

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

BEFORE SHRI N.K. BILLAIYA ACCOUNTANT MEMBER, AND  
SHRI N.K. CHOUDHARY, JUDICIAL MEMBER

ITA Nos. 2712, 2713 & 6884/DEL/2015  
[Assessment Years: 2010-11, 2011-12 & 2012-13]

The Dy. C.I.T  
Circle 13(2)  
New Delhi

Vs.

M/s Jetair Pvt. Ltd  
13, Community Centre,  
Yusuf Sarai, New Delhi

PAN : AAACJ 0121 C

[Appellant]

[Respondent]

Date of Hearing : 17.09.2018  
Date of Pronouncement : 19.09.2018

Assessee by : Shri Vijay Mehta, CA  
Revenue by : Ms. Asima Neb, Sr. DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

These three appeals by the Revenue are preferred against the three separate orders of the CIT(A) - V, New Delhi dated 16.02.2015 pertaining to A.Ys 2010-11, 2011-12 & 2012-13. Since common issues are involved in all these appeals, they were heard together and are disposed by this common order for the sake of convenience and brevity.

2. The common grievance in all these appeals relates to the deletion of disallowance of the amount paid as finance charges when the assessee has provided interest free loans to its subsidiaries. The quantum of addition may differ in the captioned assessment years.

3. We have considered the facts in ITA No. 2712/DEL/2015 for assessment year 2010-11 for the purpose of our adjudication.

4. Briefly stated, the facts of the case are that the assessee is engaged in the business of General Sales Agent for domestic and international airlines and airport handling. From the details filed by the assessee, the Assessing Officer found that the assessee has given interest free loans and advances to three subsidiary companies and to nine parties aggregating to Rs. 60.10 crores. The Assessing Officer was of the opinion that the funds so advanced are interest bearing in nature for which the assessee has paid total finance charges of Rs. 2.96 crores. The assessee was asked to show cause as to why not proportionate interest be disallowed in this respect.

5. The assessee filed a detailed reply dated 19.12.2012 which did not find favour with the Assessing Officer who proceeded by disallowing a sum of Rs. 2.96 crores in assessment year 2010-11, Rs. 1.46 crores in assessment year 2011-12 and Rs. 56.84 lakhs in assessment year 2012-13.

6. The assessee carried the matter before the Id. CIT(A) and explained that the total interest free funds available with the assessee were far more in excess of the alleged interest free advances to subsidiary companies and sister concerns. Therefore, there is no case for any proportionate disallowance. It was further explained that the loans and advances are coming from earlier year and in assessment year 2009-10, no such disallowance was made by the Assessing Officer.

7. After considering the facts and submissions, the Id. CIT(A) found that the interest free funds available with the assessee were much higher than the alleged interest free loans and advances and accordingly, directed the Assessing Officer to delete the impugned disallowance.

8. Before us, the ld. DR strongly supported the findings of the Assessing Officer and vehemently stated that the assessee has not demonstrated any commercial expediency in extending such interest free advances to its subsidiary companies and sister concerns. In support of her contention, strong reliance was placed on the judgment of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Abhishek Industries Ltd. 286 ITR 1 and on the decision of the Hon'ble Supreme Court in the case of S.A. Builders Ltd in Civil Appeal No. 5811 of 2006. Reliance was also placed on the judgment of the Hon'ble Punjab & Haryana High Court in the case of M/s Punjab Stainless Steel Inds. in Tax Appeal No. 47 of 2008. The ld. DR further stated that the ld. CIT(A) has considered the year end figure without looking into commercial expediency and without looking into the cash flow statement. It is the say of the ld. DR that the order of the first appellate authority deserves to be set aside and that of the Assessing Officer should be restored.

9. Strongly rebutting to the submissions made by the ld. DR, the ld. counsel for the assessee stated that the Assessing Officer himself has considered the year end figure for making proportionate disallowance. It is the say of the ld. counsel for the assessee that the issue of

commercial expediency was never raised by the Assessing Officer and, therefore, the Id. DR cannot improve the assessment order by raising the issues which are not emanating from the assessment order. The Id. AR drew our attention to the availability of interest free funds and once again stated that the interest free funds are far more in excess of interest free loans and advances. It is the say of the Id counsel that there is no error or infirmity in the findings of the Id. CIT(A).

10. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that the Assessing Officer has considered the year end figure for making the proportionate disallowance which is evident from para 3 page 2 of the assessment order. It is equally true that the proportionate disallowance made by the Assessing Officer was never on the grounds of commercial expediency. In our considered opinion, the Id. DR cannot improve the assessment order by raising issues which were never considered by the Assessing Officer at the assessment stage.

11. It is not in dispute that the assessment for assessment year 2009-10 was framed u/s 143(3) of the Act and no such disallowance was made in that year. We find that in assessment year 2009-10 the total

loans and advances to subsidiaries and sister concerns was at Rs. 44.92 crores and in assessment year 2010-11, the same stood at Rs. 60.10 crores. The finance charges paid in assessment year 2009-10 were Rs. 3.44 crores and in assessment year 2010-11, the same were at Rs. 2.96 crores. As mentioned elsewhere, no disallowance was made in assessment year 2009-10. Reliance placed by the Id. DR on the decisions of the Hon'ble Supreme Court and Hon'ble Punjab & Haryana High Court are misplaced, in as much as, in those cases, the disallowances, vis a vis claims, were on the grounds of commercial expediency, which is absent in the case in hand.

12. The Hon'ble Jurisdictional High Court of Delhi in the case of Modi Rubber 378 ITR 128 had an occasion to consider a similar issue of availability of interest free funds, vis a vis, lending of interest free advances. The relevant findings of the Hon'ble High Court read as under:

"From a perusal of the financial statements for the year ended September 30, 1997, it was seen that the assessee was having mixed pool of funds comprising own funds and loan funds. It was held that in such a situation where the one to one

nexus between the borrowed funds and the loan advanced to Modi Stone Ltd. was unable to be established, the loan to Modi Stone had to be held as having come out of its own funds. .Consequently, the order of Assessing Officer and Commissioner of Income-tax (Appeals) was set aside.

The court finds that the decision of the Income-tax Appellate Tribunal on the above aspect turned purely on facts. The view taken by the Income- tax Appellate Tribunal on facts was a plausible one. Consequently, the court finds that no substantial question of law arises for determination as **far** as the said issue is concerned."

13. A similar view was taken by the Hon'ble High Court of Delhi in the case of Bharti Televenture Ltd. 331 ITR 502 and the relevant findings read as under:

"In the instant case, from the order of the Commissioner of Income-tax 12 (Appeals) and that

of the Income-tax Appellate Tribunal, as reproduced above, in paragraphs 3 and 6, we note that the assessee was maintaining a bank account with mixed common funds in which all the deposits and withdrawals were made. There was no specific instance noted by the Assessing Officer in respect of any direct nexus between the borrowed fund and the said advances made to the subsidiaries. The Assessing Officer had made general observations without going into the depth of the matter and without pointing out any specific instance where an interest bearing borrowing was advanced to the subsidiaries or establishing that the borrowings made by the appellant were not for business purposes. Both appellate authorities below were of the view that the assessee had explained the sources of the advances and investments made to the subsidiaries, which could not be linked to the borrowed funds and that the advances were made out of the assessee's own capital. At the relevant time the assessee was found to be having an adequate non-interest bearing fund by way of share capital and reserves.



14. The Hon'ble High Court further held as under:

*"We are in entire agreement with the findings recorded by the Commissioner of Income-tax (Appeals) as also by the Income-tax Appellate Tribunal in all the three cases and do not find any ground to interfere with those findings".*

15. Similar view was taken by the Hon'ble High Court of Bombay in the case of Reliance Utilities and Power Ltd 313 ITR 340 followed in HDFC Bank Ltd 366 ITR 505.

16. Considering the facts in totality, in the light of decisions of the Hon'ble jurisdictional High Court of Delhi [supra], we decline to interfere. This common ground in all the three appeals is dismissed.

17. In ITA No. 6884/DEL/2015, another grievance of the Revenue is that the Id. CIT(A) erred in deleting the disallowance of Rs. 4,82,945/- made u/s 14A of the Act r.w.r 8D of the Rules.

18. While scrutinizing the return of income, the Assessing Officer noticed that the assessee has not disallowed any proportionate expense u/s 14A r.w.r 8D of the Rules. Drawing support from the decision of the Special Bench of the Tribunal in the case of Daga Capital Management 312 ITR [AT] 01 and Cheminvest Ltd 317 ITR [AT] 86, the Assessing Officer computed the disallowance u/s 14A r.w.r 8D at Rs. 4,82,945/-.

19. The assessee strongly agitated the matter before the Id. CIT(A) and pointed out that there was no exempt income earned during the year under consideration, therefore, there is no question of any disallowance u/s 14A of the Act.

20. The Id. CIT(A) found that there is no exempt income earned by the assessee, disallowance u/s 14A is unwarranted and deleted the addition.

21. Before us, the Id. DR strongly supported the findings of the Assessing Officer. It is the say of the Id. DR that the provisions of section 14A are very clear on this aspect and when read with CBDT Circular the disallowance so made by the Assessing Officer should be sustained.

22. We have carefully considered the orders of the authorities below. The undisputed fact is that there is no exempt income earned by the assessee during the year under consideration. The Special bench decision on which the Assessing Officer relied for making the disallowance has been reversed by the Hon'ble High Court of Delhi in Cheminvest Ltd. 281 CTR 447. The Hon'ble High Court of Gujarat in the case of Corrttech Energy [P] Ltd. 272 CTR 262 and the Hon'ble Allahabad High Court in the case of Shivam Motors Pvt. Ltd [All] 272 CTR 277 have categorically held that if there is no exempt income earned by the assessee during the year, there cannot be any disallowance u/s 14A r.w.r 8D of the Rules. Respectfully, following the judicial decisions on this issue, we decline to interfere. This ground is also dismissed.

23. In the result, all the three appeals of the Revenue are dismissed.

**The order is pronounced in the open court on 19.09.2018.**

**Sd/-**

**[N.K. CHOUDHARY]  
JUDICIAL MEMBER**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 19<sup>th</sup> September, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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