

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.376/PUN/2024
Assessment Year : 2021-22**

| | | |
|--|------------|-------------------------|
| M/s. Capricorn Lifestyle Pvt. Ltd. 192, Hotel Regency, Dhole Patil Road, Pune – 411001 | Vs. | DCIT, Circle 1(1), Pune |
| PAN: AAACK2078B | | |
| (Appellant) | | (Respondent) |

Assessee by : Shri Sanket M Joshi
Department by : Shri Ramnath P Murkunde
Date of hearing : 20-08-2024
Date of pronouncement : 09-09-2024

ORDER

PER R.K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 17.01.2024 of the CIT(A) / NFAC, Delhi relating to assessment year 2021-22.

2. The grounds raised by the assessee are as under:

1. *The learned CIT(A) erred in confirming the disallowance of entire interest of Rs.52,59,935 made by the A.O. on the ground that the appellant company had borrowed interest bearing loan funds of around Rs.5.40 Crs. And on the other hand, it has advanced interest free funds of Rs.14 Crs. To its sister concern without appreciating that the said disallowance was not justified on facts and in law.*
2. *The learned CIT(A) failed to appreciate that interest free own funds available with the assessee company as on 31.03.2021 by way of capital and reserves were to the tune of Rs.44.59 Crs. Which were far more than the quantum of interest free advance of Rs.14 Crs. Given to sister concern and the A.O. has not established any direct nexus between the loan funds*

and interest free advance given to sister concern and hence, it could be safely presumed that the interest free advance was given out of own funds and therefore, the disallowance of interest of Rs.52,59,935 was not justified.

3. *The learned CIT(A) erred in not appreciating that the impugned issue was no more res Integra and the same was squarely covered in favour of the assessee by the law laid down by Hon'ble Supreme Court in Reliance Industries Ltd. [410 ITR 466(SC)]and South Indian Bank Ltd. v. CIT [(2021) 438 ITR 1] and therefore, the disallowance of interest of Rs.52,59,935 ought to have been deleted.*
4. *The learned CIT(A) erred in confirming the disallowance of Rs.45,00,000 in respect of compensation paid by the appellant company to a third party towards cancellation of agreement to sale of land owned by its subsidiary company without appreciating that the said payment was made towards business purposes and the same was never claimed as a deduction by its subsidiary company and therefore, there was no reason to disallow the said payment in the hands of the appellant company when the genuineness of the same was not doubted.*
5. *The appellant craves leave to add/alter/amend any of the grounds of appeal.*

3. The Ld. Counsel for the assessee at the time of hearing did not press ground of appeal No.4 for which the Ld. DR has no objection. Accordingly, the same is dismissed 'as not pressed'. The ground of appeal No.5 being general in nature, is also dismissed.

4. So far as the grounds of appeal No.1 to 3 are concerned, these all relate to the order of the CIT(A) / NFAC in confirming the disallowance of interest expenditure of Rs.52,59,935/- made by the Assessing Officer on the ground that the assessee has advanced interest free funds to the sister concern, whereas the assessee is paying interest on borrowed funds to the bank.

5. Facts of the case in brief, are that the assessee is a private limited company and filed its return of income declaring total income of Rs.67,11,697/- which was set off against brought forward losses and taxable income was declared at Nil. The case was selected for scrutiny under CASS to verify and examine the following issues:

“Very low PBDIT ratio in specific business code and turnover range where deficiency in audit report.-The assessee has claimed large business expenses, which may be verified.”

6. Accordingly, statutory notices u/s 143(2) and 142(1) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) were issued and served on the assessee, to which the assessee filed certain details before the Assessing Officer. The Assessing Officer during the course of assessment proceedings noted that the assessee has paid Rs.14 crores to M/s. Anishka Developer Pvt. Ltd. and has shown the same in its financials as interest free loan / advance. He noted that although the assessee has debited interest cost of Rs.52,59,935/- being the loan availed from YES Bank, however, it has not charged any interest from Anishka Developer Pvt. Ltd. on the amount of advance of Rs.14 crores given. Since the assessee was availing the interest bearing loan from the bank whereas it has advanced interest free funds to the sister concern for non-business purpose, therefore, the Assessing Officer confronted the assessee to explain as to why proportionate interest should not be disallowed. Rejecting the various explanations given by the assessee, the Assessing Officer made addition of Rs.52,59,935/- by observing as under:

“3.2 Inferences based on the replies of the assessee's and facts of the case.

1. The assessee has paid Rs.14,00,00,000/- to Anishka Developers Pvt. Ltd. And showing the same in its financials as interest free loan/advances given. As per the documents submitted by the assessee in its reply dated 10.09.2022, the assessee entered into an agreement with Anishka Developers on 07.11.2007, as per which the assessee had to deposit Rs.19,00,00,000/- with Anishka developers on or before 31.03.2008 and Anishka Developers shall complete the construction of a hotel building as per the details and specification mentioned in the said agreement within the period of 36 months, i.e till 30.09.2009. But the assessee is still claiming this fund as interest free loan/advance given. In its reply dated 29.11.2022 also the assessee is claiming it to be business agreement and failed to submit anything regarding duration of validity of the concerned agreement because (as the agreement) the Anishka Developers had to complete the work (as mentioned in agreement) within 36 months from the date of agreement. It means that if the work had been completed then agreement cease to exist and if the work had not been completed as per the time frame of 36 months fixed in the agreement the assessee might have recovered its amount from the Anishka developers. It is beyond any human/business possibility that even after lapse of more than 15 years the same agreement is valid, the concerned work is pending and still the assessee is giving advance to Anishka Developers. On the other hand the assessee himself is paying interest on secured loans raised from the bank and claiming the interest as expense. As the assessee has completely failed in justifying the bonafide nature and purpose of advance given to Anishka developers for Rs 14,00,00,000/- therefore, the interest expense of Rs.52,59,935/- claimed is being disallowed proportionately to the interest not being charged on the advance given to Anishka developers besides initiating penalty proceedings u/s 270A(1) for under reporting of income.”

7. In appeal, the CIT(A) / NFAC relying on the decision of the Hon'ble Supreme Court in the case of CIT vs. Mir Mohammed Ali (1964) 53 ITR 165 (SC) wherein it was held that the onus is on the assessee to prove that the interest is deductible, sustained the addition on the ground that the assessee had failed to establish the direct nexus between the interest-free funds available as on the date of advance and the loan given to the sister concern by observing as under:

“The assessment order and the submission have been carefully examined and found that the appellant had advanced loan to its sister concern M/s. Anishka Developers which continued even during the A.Y. 2021-22. Either at the time of

assessment or at the time of appellate proceedings, the appellant has failed to substantiate the availability of interest-free funds for advancing loan to sister concern. Whatever the loan availed, the same thing continued in the subsequent assessment years that necessitated the liability of interest payment to the appellant. The case laws relied upon are not directly on the issue, hence it is different and distinguishable. It must be stated that when the appellant advances loan it is for it to prove with the bank/cash book that as on the date of advance there was sufficient balance available. Otherwise as held by the AO, the loan taken from the bank continued to be in existence in the subsequent year for which interest has to be paid.

The Hon'ble Supreme Court in the case of CIT Vs Mir Mohammed All (1964) reported in 53 ITR 165 has held that the onus is on the assessee to prove that interest is deductible.

In the light of the above discussion, since the appellant had failed to establish the direct nexus between the interest-free funds available as on the date of advance and the loans given to the sister concern, I am of the considered opinion that the AO was right in disallowing interest debited amounting to Rs.52,59,935/-. Accordingly the grounds raised are dismissed.”

8. Aggrieved with such order of CIT(A) / NFAC, the assessee is in appeal before the Tribunal.

9. The Ld. Counsel for the assessee referring to the copy of the Balance Sheet as on 31.03.2008 submitted that the own capital and free reserves & surpluses of the assessee as on 31.03.2008 was Rs.46.57 crores, out of which an amount of Rs.14 crores was advanced to the sister concern without any interest. He submitted that from assessment year 2008-09 till the assessment year 2020-21 no such disallowance of interest was made by the Assessing Officer. However, for the impugned assessment year, the Assessing Officer made the disallowance. Referring to the copy of the Balance Sheet as on 31.03.2021, he submitted that the own capital and free reserves & surpluses of the assessee as on 31.03.2021 is

Rs.44.59 crores which far exceeds the amount of interest-free advance given to the sister concern of Rs.14 crores.

10. Referring to the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Industries Ltd. reported in 410 ITR 466 (SC), he submitted that the Hon'ble Supreme Court in the said decision has held that where interest-free funds available to the assessee were sufficient to make investments, it could be presumed that the loans were given to the subsidiaries out of interest-free funds and therefore, interest referable to the funds given to the subsidiaries is allowable as deduction u/s 36(1)(iii) of the Act.

11. Referring to the decision of the Hon'ble Supreme Court in the case of South Indian Bank Ltd. vs. CIT reported in 438 ITR 1 (SC), he submitted that the Hon'ble Supreme Court in the said decision has held that where the assessee has mixed fund i.e. partly of interest-free funds and partly of interest bearing funds and payment for investment is made out of that mixed fund, the investment must be considered to have been made out of interest-free funds. To put it another way, in respect of payment made out of mixed fund, it is the assessee who has such right of appropriation and also the right to assert from what part of the fund a particular investment is made and it may not be permissible for the Revenue to make an estimation of a proportionate figure. Applying the same logic, the disallowance would be legally impermissible for the investment made by the assessee in bonds /

shares using interest-free funds u/s 14A of the Act. In other words, if investment in tax-free securities is made out of common funds and the assessee has available, non-interest bearing funds larger than the investments in tax-free securities, in such cases, the disallowance of interest u/s 14A of the Act cannot be made. He accordingly submitted that since the assessee has sufficient own capital and free reserves & surpluses, therefore, the interest-free advance made to the sister concern of Rs.14 crores which is much less than the amount of own capital and free reserves & surpluses, therefore, no disallowance u/s 36(1)(iii) of the Act is called for.

12. The Ld. DR on the other hand heavily relied on the orders of the Assessing Officer and the CIT(A) / NFAC.

13. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A) / NFAC and the paper book filed by both the sides. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case has made addition of Rs.52,59,935/- being the interest debited in the Profit and Loss Account on the ground that the assessee has given interest-free advance of Rs.14 crores to the sister concern M/s. Anishka Developer Pvt. Ltd., whereas it is paying interest to the bank on the loan borrowed. We find the CIT(A) / NFAC upheld the action of the Assessing Officer, reasons of which are already reproduced in the preceding

paragraphs. It is the submission of the Ld. Counsel for the assessee that the advance of Rs.14 crores was given during the financial year 2007-08 when the own capital and free reserves & surpluses of the assessee was at Rs.46.57 crores which was much more than the amount of Rs.14 crores given as interest-free advance to the sister concern M/s. Anishka Developer Pvt. Ltd. Even as on 31.03.2021 also, the own capital and free reserves & surpluses of the assessee stood at Rs.44.59 crores which is more than the amount of interest-free advance given to the sister concern, therefore, no disallowance u/s 36(1)(iii) of the Act is called for.

14. We find merit in the above arguments of the Ld. Counsel for the assessee. The Hon'ble Supreme Court in the case of CIT vs. Reliance Industries Ltd. (supra) has held that when the interest-free funds available to the assessee were sufficient to make investment, it could be presumed that the investments were made from the interest-free funds available with the assessee and therefore, interest referable to the funds given to the subsidiaries is allowable as deduction u/s 36(1)(iii) of the Act. We find that, following the above decision and various other decisions, the Hon'ble Supreme Court in the case of South Indian Bank Ltd. vs. CIT (supra) has held that if investments in tax-free securities are made out of common funds and the assessee has available, non-interest-bearing funds larger than the investments made in tax-free securities, in such cases, disallowance of interest u/s 14A of the Act cannot be made. Since, admittedly the assessee in the instant case is having sufficient own capital and free reserves & surpluses which far exceeds the amount

of interest free advance given to the sister concern, therefore, we are of the considered opinion that no disallowance of interest u/s 36(1)(iii) of the Act is called for. We, therefore, set aside the order of the CIT(A) / NFAC and direct the Assessing Officer to delete the addition. The grounds of appeal No.1 to 3 raised by the assessee are accordingly allowed.

15. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 9th September, 2024.

Sd/-
(ASHTA CHANDRA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 9th September, 2024
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

| S.No. | Details | Date | Initials | Designation |
|-------|--|------------|----------|-------------|
| 1 | Draft dictated on | 20.08.2024 | | Sr. PS/PS |
| 2 | Draft placed before author | 21.08.2024 | | Sr. PS/PS |
| 3 | Draft proposed & placed before the Second Member | | | JM/AM |
| 4 | Draft discussed/approved by Second Member | | | AM/AM |
| 5 | Approved Draft comes to the Sr. PS/PS | | | Sr. PS/PS |
| 6 | Kept for pronouncement on | | | Sr. PS/PS |
| 7 | Date of uploading of Order | | | Sr. PS/PS |
| 8 | File sent to Bench Clerk | | | Sr. PS/PS |
| 9 | Date on which the file goes to the Head Clerk | | | |
| 10 | Date on which file goes to the A.R. | | | |
| 11 | Date of Dispatch of order | | | |