

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.2502/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2018-2019)

The Assistant Commissioner of
Income Tax,
Company Circle 1(1)
Chennai.

Vs. R R Industries Limited,
TVK Industrial Estate,
Guindy,
Chennai 600 032.

(अपीलार्थी/Appellant)

[PAN:AAACR 3594H]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri M.K. Rangaswamy, FCA

प्रत्यर्थी की ओर से /Respondent by

: Ms. D. Komali Krishna, CIT.

सुनवाई की तारीख/Date of Hearing

: 16.12.2024

घोषणा की तारीख /Date of Pronouncement

: 24.02.2025

आदेश / ORDER

PER MANU KUMAR GIRI (Judicial Member)

This appeal filed by the revenue is directed against the order of the Commissioner of Income tax (A), Chennai-18['CIT(A)' short] dated 23.07.2027 for Assessment Year 2018-19.

2. The registry has noted delay of 03 days in filing the appeal. Considering the period of delay, we condone the delay and admit the appeal for adjudication.

3. In this appeal, the revenue has raised following as under:

'1The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law,

2 The Ld.CIT(A) erred in deleting the addition of Rs.7,85,80,924/- towards disallowances of interest u/s.36(1)(iii) of the Act, without considering the facts of the case that the assessee had availed huge loan of Rs 68.62 crore and, out of this invested an amount of Rs. 60.25 in subsidiary companies and claimed an interest expenditure of 8.95crores on this loan amount for AY: 2018-19.

3. The Id.CIT(A) disregarded the findings of the AO, that the assessee could not produce the supporting details to prove the commercial expediency. Just because the investments were made in the subsidiary companies, it cannot be construed that the same were in made due to business expediency.

4 The Id. CIT(A) failed to appreciate that the assessee could not prove how interest free loans given to subsidiaries advanced the cause of its own business.

For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored".

4. Brief facts are as under:

The assessee company is engaged in the business of renting of its infrastructure buildings and industrial parks to various third parties and receiving rental income. For the AY 2018-19, the original return of income was filed on 29/09/2018 declaring an income of Rs.2,92,45,700/-. Subsequently the appellant company filed revised return of income on 17.12.2018 with a total income of Rs.2,71,67,850/-. The assessment u/s 143(3) of the Act was completed on 05.08.2021 assessing the total income of the assessee at Rs.10,91,34,209 by making following disallowances:

(i)	Disallowance of interest u/s 36(1)(iii)	Rs.7,85,80,924/-
(ii)	Disallowance Foreign Travel expenses	Rs.13,07,585/-

5. The assessee challenged the order of the AO before the Id.CIT(A) who deleted the addition of Rs.7,85,80,924/- towards disallowance of interest u/s 36(1)(iii) holding as under:

'5.6 I have gone through the assessment order, the submissions made by the appellant during the present proceedings and the case laws relied upon. Before deciding the issue on hand, it is relevant to refer to the facts of the case as brought out by the AO and the appellant. As seen from the material available on record, the appellant company has completed construction IT Park long back and has been earning rental income from those Parks. After commencement of their business, they started investing in subsidiaries established with similar objects by availing loans apart from their own funds. From the facts of the case, it is seen that the subsidiaries were incorporated long back and there is no fresh investment during the year or for that fact, during the past 4 years. Therefore, the observation of the AO that year after year the assessee has been availing huge loans and investing in their subsidiaries without charging interest, are not factually correct. The appellant had not availed any fresh loans after the initial investments in their subsidiaries long back and the statement brought out in the assessment order, at page no. 7 & 8, indicates reduction of cumulative loan amount year to year i.e. from Rs.81.28 Crores in AY 2015-16 to Rs.68.62 Crores relevant to the subject assessment year.

In the assessment order, the AO also observed that interest has to be charged from subsidiaries to compensate the interest outflow in the hands of the assessee-company. As rightly pointed out by the appellant, the holding company had invested in the share capital of their subsidiaries and had not lent any loans/ advances to charge interest. Therefore, such investments can only yield dividends to the holding company.

5.6.1 Now, the moot point for consideration is whether interest on borrowed funds utilized for investing in subsidiaries is allowable as business expenditure? Though there cannot be any direct reply to this issue since various words in the very question convey different meanings and the same have to be viewed depending on the facts of each case. Coming to the facts of the present case, the undisputed fact is that the subsidiaries of the appellant company were also engaged in similar line of business as of the appellant. Therefore, whether pursuing business interest through subsidiaries can be termed as business of the appellant company? While referring to such question and elaborating the term 'for the purpose of business' the Hon'ble Supreme Court in the case of Madhav Prasad Jatia v. CIT [1979] 118 ITR 200 (SC) observed that the expression 'for the purpose of business' is wider in scope than the expression for the purpose of earning income, profits and gains. Therefore, the remarks of the AO that the investments had not brought in any income to the assessee and that the subsidiaries should have availed loan in their name has no substance. Further, it

is settled position that the AO cannot sit into the shoes of a businessman and decide how the assessee can carry on his business

5.6.2 Further, in the case of *CIT v. Anand Technology Resource Park (P.) Ltd.* [2011] 202 Taxman 654/15 taxmann.com 4 (Kar.), the Hon'ble High Court of Karnataka held that as long as the investment is for the purpose of business of the assessee, the interest on borrowed funds is allowable u/s 36(1)(iii). The operative portion of the decision is as under:

In the instant case the assessee is carrying on the business of rendering technical assistance. The amount which is borrowed is not used in rendering technical service. It is invested in acquiring 25.1% of shares in M/s Spice India Limited, the intention of investment of the shares is to carry on business and not to be content with by receiving dividend. This argument has been rejected by the assessing authority on the ground that acquiring shares to the extent of 25.1% would not give him a control over the company. In law to carry on business one need not have majority shares. With a proper understanding with the persons who have invested the money he could carry on the business. In the instant case, probably to carry on the business of the said company technical service is required which is provided by the assessee. In addition to that to have control over the company they have also invested money in acquiring shares to the extent of 25.1%. Therefore, the material on record clearly establishes the intention on the part of the assessee to carry on the business after acquiring shares and therefore as the said business to be carried is the business of the assessee and the amount is borrowed for the purpose of the said business, the amount of interest paid in respect of the capital borrowed is eligible for deduction under Section 36(1)(iii) of the Act, as rightly held by the Tribunal. In that view of the matter, we do not see any merit in these appeals. The substantial question of law framed in these appeals is answered in favour of the assessee and against the revenue. Appeals are dismissed. No costs."

5.6.3 *In the case on hand, the assessee invested in their subsidiaries not just to earn dividend income but with an intention to expand their business through subsidiaries, which are involved in similar line of business as of the appellant. Therefore, in view of the above decision, the test of allowability of interest is that the investment should be for the purpose of business. Accordingly, the inferences drawn by the AO in disallowing the proportionate interest on investments made out of borrowed funds are not well founded.*

5.6.4 Further, the jurisdictional High Court in the case of *CIT V. RPG Transmissions Ltd.*, (359 ITR 673) (2013) (Mad) referring to similar set of facts where assessee-company invested borrowed funds in shares of sister company having similar business, held that interest paid on borrowed capital was to be allowed. The operative portion of the said judgment is as under:

"In the instant case, the Tribunal found that there is proximate nexus between the business of the assessee-company and that of the

company in which investments were made in the form of shares. It may be true that the returns are not commensurate with the expected returns in the form of interest, but if and when, the shares are liquidated, there is expectancy of substantial gains which fact has returns are far below the quantum of interest paid on the borrowed funds and, therefore, the basis of analyzing that the payment of interest on borrowed funds has to be tested on the ground of quantum of return is untenable. Furthermore, section 36(1)(iii) does not contemplate any test that the amounts so invested should be wholly and exclusively for making or earning such income. On a plain reading of section 36(1)(iii), there is no such requirement mandated in the section to confine such expense. Furthermore, the section also does not place any embargo on investments to be made in group concerns and subsidiary concerns.

.....
The appellate authority and the Tribunal found that the investment made in shares by the assessee by utilizing borrowed capital was for strategic business purposes because the companies were promoted as special purpose companies to strengthen and promote its existing business by combining different business segments. The revenue did not adduce any material to show that the borrowed capital was utilized by the assessee for non-business purposes. The appellate authority was correct in allowing the claim of the assessee and deleting the disallowance made by the assessing authority.

As the facts of the appellant squarely apply to the above decisions, following the same ratio, the AO is directed to delete the disallowance of proportionate interest u/s 36(1)(iii) of Rs. 7,85,80,924/-.

Accordingly, the ground nos. 3 to 8 are treated as allowed”.

Now assessee is in appeal before us.

6. The Id.DR argued that the Id.CIT(A) without considering the facts of the case that the assessee had availed huge loans of Rs.68.62 Crores and out of this invested an amount of Rs.60.25 in subsidiary companies and claimed an interest of 8.95 crores on this loan amount for AY 2018-19. He further argued that the assessee has not proved the commercial expediency.

7. Per contra, the Id. counsel for the assessee read out the entire submissions filed before the Id.CIT(A) as discussed in para 5.4 as under:

'5.4 During the course of appeal proceedings, the appellant contended that they made these investments some 8 years back and there is no increase in investments made during the year. The investment in equity / preferential shares of subsidiaries is to expand horizontally their business, thus enabling additional creation of business opportunities through borrowing leverages out of the equity capital in the subsidiaries. It was also contended that this expansion of business is within the ambit of objects of company as laid in their memorandum and articles of association.

The relevant portion of the appellant's submission is reproduced as under:

"5. As seen from the Schedule no 12 of the audited Financial statement for the Impugned year, Copy enclosed in paper book Page no 27, the appellant company has total Investment of Rs 123.40 crores in the Equity and Preference capital in six subsidiaries and step down subsidiaries and one Associate concern as a part of its business Planning. Out of the said total investment Rs 120.35 crore was invested on or before AY 2010-11 and Rs 3.05 crores spread over the years AY 2015-16 to AY 2017-18. Thus these investments had been carried over many years, the majority of which even more than eight years ago. A chart detailing the same is enclosed in paper book Pg No 34. The amount of investment is Rs 123.40 crore is also the opening balance for the impugned Assessment year. There is no increase in the Investments during the year. This investment has been ill conceived and noted by the Ld AO as Advance/Loan to sister concern. The appellant submits that the investment in the Equity/preference share is well laid business plan to expand horizontally thus enabling additional creation of business facilities though borrowing leverages out of the equity capital in the subsidiaries as it enables new partnership investment on standalone special purpose allied business also known as Special Purpose Vehicles (SPV). This expansion of business through investment in capital of subsidiary is within the ambit of objects of the company as laid out in the Memorandum and Articles of Association of the Appellant company. It is the humble submissions that the appellant company cannot be barred from investing in any manner as per its business requirement and choice and cannot be penalised for such investments which was done with the sole of objective of advancing the objects of the business".

6. The appellant submits that the Loans outstanding as on the year end 31.03.2018 is Rs 68.62 crores. The balance as on 31.03.2017, the previous year is Rs 74.53 crores which is the opening Balance for the impugned year. This indicates that there was no fresh or further loan taken during the impugned year nor was there any investment or diversion of fund to subsidiary or sister concern for which the disallowance of interest is brought in by the Ld AO. The appellant has gathered relevant year wise information

from AY 2006-07 till AY 2018-19 as regards Loans, Investment, Profits & Reserves in separate chart which are enclosed in paper book in Page no 34-35. These show that the appellant company had made investment in share capital of its subsidiary/group company more than 5-6 years before, which has been misunderstood by the Ld AO as if the appellant company had advanced interest free loans to the subsidiary/group companies.

8. Section 36(1)(iii) refers to the deduction allowable to the extent of the amount of interest paid in respect of capital borrowed for the purposes of the business or profession. It is well laid legal principal as held in various decision consistently by the courts is that "The expression for the business is wider in scope than the expression for the purpose of earning profits". It is acknowledged position that the manner of doing business is solely with the Assesse who knows his interest best, therefore the AO cannot sit in judgement over the business model. The Ld AO assumed that the Loan borrowed had been diverted to subsidiary and sister concern as loans or advances. Had the appellant company advanced the capital borrowed by way of Interest Free loan to its sister concern or subsidiary who are not in need and in similar line of business, may be, there can be a case to say there is no business exigency exists. This again is subject to the facts surrounding the ratio of the law held by the Hon'ble Apex Court in the case of SA Builders 288 ITR 1(SC). However in the appellant's case it is not a Loan nor advance and the investment in share capital is for the purpose of business need and expediency for the advancement of the objects of business to capture the fast growing market. Without prejudice even assuming that the investments are with a view to earn dividends, the capital invested and the return their from would be assessed under Income from Other Sources. In such an event the Interest on borrowed funds used for the investment in shares would be allowable under the head Income from Other Sources. Without prejudice, the appellant further submits that on facts surrounding the case, the disallowance, if any, could at best be under section 14A r.w.r 8D in respect of and to the extent of dividend income earned by the appellant company and not under section 36(1)(iii) as envisaged by the Ld AO. Even the stated disallowance, if any, will have to be considered in line with the ratio of laws held in the Judicial decisions pointed out by the appellant in their reply to the SCN.

10. The appellant company submits that the conclusion of the Ld AO noted in the assessment order are misguided for further reasons

- i Interest outflow are carried out based on the Term of the loan already borrowed many years ago as may be seen from the chart enclosed in paper book Page no 35 which is the figures of various relevant items of Balance sheet drawn from the year wise Financial Statements.*
- ii. Investment are in the share capital of the subsidiary and step down subsidiary are one time affair till the shares are divested or subsidiary*

company are sold. No Fresh Investment has been made in the impugned year. As can be seen from the enclosed chart in the paper book page no 34, the major portion of the Investment were made on or before AY 2010-11.

iii. It is not a case of Loans & advances given out of any "commercial Expediency to any of its subsidiary concern. It is factual that the appellant company had invested in the share capital which are with a view to advance the objects of the business and capture the fast growing available market and it is well within the ambit of objects of the company as laid out in its Memorandum and Articles of Association. It is a recognised and well laid business strategy in the present day to expand business through creating Special Purpose Vehicle (SPV) in which borrowing and further outside Equity can be generated to invest in creating further business.

iv. There is clearly a commercial expediency and business exigency in the appellant case, but in any case, it is not a paramount issue, because there are no Loans or Advances given but a case of Investment in share Capital. The Appellant reiterates that the appellant company had only invested in the share capital as part of business strategy for expansion and that majorily of the investments were made on or before AY 2010-11 and only about 3.42 crores was fresh investment in AY 2015-16 (Rs 1.81 crores) and 2016-17 (Rs 1.60 crore) which are detailed in the chart enclosed in paper book page no 34.

11. The appellant company submits that in the assessments for earlier years with similar and existing facts had been completed u/s 143(3), 153A and also u/s 147 where no such disallowance was made by the then AO, even after making due enquiries on the loans and investments.

12. Further, the conclusion of the Ld AO in his order in page 8 and 9 are ill conceived and erroneous for the reasons:

i. The observation that huge Investment in sister concern without charge of Interest is highly ill conceived as the invested amount is in the share capital on which the income can be only through Dividend and not Interest. There can be no payment of Interest on share capital nor repayment as in the case of loans for the share capital invested creates further Business opportunities.

ii Year after year business Exigency can emerge if new loans are given to its sister concern or subsidiary companies based on the requirements. The chart enclosed in the paper book page no 35 indicates that the appellant company is not obtaining loan year on year to divert it to sister concern or subsidiary companies. The majority of the amount of loan was taken in the AY 2010-11 while there was also large repayments in AY 2008-09. There was addition of Loan of about Rs11.53 crores in AY 2014-15 and these were for expansion of business through investment in subsidiaries.

iii. In the existing facts the appellant submits that the sole aim of the appellant company was not to reduce the Tax Liability as alleged by the Ld AO but to expand and capture the growing market by financial leveraging to meet the cost of additional facilities. Connected there with, the appellant humbly submits that the claim of the eligible Business Expenditure being interest against the income returned is within the ambit of Taxation Law."

The assessee also filed paper book with annexures dated 19.12.2024 containing pages 1-63 and Assessment order for AY 2017-18, written submissions before us.

8. We have heard the rival submissions and perused the orders of the lower authorities. The grievance of the assessee before us is whether interest on borrowed funds utilised for investing in subsidiaries is allowable as business expenditure.

9. The legal proposition and case law citations are as under for guidance:

Page number/ Para no.	Legal Proposition	Case law and ratio
Para 4	This expansion of business through investment in capital of subsidiary is within the ambit of objects of the company as laid out in the Memorandum and Articles of Association of the Appellant company. It is the humble. submissions that the appellant company cannot be barred from investing in any manner as per its business requirement and choice and cannot be penalised for such investments which was done with the sole of objective of advancing the objects of the business	1. Addl. CIT v. Tulip Star Hotels Ltd. 2014 Tax Pub(DT) 4813 (SC) Subsidiary company for its business purpose-Where a holding-company has a deep interest in its subsidiary, and hence if the holding-company advance borrowed money to a subsidiary and the same was used by the subsidiary for some business purposes, the assessee holding-company would, ordinarily be entitled to deduction of interest on its borrowed loans
Para 13	that the disallowance of Interest u/s 36(1)(iii) cannot be made on the ground that there is no advance or loan to the sister concerns from out of borrowed funds and the disallowance on the test of business exigency cannot apply in the impugned case since there is no loans/advances to Subsidiary and that the Investment in the share capital of subsidiary or group concern cannot be considered for invoking the impugned disallowance u/s 36(1)(iii)	2. Hero Cycles (P.) Ltd. v. CIT[2015] 63 taxmann.com 308 (SC) The Supreme Court has reiterated in its decision dated 5th November, 2015 that "commercial expediency is the prerogative of the businessman and that the Revenue cannot justifiably claim to put itself in the armchair of the businessman and dictate as to what is "commercial expediency". The Supreme Court has also observed that the Revenue cannot put itself in the position of the Board of Directors and

		<p>assume the role to decide how much is reasonable expenditure, having regard to the facts and circumstances of the case. It further held that no businessman can be compelled to maximize his profit and that the income-tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own point o view but that of a prudent businessman. This decision of the Supreme Court should go a long way in asserting the rights of the businessmen with regard to what is meant by "commercial expediency" as the Revenue does not seem to have understood the market conditions in which businesses are carried on. No doubt, the Income-tax Department (Revenue) is not precluded from assuming powers against those who try to circumvent law through unacceptable and prohibited means</p> <p>The expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency.</p>
	<p>The expression for the business is wider in scope than the expression for the purpose of earning profits". It is acknowledged position that the manner of doing business is solely with the Assessee who knows his interest best, therefore the AO cannot sit in judgement over the business model. The Ld AO assumed that the Loan. borrowed had been diverted to subsidiary and sister concern as loans or advances</p> <p>It is not a case of Loans & advances given out of any "commercial Expediency" to any of its subsidiary concern. It is factual that the appellatn company had invested in the share</p>	<p>SA Builders 288 ITR 1(SC).</p> <p>1.SA Builders 288 ITR 1(SC)</p> <p>2.B Nanji & Co. vs Dy Commissioner Of Income Tax-Gujarat High Court-In C/TAXAP/1625/2007</p>

	capital which are with a view to advance the objects of the business and capture the fast growing available market and it is well within the ambit of objects of the company as laid out in its Memorandum and Articles of Association	Order dt.28 January, 2020-(Copy Enclosed). Particular reference is drawn from para 35 to 40 of the judgement
	<p>Without prejudice even assuming that the investments are with a view to earn dividends, the capital invested and the return therefrom would be assessed under Income from Other Sources. In such an event the Interest on borrowed funds used for the investment in shares would be allowable under the head Income from Other Sources.</p> <p>Without prejudice, the appellant further submits that on facts surrounding the case, the disallowance, if any, could at best be under section 14A r.w.r BD in respect of and to the extent of dividend income earned by the appellant company and not under section 36(1)(iii) as envisaged by the Ld AO the assessments for earlier years with similar and existing facts had been completed u/s 143(3), 153A and also u/s 147 where no such disallowance was made by the then AD, even after making due enquiries on the loans and investments</p>	<p>B Nanji & Co. vs Dy Commissioner Of Income Tax - Gujarat High Court-In C/TAXAP/1625/2007 Order dt.28 January, 2020-(Copy Enclosed). Particular reference is drawn from para 35 to 40 of the judgement.</p> <p>Maxopp investment Ltd vs CIT 247 CTR 162. Interest allowed in earlier years cannot be disallowed in subsequent years</p> <p>Mecords India Limited Vs ITO (ITAT Mumbai In ITA No.1013/Mum/2016. Order dt. 04.10.2019</p>

10. Having keeping in mind the entire conspectus of matter the following facts emerged as under:

- The assessee company has completed construction IT Park long back and earning rental income therefrom;
- The assessee also started investing in subsidiaries established with similar objects by availing loans apart from their own funds;

- The subsidiaries were incorporated long back and there is no fresh investment during year or for past 4 years;
- The appellant had not taken any fresh loan except the initial investments in their subsidiaries long back;
- There is reduction of cumulative loan amount year to year i.e. from Rs.81.28 crores in AY 2015-16 to Rs.68.62 crores for this subject year;

11. Hence, respectfully following ratio of the judgments of the Hon'ble Supreme Court and High Courts referred supra, we are not inclined to interfere in the impugned order on this issue. Accordingly, we dismiss the appeal of the revenue.

12. In the result, appeal filed by the revenue stands dismissed.

Order pronounced in the open court on 24th day of February, 2025 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai:

दिनांक Dated : 24-02-2025

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

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

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER