2,10,00,000/-, the assessee had availed a sum of Rs.1,60,00,000/- at the rate of interest of 15% and a sum of Rs.50,00,000/- was availed at interest rate of 18%; and the balance amount of Rs.3,67,90,006/- are interest-free loans. And that the assessee had given advance/loan of a sum of Rs.4,40,00,000/- @8.51% to M/s.Info Drive Software limited. According to the Ld.AR, the AO in the assessment order had, without appreciating about the mixed funds (*interest-free amount of Rs.3,67,90,000/- as well as interest bearing amount of Rs.1.60 crs at 15% & Rs 50 lacs at 18%*), has erred in adding/computing disproportionate interest in the hands of assessee. According to the Ld.AR, the assessee was not given the benefit of presumption where mixed funds are in the hands of assessee as seen above. According to the Ld.AR, firstly, if the benefit of presumption is given to the Assessee/Appellant, the entire non-interest-bearing loan amount i.e.



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Rs.3,67,90,000/- to be disregarded. Therefore, out of Rs.4,40,00,000/- loan advanced by the Assessee/ Appellant to M/s.Info Drive Software limited, it would have to be necessarily presumed that sum of Rs.3,67,90,006/- was out of non-interest-bearing loans and hence disregarded for this purpose (computing the purported interest disallowing) and the difference would only have to be considered and that would amount to sum of Rs. 72,09,994/- (Rs.4,40,00,000 **minus** Rs.3,67,90,006 = Rs.72,09,994). Secondly, for the purposes of calculating proportionate interest, the Ld.AR submitted that while computing interest rate of 15%, the AO ought to have arrived at the proportionate interest by calculating such rate of interest by reducing the rate at which the assessee had advanced the loan i.e. @8.51%. If that is taken into consideration herein, out of the 15%, the rate of interest taken into account by the AO, 8.51% is to be reduced, therefore, the difference being 6.49% (15 minus 8.51% = 6.49%) is only to be taken into account when disallowing the exemption claimed u/s.36 (1) (iii) of the Act. Having noted the aforesaid submissions of assessee, in this context, we note that it is no longer *res integra* then when the assessee has mixed funds (interest free as well as interest bearing) then the presumption is that the loan given are from the interest-free funds as held by the Hon'ble Bombay High Court in the case of CIT v. Reliance Utilities & Power Ltd., reported in (2009) 313 ITR 340 (Bom.).



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M/s.EH Building Consultancy Pvt. Ltd.

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**7.** In the light of the aforesaid submission of the Ld.AR and since, the aforesaid facts have not been verified by the AO, we set aside the impugned order of the Ld.CIT(A) and restore this issue back to the file of the JAO for limited purpose of verification of the aforesaid facts discussed (supra) and if it is found to be correct, then, the AO to disallow only interest @6.49% of Rs.72,09,994/- and if the assessee fails to prove it, then, the AO is at liberty to confirm/restrict the disallowance in accordance to law, after hearing the assessee. The assessee is at liberty to substantiate the aforesaid submissions made before us and the AO to pass a speaking order while framing the assessment on this issue.

**8.** In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 21<sup>st</sup> day of August 2024, in Chennai.

**Sd/-**  
**(अमिताभ शुक्ला)**  
**(AMITABH SHUKLA)**  
लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**  
**(एबी टी. वर्की)**  
**(ABY T. VARKEY)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,  
दिनांक/Dated: 21<sup>st</sup> August 2024.  
**TLN, Sr.PS**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF