

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री बी.आर.बास्करन, लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 557/Mds/2013

निर्धारण वर्ष /Assessment Year : 2009-10

The Deputy Commissioner
of Income-tax,
Company Circle-I(1),
Chennai – 34.
(अपीलार्थी/Appellant)

v. M/s. Alliance Retreat P. Ltd.,
Plot No.A, Door No.36/1,
Gandhi Mandapam Road,
Kotturpuram, Chennai 600 085.
PAN AAFCA9771N
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर /Appellant by : Shri A.V.Sreekanth, JCIT
प्रत्यर्थी की ओर से/Respondent by : Shri M. Narayanan (Retd. Addl.CIT)

सुनवाई की तारीख/Date of Hearing : 03.02.2015

घोषणा की तारीख/Date of Pronouncement: 10.04.2015

आदेश / O R D E R

PER VIKAS AWASTHY, JUDICIAL MEMBER

The appeal has been filed by the Revenue impugning the order of the Commissioner of Income-tax(Appeals)-III, Chennai dated 10.12.2012 for the assessment year 2009-10. The Revenue has assailed the findings of CIT(A) in deleting the

disallowance of ₹ 2,17,08,433/- made under Section 36(1)(iii) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. The facts of the case as emanating from the records are: The assessee is a private limited company and is engaged in the business of real estate and construction. The assessee filed its return of income for the assessment year 2009-10 admitting loss of ₹ 34,12,997/- and offered ₹ 3,77,879/- as income u/s.115JB of the Act. During the course of scrutiny assessment, the Assessing Officer made certain additions in the income returned by the assessee including disallowance of interest expenditure u/s 36(1)(iii) of the Act.

Aggrieved by the assessment order dated 30.12.2011, the assessee preferred an appeal before the Commissioner of Income-tax(Appeals). The Commissioner of Income-tax(Appeals) accepted the submissions of the assessee and allowed the appeal in toto.

Now, the Revenue has come in appeal before the Tribunal assailing the findings of the Commissioner of Income-tax(Appeals) with respect to disallowance u/s.36(1)(iii) of the Act.

3. Shri A.V.Sreekanth, representing the Department, submitted that the assessee had advanced interest free loans to its group companies from interest bearing funds. The assessee has not been able to show business expediency on account of which funds to the tune of ₹ 49 crores have been advanced as interest free loan to the group companies. The assessee has borrowed funds on which it has paid interest charges of ₹2,86,80,198/-. The assessee instead of reducing its interest burden by repaying loan amount has diverted funds to the group companies. The Id. DR further pointed out that the assessee has admitted that it has restructured loan as the assessee-company was not able to pay the interest on term loan. The Id. DR vehemently defended the assessment order and prayed for setting aside the findings of the Commissioner of Income-tax(Appeals) on this issue.

4. Controverting the submissions made by the Revenue, Shri M. Narayanan, appearing on behalf of the assessee, strongly supported the findings of the Commissioner of Income-tax(Appeals). The Id. Authorized Representative of the assessee submitted that the assessee had sufficient own funds.

Therefore, there is no question of diversion of interest bearing funds for advancing to group companies. The Id. AR further contended that the advances were given to sister concerns on account of commercial expediency. The Revenue has not been able to establish any nexus between the amount lent to sister concerns and interest bearing funds. The loan amount was utilized for purchase of land and development and construction of project villas. The Id. AR prayed for dismissing the appeal of the Revenue.

5. We have heard the submissions made by the representatives of both the sides and have perused the orders of the authorities below. The Assessing Officer made disallowance u/s.36(1)(iii) of the Act on account of diversion of interest bearing borrowed funds to group companies. The Commissioner of Income-tax(Appeals) after appreciating the facts of the case, placing reliance on the decisions rendered in the case of CIT v. Reliance Utilities and Power Ltd., reported as 313 ITR 340 (Bom.) accepted the claim of the assessee.

6. It is an undisputed fact that the assessee has taken a term loan of ₹20,03,78,000/- and has paid interest to the tune of ₹2,86,80,918/- thereon. The Commissioner of Income-tax(Appeals) in the impugned order has observed that the assessee has established that interest bearing term loan was directly utilized for acquisition of land and meeting the cost of construction. He further observed that the Assessing Officer has failed to establish that the loan amount advanced to sister concerns is out of interest bearing funds only. The assessee has given the details of the borrowings and the utilization of same. The assessee has also furnished the details of interest free funds available with the assessee during the relevant period. A perusal of the same shows that a sum of ₹17 crores sanctioned as term loan was directly disbursed by the bank on behalf of assessee to M/s. Sai Enterprises on different dates for purchase of land. Another sum of ₹2,54,00,000/- was disbursed by the bank as term loan, that was utilized by the assessee for making payments to M/s. Soorya Developers (₹1,48,46,000/-) and M/s. Meghana Developers ((₹1,06,04,000/-) for development and construction of villas. The assessee has been able to explain

utilization of entire secured loan of ₹20 crores for business purposes. The assessee has also given the details of interest free funds, amounting to ₹82.47 crores. The details of interest free funds and utilization of entire borrowed funds for business of the assessee have not been controverted by the Revenue.

7. As far as, the argument of Revenue with respect to utilization of own funds for the repayment of loan instead of advancing to group companies is concerned, we are of the considered opinion that the Revenue should not step into the shoes of assessee. The Revenue cannot dictate the assessee to conduct its business affairs in a particular manner. As long as the assessee is conducting its business affairs within the legal framework, it is at liberty to manage and utilize its resources according to its own prudence and skill. We find no infirmity in the impugned order. The order of the Commissioner of Income-tax(Appeals) is confirmed and the appeal of the Revenue is dismissed being devoid of merit.

Order pronounced on Friday, the 10th of April, 2015 at
Chennai.

Sd/-
(बी.आर.बास्करन)
(B.R.Baskaran)

लेखा सदस्य/Accountant Member

sd/-
(विकास अवस्थी)
(Vikas Awasthy)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 10th April, 2015.
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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.