

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.2942/Del./2016
Assessment Year 2011-2012

M/s. RTC Restaurants (India) Ltd., 703-706, Chiranjiv Tower, 43 Nehru Place, New Delhi. PAN AAACR7638C	vs.,	The DCIT, Circle-15 (1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Jaspal Singh, Advocate.
For Revenue :	Smt. Naina Soin Kapil, Sr.D.R.

Date of Hearing :	08.04.2019
Date of Pronouncement :	15.04.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of Ld. CIT(A)-7, New Delhi, Dated 31st March, 2016, for the A.Y. 2011-2012, challenging the order of Ld. CIT(A) in upholding the disallowance of interest to the tune of Rs.19,90,220/- on term loan paid by the assessee company on the loan raised from the Bank.

2. The A.O. noted that assessee-company had taken term loan from Catholic Syrian Bank of Rs.275 lakhs and diverted the raised fund to TRR Properties Limited as an interest free advance. The interest paid on term loan was Rs.19,90,220/- during the year. Since the raised fund had not been used by the assessee for its business purposes, the same was disallowed.

3. The assessee challenged the addition before Ld. CIT(A). The written submissions of the assessee is reproduced in the appellate order, in which the assessee explained that assessee-company is running a chain of restaurants by the name of "Ruby's Tuesday" and has various outlets throughout India. The restaurant at Mumbai called "CR-2 Unit" of Ruby's Tuesday was run in a rented property and rent of Rs.54 lakhs was paid annually. The said property is owned by TRR Properties Limited. The said company [TRR Properties Limited] had taken a loan of Rs.2.75 crores for purchase of this property. The said company, during the year requested the tenants i.e., the assessee-company that in case a sum of Rs.2.75 crores

could be advanced by the assessee company to M/s. TRR Properties Limited, the said company would allow the user of this property without any rent. Thus, on this arrangement, assessee-company raised a loan from Catholic Syrian Bank and advanced the same to the landlord namely TRR Properties Limited. The assessee-company in this way saved a rent of Rs.54 lakhs and gained Rs.34,09,780/- [Rs.54 lakhs (-) Rs.19,90,220/-]. It was further submitted that assessee is a holding company of TRR Properties Limited till 31st March, 2010, a rent of Rs.4,50,000/- per month was being paid to the landlords i.e., TRR Properties Limited. The assessee-company purchased all the shares of the landlord company and as such the landlord TRR Properties Limited became a 100% subsidiary company of the assessee-company. TRR Properties Limited passed resolution that the company required to pay loan of approximately Rs.3.30 crores to M/s. Hotz Industries Ltd., and Bank. It was decided to request the holding company i.e., assessee-company to provide the loan with the condition that till this loan is repaid by TRR Properties Ltd.,

it shall not charge rent in respect of the property at Mumbai. The assessee-company acknowledge the request of the subsidiary company in their meeting, in which it was decided to grant loan of Rs.3.3 crores to its subsidiary company TRR Properties Ltd., on the condition that no rent for the Mumbai property being used by the assessee company be paid till the entire loan is paid on. The assessee company, accordingly, took loan from the Bank. Copy of the Rent Agreement and balance sheet were provided. M/s. TRR Properties Limited became a subsidiary of the assessee company on 26th March, 2010 i.e., in the year immediately preceding under appeal. The holding company i.e., assessee company is by itself a subsidiary of M/s. Hotz Industries Ltd., since June 1999, which is not a subsidiary of any other company. The above loan of Rs.3.3 crores was given to its subsidiary company to buy the property. The details of the loans raised by TRR Properties Limited from the assessee-company was utilised for repayment of loan of M/s. Hotz Industries Ltd., and repayment to the Bank for closure of loan already taken at the time of purchase of the

property and other misc payments of business, totaling to Rs.3,29,99,977/-.

3.1. The Ld. CIT(A) noted the above contention of the assessee-company that in this way the assessee-company saved the amount of the rent. The Ld. CIT(A) did not accept the contention of the assessee-company. The Ld. CIT(A) noted that loan raised by the assessee-company has in effect been utilised by the subsidiary company of the assessee to repay the outstanding loan of the holding company of the assessee-company [M/s. Hotz Industries Ltd.,] The Ld. CIT(A) also considered the Leave and License Agreement between assessee-company and TRR Properties Ltd., He has noticed that the said agreement is actually between TRR Properties Ltd., and M/s. Round the Clock Stores Ltd., and not the assessee-company. The said agreement is valid for 33 months up to 15th June, 2007. It was, therefore, noted that the interest payment on the loan, cannot be treated as wholly and exclusively incurred for the purpose of business. Therefore, addition was confirmed.

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has referred to PB-22, which is balance sheet of the assessee-company to show that assessee-company has interest free funds/capital to the tune of Rs.16,92,96,307/-, out of which, unsecured loans [interest free] are in a sum of Rs.11,61,52,631/- [PB-25]. He has, therefore, submitted that assessee-company has sufficient interest free funds available which were more than the amount advanced to the subsidiary company. PB-27 is details of loan and advances given to the subsidiary company in a sum of Rs.3,29,00,000/-. He has, therefore, submitted that presumption could be in favour of the assessee that assessee has given the aforesaid loan to the subsidiary company, out of interest free capital and reserves available to the assessee. He has submitted that the ITAT in the case of Holding Company M/s. Hotz Industries Ltd., New Delhi vs. DCIT, Circle-12(1), New Delhi, for the A.Y. 2010-2011, vide Order Dated 21st May, 2018 in ITA.Nos.4539 & 5058/Del./2014 following the decision of the Hon'ble

Bombay High Court in the case of CIT vs., Reliance Utilities & Power Ltd., (2009) 313 ITR 340 (Bom.), deleted the similar addition on the above reasons.

5. On the other hand, the Ld. D.R. relied upon the Orders of the authorities below.

6. We have considered the rival submissions and perused the material on record. The Hon'ble Bombay High Court in the case of CIT vs., Reliance Utilities & Power Ltd., (2009) 313 ITR 340 (Bom.) held as under :

“The assessee claimed deduction of interest on borrowed capital. The Assessing Officer recorded a finding that the sum of Rs. 213 crores was invested out of its own funds and Rs. 147 crores was invested out of borrowd funds. Accordingly he disallowed interest amounting to Rs.4.40 crores calculated at 12 per cent, per annum for three months from January, 200o to March, 2000. The Commissioner (Appeals) found that the assessee had enough interest-free funds at its disposal for investment and accordingly deleted the addition of

Rs.4.40 cores made by the Assessing Officer and directed him to allow the deduction under section 36(l)(iii). The order of the Commissioner (Appeals) was upheld by the Tribunal. On appeal to the High Court :

Held, dismissing the appeal, that if there were funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free funds generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this presumption was established considering the finding of fact both by the Commissioner (Appeals) and the Tribunal. The interest was deductible.

6.1. The Hon'ble Supreme Court in the case of CIT vs Reliance Industries Limited (2019) 410 ITR 446 (SC) has held as under :

“Business expenditure – Interest on borrowed capital – Finding of Tribunal that interest-free funds available with assessee sufficient to meet investment – Presumption that investments in subsidiaries were out of interest-free funds – Interest referable to funds invested in subsidiaries allowable – Income Tax Act, 1961, s. 36(1)(iii).”

6.2. Learned Counsel for the Assessee referred to the balance sheet of the assessee-company which shows that assessee-company has share capital and unsecured loans to the tune of Rs.16.92 crores. The assessee has interest free unsecured loans in a sum of Rs.11,61,52,631/-. Thus, assessee has sufficient interest free funds available, then presumption would arise that loan given by the assessee-company to the subsidiary company, would be out of the interest free funds generated as are available with the assessee-company. When interest free funds were sufficient to meet the Investments above, no disallowance could be made against the assessee. In view of the above and following the decisions referred to above, we are of the view

that addition is wholly unjustified. We, accordingly, set aside the orders of the authorities below and delete the addition.

7. In the result appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 15th April, 2019

VBP/-

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1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "D" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.