

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

I.T.A. No. 235/HYD/2018

Assessment Year: 2013-14

Chiranjeevi Traders Private Limited, HYDERABAD [PAN: AABCC1964F]	Vs	DCIT, Circle-1(2), HYDERABAD
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(Appellant)

(Respondent)

For Assessee : Shri P.Murali Mohana Rao, AR
For Revenue : Shri Rohit Mujumdar, DR

Date of Hearing : 07-04-2021

Date of Pronouncement : 02-07-2021

ORDER

PER S.S.GODARA, J.M. :

This assessee's appeal for AY.2013-14 arises from the CIT(A)-1, Hyderabad's order dated 03-10-2017 passed in case No.0023/CIT(A)-1/Hyd/2016-17/2017-18, in proceedings u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. The assessee has raised the following substantive grounds in the instant appeal:

"1. The order of the Ld. CIT (A) is erroneous both on facts and in law to prejudicial to the interests of the appellant.

2. The Ld.CIT(A) ought to have allowed the appeal in full.

3. The Ld.CIT(A) erred in upholding the disallowance of Rs.94,28,655/-.

4. The Ld.CIT(A) grossly erred in observing that no due diligence report and acquisition details in which financial impact is entailed, has been submitted by the appellant in respect of the interest liability of Rs.94,28,655/-.

5. The Ld.CIT(A) grossly erred in ignoring the fact that the scheme of amalgamation of M/s.Everbig Properties & Finvest Private Ltd and the appellant company is effective from 01-04-2012, which is relevant to the assessment year under consideration in respect of the liability of Rs.94,28,655/- as per A.P. High Court order in C.P.Nos. 75 & 76 of 2013 dated 02-07-2013.

6. The Ld.CIT(A) erred in observing that no due diligence report and acquisition details in which financial impact is entailed has been submitted by the appellant with regard to the liability of Rs. 94,28,655/- de hors the filing of paper book before her in which the requisite information is available.

7. The Ld.CIT(A) erred in observing that the appellant has not been able to prove that there was a liability of Rs. 94,28,655/- payable to M/s Gajmukh Investments Private Limited.

8. The Ld.CIT (A) ought to have allowed the claim for Rs.50,32,183/ - made towards TDS and Advance Tax.

9. The Ld.CIT(A) has erred in directing the A.O to verify the claim of the appellant towards TDS and Advance Tax amounting to Rs.50,32,183/- in spite of the fact that full details in support of the claim have been filed before her through paper book.

10. The appellant may add or alter or mend or modify or substitute or delete and / or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal”.

3. We come to the former issue of interest disallowance of Rs.94,28,655/-. The CIT(A)'s detailed discussion upholding the Assessing Officer's action to this effect reads as under:

5. Ground 1: Disallowance u/s.37(1) of Rs.94,28,655/- towards the Interest payment to M/s.Gajmukh Investments Private Limited:

5.1 During the course of assessment proceedings, the Assessing officer noticed that the assessee has claimed expenditure of Rs.94,28,655/- on account of interest paid to M/s.Gajmukh Investments Private Limited. However, it was found that the total outstanding advance from Gajmukh in the books of assessee company (post merger) was only Rs.55lakhs. Thus, the interest

claimed is incommensurate to the principal amount on which the interest has been claimed to have been paid. Thus, the assessee was asked to provide the detailed working of such interest charged to P & L statement. In response, the assessee stated that Interest paid was Rs.94,24,577/- to M/s.Gajmuckh Investmerits Private limited for the amount borrowed from it. Rate of interest was 18%.

The assessee further submitted before the Assessing Officer that the total interest paid was Rs.94,24,577/- by M/s Everbig Properties & Finvest Private Limited to M/s',Gajmukh Investments Private Limited for the amount borrowed from it in the year 2005-06. Rate of Interest was 18%. As M/s.Everbig was not having funds to reply to M/s. Gajmukh Investments Private Limited & hence understanding was reached between them to return money along with Interest of 18% from 01.04.2004 in the year of sale of property.

