

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 2659/MUM/2024
Assessment Year: 2015-16**

ACIT 32(1),
202, 2nd floor, Kautilya Bhavan,
BKC, Bandra (East)
Mumbai-400051.

Appellant

VKT Ventures LLP,
318 A to Z Industrial Estate,
Delisle Road, S.O.
Mumbai-400013.
PAN NO. AAJFV 3533 G
Respondent

Assessee by : None
Revenue by : Mr. Ankush Kapoor, CIT-DR

Date of Hearing : 11/07/2024
Date of pronouncement : 27/08/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 19.03.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2015-16, raising following ground:



1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of interest of Rs.173489190/- u/s 36(1)(iii) of the Income Tax Act.

2. Briefly stated, facts of the case are that the assessee firm is engaged in business of investment and finance activity. In the assessment completed u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act'), the Assessing Officer disallowed interest of Rs.17,34,89,190/- u/s 36(1)(iii) of the Act

3. On further appeal, the Ld. CIT(A) deleted the said addition. Aggrieved, the Revenue preferred appeal before the Income-tax Appellate Tribunal (in short 'ITAT') raising the sole ground as reproduced above.

4. Despite notifying neither anyone attended on behalf of the assessee, nor was any adjournment filed. Therefore, we were of the opinion that assessee was not interested in prosecuting the appeal and therefore, same was heard *ex-parte* qua the assessee after hearing arguments of the Ld. Departmental Representative (DR) and perusal of the material available on record.

5. The Ld. DR submitted that issue in dispute involved is identical to the issue raised in appeals having ITA No. 2322 and 2349/Mum/2024 for assessment year 2013-14 and 2014-15, which were heard on 09.07.2024. We find that in those appeals, the issue has been restored to the file of the AO by the Co-ordinate Bench , observing as under:



7.3 Thus, for deduction of interest u/s 36(1)(iii) of the Act, firstly, the condition should be satisfied that borrowed fund on which interest is claimed are utilised for the purpose of business of the assessee, , secondly, if such funds have been advanced to sister concern interest free , then assessee should show that same were advanced for commercial expediency. The Hon'ble Delhi High Court in the case of **CIT v. Dalmia Cement (Bharat) Ltd. [2001] 69 CCH 0830 (Del HC)** has held that expenditure needs to be incurred for business purpose and reasonableness of the expenditure has to be judged from the point of view of the businessman and not from the view of the Department. Further, the assessee has relied on before the Ld. CIT(A) on the decision of the Hon'ble Madras High Court in the case of **CIT v. Padukottai Company Pvt. Ltd. 84 ITR 788 (Mad)** wherein it is held that once it is accepted that capital was borrowed for the purpose of business, payment of interest on such borrowed capital could not be disallowed on the ground that interest charged on lending was at lower rate than interest paid on borrowing and that lending was in favour of the persons who were connected with the assessee.

7.4 In view of the above, for deduction of interest on borrowed capital, onus lies on the assessee to demonstrate whether the borrowed funds have been utilized for the purpose of the business or commercial expediency. In the instant case the issue in dispute whether loans advanced, may be at the lower rate of the interest or without charging any interest, but those loans have been advanced for the purpose of the business of the assessee or not. The assessee has suo-motu made disallowance of Rs.7,70,05,688/- but it has not filed detailed justification of calculation of such disallowance. On perusal of the above table of suo-motu disallowance, we find that assessee has mainly worked out interest disallowance on outstanding balance of parties at the year end. The assessee has not specified on what rate it has worked out the notional disallowance. Once, the assessee has suo-moto made disallowance then, it is established that those loans were not deployed for business purpose and the corresponding interest therefore need to be disallowed invoking section 36(1)(iii) of the Act. The only issue thus left is examining the correctness of the calculation of the suo-motu disallowance made by the assessee. Since, no such rational analysis has been done either by the Assessing Officer or by the assessee and therefore, we feel it appropriate to restore this issue back to the file of the Assessing Officer for identifying the borrowed funds which have been deployed towards the loans or advances which are not for the purpose of business or for the commercial expediency and the corresponding interest on the borrowed funds is liable to be disallowed, need to be calculated on the basis of number of days those funds remained advanced for non business purpose. In view of the



discussion, we feel it appropriate to restore this issue back to the file of the Assessing Officer for deciding afresh.

5.1 Respectfully, following our finding in the preceding assessment years in the case of the assessee, the finding of Id CIT(A) on the issue in dispute is set-aside and the sole ground of the appeal of the Revenue is restored back to the file of the AO for deciding afresh. The ground is accordingly allowed for statistical purposes.

6. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 27/08/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 27/08/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai