

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI

BEFORE SH. MAHAVIR SINGH, VICE PRESIDENT
AND
SH. S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No.1829/Del/2022
 Assessment Year: 2014-15

Balaji Fuels 66, Milestones, NH 8 Distt. Gurgaon-122413 PAN No.AAJFB5505E	Vs	ITO Ward- (3) New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.929/Del/2023
 Assessment Year: 2014-15

Balaji Fuels 66, Milestones, NH 8 Distt. Gurgaon-122413 PAN No.AAJFB5505E	Vs	PCIT Gurgaon
(APPELLANT)		(RESPONDENT)

Appellant by	Manoj Kumar, CA
Respondent by	Mr. Javed Akhtar, CIT DR

Date of hearing:	16/12/2024
Date of Pronouncement:	16/12/2024

ORDER

PER MAHAVIR SINGH, VP:

These appeals by the assessee are arising out of the order of CIT(A)/NFAC, Delhi in Appeal No. CIT(A), Gurgaon-1/11855/2019-20 vide order dated 13.06.2022 and order of PCIT, Gurgaon dated

06.03.2019. The assessment in consequence to revision order was framed by ITO, Ward -13, Gurgaon for the A.Y. 2014-15 u/s. 143 (3) r.w.s. 263 of the IT Act, 1961 (hereinafter referred as “the Act”) vide his order dated 15.12.2019. The original assessment was framed by ITO, Ward-1(3), Gurgaon for the A.Y. 2014-15 U/s.143 (3) of the Act vide order dated 26.09.2016.

2. The first issue in these appeals of the assessee is as regards to the order of CIT(A) confirming the action of the AO in disallowing the bank interest of Rs.14,07,437/- U/s. 36 (1) (iii) of the Act for the reason that the assessee has claimed interest on bank loan as against which he has advanced interest free loan to its sister concern. For this assessee has raised following ground No.6 :-

“6. That the Honorable CIT(A), NFAC has erred in law and on facts in sustaining the addition in sustaining the disallowance of bank interest of Rs.14,07,437.00 u/s. 36(1)(iii) on untenable and illegal grounds. Hence, the disallowance of Rs.14,07,437.00 may be deleted.”

3. The brief facts are that the assessee is deriving income from business of running petrol pump at Gurgaon. The assessee filed its return of income on 31.10.2014 originally and accordingly scrutiny

assessment was completed u/s. 143 (3) of the Act by the AO vide order dated 26.09.2016. Subsequently PCIT, Gurgaon passed revision order U/s. 263 of the Act by holding the assessment order passed U/s.143 (3) dated 26.09.2016 is erroneous as well as prejudicial to the interest of the Revenue for the reason that “on examination of records” it is noted that the assessee has taken a loan of Rs.1,50,40,345/- from banks and claimed interest paid to the banks amounting to Rs.22,00,266/-. On the other hand, the assessee has given interest free loans and advances to its sister concerns for non business purposes amounting to Rs.93,82,912/-. According to PCIT, the AO failed to verify the same during the course of assessment proceedings and hence he set aside assessment order and directed the AO to reframe the assessment after verifying the business purpose of the assessee for taking loan of Rs.1,50,40,345/- from banks.

4. Accordingly, the impugned assessment order was passed by the AO. The AO simplicitor noted that the assessee has given interest free advances to its sister concerns for non business purposes amounting to Rs.93,82,912/- as under :-

Ganpati Builders	Rs.19,00,000/-
Hakim Harikishan	Rs.7,30,625/-
Rishi raj Films	Rs.20,60,000/-
Rishi Raj	Rs.46,92,287/-

The AO noted that the borrowed funds were not used for the business purposes but was used for supplementing the cash diverted by the assessee without any benefit. Hence, he disallowed the proportionate interest to the extent on the amount borrowed for non business purposes amounting to Rs.93,82,912/- and thereby disallowed a sum of Rs.14,07,437/-. Aggrieved, assessee preferred appeal before the CIT(A).