Accordingly, loan along with interest was repaid in the accounting year 2012-13 (year of sale of property). The Assessing Officer concluded that-

- a) Even though specifically asked to provide the detailed working of the interest claimed, the assessee, despite availing sufficient time to file the explanation, could not, provide the year-wise working of the interest.*
- b) No supporting documentary evidences have been filed to support the authenticity and validity of any such agreement entered into by the assessee with M/s.Gajmukh Investments.*
- c) No evidence illustrating the actual transaction pertaining to payment of any such interest, has been filed by the assessee.*
- d) The assessee is following mercantile basis of accounting. The assessee was already aware of the arrangement that interest will accrue yearly. Thus it should have charged interest to its Profit and Loss Account, as and when it accrued i.e. on yearly basis. Charging of the interest in one go in the current year has been done (just to bring down its taxable profits).*
- e) Even if the contention of the assessee is accepted for once, the contract entered into with M/s. Gajmukh Investment is contingent to the sale of property. Thus, the interest is attached directly to the property in question. In such circumstances, it is important to see whether such property is generating any income from business or not. It is seen from the records, that income from sale of this property has not been accounted for a business income, but as long term capital gains, after taking the benefit of indexation. Thus, there is no room for any doubt that the interest at Rs.94,28,655/- even if has been really paid, does not pertain to the business of the assessee at all.*

Under the provisions of section 37(1), it is construed that the interest of Rs.94,28,655/- claimed to have been paid by the assessee is not related to the business of the assessee. Thus, the Assessing Officer disallowed the same and added to the returned income of the assessee.

5.2 Before me, the appellant submitted the following:

(1) The appellant submitted that in the year under consideration M/s.Everbig Properties & Finvest Pvt Ltd has merged into the assessee company with effect from 01.04.2012 as per High Court of Andhra Pradesh order dt.02.07 :2013.

(2) The appellant submitted that during the financial years 2004-05 and 2006-07 i.e., before merger M/s. Everbig Properties & Finvest Pvt Ltd has borrowed an amount of Rs.54,75,000/- from M/s.Gajmukh Investmets Pvt Ltd. This money has been received by the MIs. Everbig Properties & Finvest Pvt Ltd, through the banking channel via Indian Overseas Bank Account No. 043202000002838. This fact can be appreciated from the Ledger of Gajmukh Investment Pvt Ltd and Indian Overseas Bank ledger in books of M/s. Everbig Properties & Finvest Pvt Ltd for the period 01.04.2003 to 31.03.2013.

(3) The appellant submitted that M/s.Everbig Properties & Finvest Pvt Ltd does not having funds to repay the above, loan amount to M/s,Gajmukh Investments Pvt Ltd accordingly an understanding was reached between them to repay along with interest at 18% p.a from the date of borrowing. As per the understanding, interest from 2004-05 became due on 2012-13 only. Total interest worked out to be Rs.94,24,577/-. Accordingly the loan along with the interest was repaid in the accounting year 2012-13 for an total amount of Rs.1,39,57,119/- which is inclusive of principal and Interest after the TDS, It is submitted that on the above interest payment TDS was made and paid @10% to Income tax Department for Rs.9,42,458/- via challan no 26078 dated 11.07.2012 of ICICI Bank, Uttam Nagar Branch, New Delhi. Therefore it is very clear that assessee has paid the interest to the M/s. Gajmukh Investrnents Pvt Ltd as per the provisions of law and deducted the respective TDS and deposited the same.

(4) The appellant further submitted that the borrowed. funds were used for business purposes only and hence interest expenditure paid on the same is business expenditure. M/s.Everbig Properties & Finvest Pvt Ltd has taken the advance in respect of the business purpose only and funds also utilized for the business activities only and same should be allowed u/s.37 of the Act as business expenditure. The interest paid on advances is an allowable expenditure u/s.37(1) of the Act. The expenditure is purely incurred for the purpose of business and it is necessary for the smooth

functioning of business therefore should be allowed u/s. 37 of the Act. Further it is submitted that expenditure incurred for the purpose of business and it is allowable as, business expenditure if it is incurred on ground of commercial expediency.

(5) The appellant submitted the following documents:

1.Statement showing calculation of interest and loan repayment. unsigned & un authenticated

2.Ledger Extract of M/s.Gajmukh Investments pvt Ltd in the books of M/s. Everbig Properties & Finvest Pvt. Ltd towards advance.

3.Ledger extract of Indian Overseas Bank in the books of M/s.Everbig Properties & Finvest Pvt. Ltd

4.Bank statement of Indian Overseas Bank A/c No.04320200002838 for the period from 01.04.2012 to 13.02.2013.

5.3 The submissions of the appellant has been considered carefully. The appellant submitted that they have paid Rs.94,24,577/- to M/s. Gajmukh Investments pvt Ltd on behalf of the M/s. Everbig Properties & Finvest pvt. Ltd. This was a liability which was inherited by the appellant company after the merge. However, no 'due diligence report' and which financial impact 15 entailed, has been submitted by the appellant. This casts doubt regarding 'the liability' of the appellant after the merger. No evidence has been brought before me to show that this amount stands payable. No bank account has been given by the appellant where they have paid the said amount to Mis. Gajmukh Investments Pvt Ltd, Secondly, in the submissions of the appellant, it has been referred to an 'Understanding'. No such documentation regarding so called understanding or any agreement has been submitted to support the contention of the appellant. Thirdly, in the ledger account of M/s.Gajmukh Investments Pvt Ltd in the books of M/s.Everbig Properties & Finvest Pvt. Ltd, there is a difference Rs.39,49,577/- (Rs.94,24,577 - Rs.54,75,000) in terms of payables as referred by the appellant. Hence, the accounts also are not supportable. Even the contention regarding deduction of TDS in the above payment also is not proved by any evidence like Form 26AS, or payment challan. In light of this, the appellant has not able to prove that there was such a liability to pay to M/s.Gajmukh Investments Pvt Ltd. No documentary evidence could be provided by the appellant as to whether this was a business related expenditure" or just an adjustment. In this background} the findings of the Assessing officer is upheld and I uphold the addition made by the Assessing Officer.

4. We have heard rival submissions against and in support of the impugned interest disallowance and find no merit in

Revenue's stand in principle. This is for the reason that the hon'ble jurisdictional high court's order approving amalgamation scheme with effect from the appointed date i.e., 01-04-2012 (falling in the relevant previous year) makes it clear that the assessee had undertaken "all the liabilities and duties of transferer company, M/s.Everbig Properties & Finvest Private Ltd.," who infact had borrowed the principle amount of Rs.54.75 Lakhs in FY.2004-05 and 2006-07 i.e. well before merger. We further notice that the assessee has also filed a petition dt.26-12-2020 *in te alia* placing on record audited financial statements of M/s.Gajmukh Investments Pvt. Ltd., (FY.2012-13) Form-26AS of M/s.Gajmukh Investments Pvt. Ltd., for the AY.2013-14 and detailed copy of the amalgamation scheme; respectively.

Faced with this situation, we deem it appropriate to express our agreement with the Revenue's stand *qua* the foregoing additional expenditure that all these documents require the Assessing Officer's necessary factual verification. We therefore restore the instant former issue of interest disallowance amounting to Rs.94,28,655/- back to the Assessing Officer for his verification as per law within three effective opportunities of hearing. This former substantive issue is accepted for statistical purposes.

5. Next comes the assessee's latter substantive grievance that the CIT(A) had erred in law and on facts in restoring the issue of TDS and advance tax claim(s) of Rs.50,32,183/- since the power to 'set aside' is no more available to him in light of Section 251(1)(a) containing the 'omission' to this effect vide Finance Act, 2001 w.e.f.01-06-2001. We find merit in the

assessee's grievance in principle and deem it appropriate to restore the instant matter back to the Assessing Officer at the same time to verify the corresponding facts pertaining to the impugned twin heads. Ordered accordingly.

6. This assessee's appeal is treated as allowed for statistical purposes in foregoing terms.

Order pronounced in the open court on 2nd July, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Hyderabad,
Dated: 02-07-2021

Copy to :

*1.Chiranjeevi Traders Private Limited, C/o. P. Murali & Co.,
Chartered Accountants, 6-3-655/2/3, 1st Floor,
Somajiguda, Hyderabad.*

2.The DCIT, Circle-1(2), Hyderabad.

3.CIT(Appeals)-1, Hyderabad.

4.Pr.CIT-1, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.