

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “B”, BANGALORE**

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.579/Bang/2018 : Asst.Year 2014-2015

The Dy.Commissioner of Income-tax, Circle 7(1)(1), Bangalore.	v.	M/s.Tally Solutions Pvt. Ltd. No.331-336, Raheja Arcade, 3 rd Floor, Koramangala Bengaluru – 560 095. PAN : AAACP7879D.
(Appellant)		(Respondent)

Appellant by : Smt.Soumya Virupakshaiah, Addl.CIT-DR
Respondent by : Sri.T.Suryanarayana, Advocate

Date of Hearing : 13.10.2021	Date of Pronouncement : 14.10.2021
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ORDER

Per George George K, JM

This appeal at the instance of the Department is directed against CIT(A)'s order dated 04.12.2017. The relevant assessment year is 2014-2015.

2. The grounds raised read as follows:-

“1. The order of the learned CIT(A) is opposed to law and facts of the case.

2. Whether on the facts and in the circumstances of the case, the CIT(A) was justified in law in following the decision of the jurisdictional High Court in the case of CIT & Anr. v. M/s Microlabs Ltd. (383 ITR 490), without looking into the commercial / business expediency of the transaction between the assessee and its subsidiary company.

3. Whether on the facts and in the circumstances of the case, the CIT(A) was justified in law in not relying on the decision of the jurisdictional High Court in the case of Embassy Development Corporation v. ACIT, wherein similar facts are involved.

4. *Whether in the facts and circumstances of the case, the CIT(A) was justified in allowing the depreciation of the Home Theatre Systems relying on the indirect evidences and not providing an opportunity to the AO under Rule 46A(3) of the I.T.Rules to examine the issue.*

5. *The appellant craves leave to add, alter, amend and / or delete any of the grounds mentioned above.”*

3. Ground No.1 and 5 are general in nature and no adjudication is called for, hence, these grounds are dismissed. Ground Nos. 2 and 3 is regarding addition of Rs.1,40,99,637 on account of diversion of funds to sister-concern. Ground No.4 is regarding disallowance of depreciation amounting to Rs.30,28,504.

We shall adjudicate the above grounds / issues as under.

Addition of Rs.1,40,99,637 (Ground No.2 & 3)

4. The assessee is a company engaged in the business of development and marketing of accounting business management software. For the assessment year 2014-2015, the return of income was filed on 28.11.2014 declaring total income of Rs.5,45,82,790. The assessment was selected for scrutiny. During the course of assessment proceedings the Assessing Officer noticed that the assessee had incurred interest expenditure amounting to Rs.2,69,84,549. It was further noticed by the A.O. that the assessee-company had diverted funds of Rs.9,72,38,877 towards sister-concern without charging interest. The A.O. adopted the rate of interest at 14.5% on the amount outstanding from the sister-

concern and made an addition of Rs.1,40,99,637. The relevant observation of the Assessing Officer reads as follow:-

“.....the assessee company has diverted a total amount of Rs.9,72,38,877/- towards its sister concern without charging any interest. The interest disallowable is worked out at the rate of 14.5% on this amount of Rs.9,72,38,877/-. Considering the above at the rate of 14.5% interest, the interest disallowable is worked out at Rs.1,40,99,637/-. Hence the amount of Rs.1,40,99,637/- is being disallowed as interest.”

4.1 Aggrieved, the assessee preferred an appeal to the first appellate authority. The CIT(A) deleted the addition of Rs.1,40,99,637. The reasoning of the CIT(A) to grant relief to the assessee are as follows:-

(i) The balance outstanding in the name of M/s.Tally India (P) Ltd. relates to entries made consequent to de-merger during the FY 2009-10.

(ii) The balance outstanding as on 31.03.2014 cannot be attributed to transfer of funds, since it is out of opening balance.

(iii) There is no nexus between the borrowed funds and balance outstanding.

(iv) There is no justification for adopting interest rate at 14.5% for quantifying the disallowance.

(v) The assessee has substantial interest free funds to cover up the outstanding amounts and hence in the light of the decision of the Hon'ble High Court of Karnataka in the case of CIT & Another v. Microlabs Ltd (2016) 383 ITR 490 (Kar) no disallowance can be made.”

4.2 Revenue being aggrieved, has raised this issue before the Tribunal. The learned Departmental Representative strongly relied on the findings of the A.O. and the grounds raised.

4.3 The learned AR, on the other hand, has filed a paper book comprising of 177 pages inter alia enclosing the written submissions before the CIT(A), the communications by the Income Tax Authorities with the assessee and vice versa, the financial statements for assessment year 2014-2015, etc. The learned AR took us through the balance sheet to appraise us that the assessee is having sufficient interest free funds to the extent of Rs.93.89 crore. It was submitted that no portion of borrowed funds was diverted to the sister-concern. The learned AR further submitted that the decision relied on by the Revenue in ground No.3, namely, *Embassy Development Corporation v. ACIT reported in 62 Taxmann.com 234 (Kar.)* is distinguishable on facts. It was submitted in the said case that the assessee, a builder, had advanced certain borrowed funds to the sister-concern for acquiring a land and putting up a project, which was developed by the sister-concern. Therefore, in the facts of those case it was held by the Hon'ble Court that there was no benefit to the assessee for diverting borrowed funds to the sister-concern without charging interest. It was submitted by the learned AR that on the facts of the instant case, the judgment of the Hon'ble jurisdictional High Court in the case of *CIT & Anr. v. Microlabs Ltd. (supra)* is squarely applicable.

4.4 We have heard rival submissions and perused the material on record. The A.O. imputed interest at 14.5% on the amounts outstanding as on 31.03.2014 by the sister-concern towards the assessee for making the addition of Rs.1,40,99,637. On perusal of the financials, it is noticed that the opening balance of the sister-concern was Rs.12,05,08,884 (as on 01.04.2013) and the advances had reduced to Rs.9,72,38,877 as on the close of the financial year, namely, 31.03.2014. Therefore, it is clear there is no advances was made during the year. The learned CIT(A) categorically held from perusal of assessment orders for the earlier years, i.e., assessment years 2011-2012, 2012-2013 and 2013-2014 there has been no addition on account of diversion of fund to sister-concern. Therefore, there cannot be any disallowance in the current assessment year in view of the Hon'ble Karnataka High Court judgment in case of *CIT v. Sridev Enterprises reported in [(1991) 192 ITR 165 (Kar.)*. Further, from the perusal of the balance sheet, it is clear that the assessee is having interest free funds of more than Rs.93.84 crore. The interest expenditure incurred by the assessee is on loans taken for specific purposes and the same cannot be diverted. In other words, there is no nexus between the borrowed funds and the amounts outstanding in the case of the sister-concern, namely, M/s.Tally India (P) Ltd. In such factual situation, there cannot be any addition for the reason that funds have been diverted to the sister-concern interest free. The judgment of the Hon'ble jurisdictional High Court relied on by the Revenue is distinguishable on facts. In the

case of *Embassy Development Corporation v. ACIT (supra)*, the assessee advanced borrowed funds to the sister-concern. The diverted funds was utilized by sister-concern for purchase and development of a property. In this context, the Hon'ble High Court held that funds have been diverted to sister-concern not out of business necessities of the assessee. In the instant case, it is clear that the assessee is having sufficient interest fund for diversion to sister-concern. Therefore, the judgment of the Hon'ble Karnataka High Court in the case of *CIT & Anr. v. M/s Microlabs Ltd. (supra)*, has application to the facts of the instant case.

4.5 In view of the aforesaid reasoning, we reject ground Nos.2 and 3 raised by the Revenue.

Ground No.4:Disallowance of depreciation of Rs.30,28,504

5. The Assessing Officer, during the course of scrutiny proceedings notice, noticed that the assessee-company had purchased home-theatre for an amount of Rs.2,01,90,028. The A.O. was of the opinion that the home-theatre was not for the purpose of business. Hence, he disallowed the depreciation claim on the same. The relevant finding of the A.O. in this regard reads as follows:-

“.....The assessee company is in the business of developing accounting software package. From the business of the assessee it is very clear that the home theatre system is of no use for business purposes.

The assessee was asked to provide backup of the said fixed asset and was also asked to produce invoices and other

documents. In its reply dated 21.12.2016, it has been said that –

‘we submit that, there was a fire accident of the premises of the assessee on 18.07.2014 and the original invoices and various other documents are destroyed.’

This establishes the fact that the addition of a home theatre equipment is not for the business purposes. Hence, considering the home theatre equipment as plant and machinery, the depreciation claimed at 15% is being disallowed and added back to the income.”

5.1 Aggrieved, the assessee preferred an appeal to the first appellate authority. It was contended before the first appellate authority that the Assessing Officer has disallowed depreciation of Rs.30,28,504 as against depreciation claim made by the assessee of Rs.15,14,252 (50% depreciation claimed by the assessee, since home-theater was purchased after 01.09.2013). Therefore, it was submitted that there is excess disallowance. It was further submitted on merits the home-theatre is for the business purpose only and the original invoices were destroyed in fire and the same could not be produced. The CIT(A) allowed the plea of the assessee and deleted the addition. The relevant finding of the CIT(A) reads as follow:-

“5.4.4 I find force in the argument of the A/R and also the submissions made. The Assessing Officer has wrongly assumed that the assets is not used for the purpose of business. It has specific purpose for the nature of business the appellant is engaged in. Moreover, the evidence produced by the appellant confirm the fact that there was a fire accident and the claim of bills having been destroyed is not under dispute. In the light of the above facts, it cannot be held that the theatre equipment was not purchased and that it was not used for business purpose. As the addition to asset is genuine and its having been used for the purpose of business activity

is also not doubtful the appellant is eligible for depreciation as claimed. I hold that, the Assessing Officer has erred in disallowing depreciation of Rs.30,20,504/-. I direct the AO to allow depreciation on the home theatre as claimed by the appellant. The addition is therefore deleted. This ground of appeal is disposed of in favour of the appellant.”

5.2 Aggrieved, the Revenue has raised this issue before the Tribunal. The learned Departmental Representative strongly supported the findings of the A.O. and relied on the grounds raised.

5.3 The learned AR supported the conclusion of the CIT(A).

5.4 We have heard rival submissions and perused the material on record. The theatre is admitted used for the business purpose of exhibiting various technologies development in the field of software to the employees and also to the customers. There was a major fire accident in the premises of the assessee and various books of account, documents and invoices were destroyed. These facts were brought to the notice of the A.O. during the course of hearing vide assessee's letter dated 21.12.2016. The proof regarding the fire accident was also furnished by supplying copy of FIR, paper report, etc. All the payments for the purchase of the equipment were made through bank account and the investment is not doubted. Further, we are of the view that there is no violation of Rule 46A(3) of the I.T.Rules, since there is no fresh facts produced before the CIT(A). The stand taken by the assessee before the A.O. was that there was a fire accident, wherein the invoices were destroyed and hence, cannot be produced. The same is the stand taken before the

CIT(A) and the same set of evidence are produced. Therefore, there is no violation of provisions of Rule 46A(3) of the I.T.Rules. For the aforesaid reasons, we hold that the CIT(A) is justified in deleting the disallowance of depreciation made by the A.O.. It is ordered accordingly.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on this 14th day of October, 2021.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 14th October, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-10, Bengaluru.
4. The Pr.CIT-7, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore