

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “A”, PUNE – VIRTUAL COURT**

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

ITA No.1569/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Kumar Urban Development Ltd., 10 th Floor, Kumar Business Centre, CTS 29, Bund Garden Road, Pune 411 001 PAN : AAACK7659N	Vs.	ITO, Ward-14(1), Pune
Appellant		Respondent

Assessee by
Revenue by

Shri Nikhil Pathak
Shri S.P. Walimbe

Date of hearing

23-10-2020

Date of pronouncement

23 -10-2020

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order dated 15-03-2017 passed by the Commissioner of Income-tax (Appeals)-7, Pune in relation to the assessment year 2012-13.

2. The first ground is against the confirmation of addition of Rs.5,64,264/- on account of bank interest on deposits not belonging to the assessee.

3. At the very outset, the ld. AR fairly submitted that this issue is covered against the assessee by the Tribunal order passed in the case of the assessee for the immediately preceding assessment year. Inviting our attention towards page 67 of the paper book,

which is the relevant part of the Tribunal order for the assessment year 2011-12, the ld. AR pointed out that this issue came to be decided against the assessee. In view of the foregoing facts, we uphold the action of the ld. CIT(A) in sustaining the disallowance at this level. This ground is not allowed.

4. The second ground is against the confirmation of addition of Rs.71,18,316/- u/s.14A read with Rule 8D.

5. Briefly stated, the facts of this ground are that the assessee made *suo moto* disallowance u/s.14A at Rs.12,26,39,682/- in terms of Rule 8D. The Assessing Officer (AO) observed that the assessee did not offer proper disallowance. He made his own calculation at para 4.2 of assessment the order and worked out the amount disallowable at Rs.12,97,57,998/-. The differential amount of Rs.71,18,316/- was disallowed. The assessee submitted before the ld. CIT(A) that the difference in assessee's calculation and that of AO arose primarily because of the fact that the assessee did not consider the amount of share application money pending allotment as investment yielding exempt income, whereas the AO treated it otherwise. Relying on the Tribunal order passed in the assessee's own case for the assessment year 2009-10, the ld. AR pleaded for

the deletion of disallowance, which did not find favour with the Id. CIT(A). This has brought the assessee before the Tribunal.

6. Having heard both the sides through the virtual court and gone through the relevant material on record, it is found that the AO computed the amount otherwise disallowable u/s.14A read with Rule 8D at Rs.12.97 crore. On the other hand, the assessee *suo moto* offered disallowance of Rs.12.26 crore. The difference of Rs.71,18,316/- emanated on account of the fact that the assessee did not consider share application money at the year-end as investment yielding exempt income, which the AO took it otherwise. It is found that similar issue came up for consideration before the Tribunal in case of the assessee for the assessment year 2009-10. A copy of such order has been placed on record. The Tribunal on page 114 of the paper book has decided this issue in assessee's favour. Similar view has been reiterated by the Tribunal in its order for the assessment year 2010-11, whose copy has also been placed in the paper book. The Id. DR could not point out if the view of the Tribunal in such earlier years has been reversed or modified by the Hon'ble High Court in any manner. Respectfully following the precedent, we set-aside the impugned order on this

score and order to delete the disallowance sustained at Rs.71,18,316/-.

7. The only other issue which survives in this appeal is against the disallowance of interest at Rs.3,79,97,067/-. The AO observed that the assessee diverted borrowed funds for non-business purpose. By applying interest rate at 12%, he computed the amount of disallowance at Rs.3,79,97,067/-. The Id. CIT(A) did not agree with the assessee and sustained the disallowance.

8. Having heard both the sides and gone through the relevant material on record, it is observed from page 20 of the impugned order that the balance of assessee's Share Capital and Reserves as at the beginning of the year stood at Rs.243.66 crore which amount at the end of the year came to Rs.246.12 crore, thereby giving average balance of Rs.244.89 crore. The AO has computed disallowable of interest at 12%, which in turn, gives figure of the amount of investments made by the assessee in sister concerns at Rs.31.66 crore.

9. The Hon'ble Bombay High Court in *CIT vs. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom)*, has held that where an assessee possessed sufficient interest free funds of its own which were generated in the course of relevant financial year, apart from

substantial shareholders' funds, presumption gets established that the investments in sister concerns were made by the assessee out of interest free funds and, therefore, no part of interest on borrowings can be disallowed on the basis that the investments were made out of interest bearing funds. In reaching this conclusion, the Hon'ble High Court relied on the judgment of the Hon'ble Supreme Court in the case of *East India Pharmaceutical Works Ltd. Vs. CIT* (1997) 224 ITR 627 (SC). Similar view has been taken by the Hon'ble Dehi High Court in *CIT vs. Tin Box Company* (2003) 260 ITR 637 (Del), holding that when the capital and interest free unsecured loan with the assessee far exceeded the interest free loan advanced to the sister concern, disallowance of part of interest out of total interest paid by the assessee to the bank was not justified. More recently, the Hon'ble Supreme Court in *CIT(LTU) VS. Reliance Industries Ltd.* (2019) 410 ITR 466 (SC) has reiterated the same view.

10. When we examine the amount of interest free advances made to sisters concerns at Rs.31.66 crore as against the availability of Share Capital and Reserves at average balance of Rs.244.89 crore, it becomes evident that the amount of such advances is much less than the amount of shareholders fund. The Id.CIT(A) examined

the issue from this angle also but did not agree with assessee's contention by observing that the assessee exhausted the shareholders fund in avoiding disallowance u/s.14A as well as u/s.36(1)(iii) for the assessment year 2009-10. There is no dispute that the assessee did claim the utilization of shareholders funds for the purposes of avoiding disallowance u/s 14A in the previous year relevant to the A.Y. 2009-10. However, utilization of shareholders funds for the purposes of avoiding disallowance u/s 14A has not been claimed for the year under consideration. This shows that such funds again became available with the assessee, which could have been claimed for any purpose, namely, avoiding disallowance u/s 14A or claiming deduction section 36(1)(iii) etc. We have examined the assessee's calculation of disallowance u/s.14A for the year under consideration. It can be seen that the assessee offered disallowance of interest u/s.14A r.w. Rule 8D at Rs.11.69 crore. Thus, it is evident that the amount of shareholders fund available with the assessee at the beginning of the year was not claimed to have been utilized doubly by the assessee once for the purpose of avoiding disallowance u/s.14A and secondly, for claiming allowance of deduction of interest u/s.36(1)(iii). The assessee claimed it only once, that is, for claiming deduction of

interest u/s 36(1)(iii) of the Act. Had the assessee claimed the benefit of utilization of shareholders fund for avoiding disallowance under section 14A and simultaneously for claiming deduction of interest in the year under consideration, the view point of the Id. CIT(A) would have been correct. Having not done so, the utilization of shareholders fund by the assessee towards making investment with sister concerns cannot be ignored. As the assessee has taken benefit of the ratio of *Reliance Utilities and Power Ltd. (supra)*, in respect of allowance of interest u/s.36(1)(iii) only, we hold that the addition cannot be sustained. We, therefore, order for the deletion of addition.

11. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 23rd October, 2020.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 23rd October, 2020
Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-7, Pune
4. The Pr.CIT-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
“ए” / DR ‘A’, ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	23-10-2020	Sr.PS
2.	Draft placed before author	23-10-2020	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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