5. The CIT(A) dismissed the appeal on merits by observing vide para 6.2 as under :-

“DECISION:- On perusal of the detailed assessment order it is evident that enough opportunity was provided to the appellant during the course of assessment proceedings but assessee did not avail those opportunities. During the present proceedings also the appellant has not availed the opportunity of being heard and did not comply to any of the 6 notices issued. Despite 6 notices served upon the appellant to defend his case and bring relevant evidences on record to explain the genuineness of the advances given to the sister concerns, the appellant preferred to remain

silent. In view of the reasons discussed in the detailed assessment order, the action of the AO to disallow the interest of Rs.14,07,437/- U/s. 36(1)(iii) of the Act is confirmed. Grounds of appeal 1 to 8 are therefore dismissed.”

Aggrieved, assessee is in appeal before us.

6. We have heard the rival contentions and gone through the facts of the case. Before us Ld. Counsel for the assessee made short submissions before us and stated that the assessee has its own interest free funds as under :-

Capital	1,08,78,603,.22
Interest free Unsecured loan	18,78,000.00
Total interest free funds	1,27,56,603.22
Alleged Interest fee loan given	93,82,912.00

Ld. Counsel in view of the above stated that whereas the assessee has interest free funds available with it, as noted above, which are more than the alleged interest free loan of Rs.93,82,912/-, the presumption will be that the assessee has advanced these interest free loans out of own funds. The Ld. Counsel for the assessee stated that this issue is covered by decision of Hon’ble Bombay High Court

in the case of HDFC Limited reported in 366 ITR 505 wherein Hon'ble Bombay High Court Ltd. held as under :-

“5. We find that the facts of the present case are squarely covered by the judgment in the case of Reliance Utilities and Power Ltd. (supra). The finding of fact given by the Income-tax Appellate Tribunal in the present case is that the assessee’s own funds and other non-interest bearing funds were more than the investment in the tax – free securities. This factual position is not one that is dispute. In the present case, undisputedly the assessee’s capital, profit reserves, surplus and current account deposits were higher than the investment in the tax-free securities. In view of this factual position, as per the judgment of this court in the case of Reliance Utilities and Power Ltd. (supra), it would have to be presumed that the investment made by the assessee would be out of the interest free funds available with the assessee. We, therefore, are unable to agree with the submission of Mr. Suresh Kumar that the Tribunal had erred in dismissing the appeal of the Revenue on this ground. We do not find that question (A) gives rise to any substantial question of law and is therefore rejected.”

7. Apart from that, Ld. Counsel also relied upon the decision of Hero Cycles of Hon'ble Supreme Court CIT 379 ITR 347(SC) wherein it is held as under:-

“In so far as the loans to Directors are concerned, it could not be disputed by the Revenue that the assessee had a credit balance in the Bank account when the said advance of Rs.34 lakhs was given. Remarkably, as observed by the CIT(Appeal) in his order, the company had reserve/ surplus to the tune of almost 15 crores and, therefore, the assessee company could in any case, utilize those funds for giving advance to its Directors.

On the basis of aforesaid discussion, the present appeal is allowed, thereby setting aside the order of the High Court and restoring that the of the Income Tax Appellate Tribunal.”

8. Since the issue is covered by the aforesaid two decisions and on facts the assessee is having own funds which are much more than the funds advanced to sister concerns interest free, the lower authority should not have resorted to the disallowances u/s. 36 (1) (iii) of the Act. Hence, we delete the disallowance and allow the issue of assessee's appeal.

9. Coming to the judicial issue raised by the assessee, the parallel proceedings U/s.154 and 263 of the Act, we refrain ourselves from adjudicating the same because we have already adjudicated the issues on merits and decided the same in assessee's favour. Hence, the appeal of the assessee is allowed.

10. The next appeal in ITA No.929/D/2023 is as regards to revision order passed by PCIT U/s. 263 of the Act. At the outset, the Ld. Counsel for the assessee stated that he is not pressing this appeal. He wants to withdraw the same. Hence, this appeal is dismissed as withdrawn.

11. In the result, the appeal in ITA No.929/D/2023 is dismissed and appeal in ITA No.1829/D/22 is allowed.

Order dictated in the open court on conclusion of hearing on 16.12.2024.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

NEHA, Sr. PS
Date:-16.12.2024

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT