

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "I-2": NEW DELHI]**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER
(Through Video Conferencing)**

ITA. No. 7302/Del/2019
(Assessment Year: 2015-16)

M/s. PCI Limited, 19 – Rajendra Park, New Delhi – 110 060. PAN: AAACP1565E	Vs.	ACIT, Circle : 19 (2), New Delhi.
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AND

ITA. No. 7959/Del/2019
(Assessment Year: 2015-16)

ACIT, Circle : 19 (2), New Delhi.	Vs.	M/s. PCI Limited, 19 – Rajendra Park, New Delhi – 110 060. PAN: AAACP1565E
(Appellants)		(Respondents)

Assessee by :	Shri Satish Aggarwal, C. A.;
Department by:	Shri M. Barnwal, Sr. D. R.;
Date of Hearing :	14/12/2021
Date of pronouncement :	22/12/2021

ORDER

PER N. K. CHOUDHRY, J. M.

1. These cross appeals have been preferred by the Assessee and the Revenue against the order dated 22.07.2019 impugned herein passed by the Id. Commissioner of Income Tax (Appeals)-44, New Delhi (Id. Commissioner) under Section 250 (6) of the Income Tax Act, 1961 (the Act) for assessment year 2015-16.

2. First we will decide the Revenue's appeal i.e. ITA. No. 7959 (Del) of 2019.

3. Facts relevant to the adjudication of this appeal are that the Assessing Officer has made an addition of Rs.2,18,26,743/- under Section 36(1)(iii) of the Act on account of disallowance of interest expenses mainly on the basis that total available interest free funds in the hands of the Assessee as on 31st March, 2015 were Rs.56,82,25,201/- only whereas the Assessee has invested in non-business assets to the tune of Rs.91,72,51,774/. The said addition was challenged before the Id. Commissioner, whovide impugned order deleted the said addition against which the Revenue-Department being aggrieved preferred this appeal.

4. The Id. DR mainly emphasized that if the Assessee do not have available interest-free funds and/or not to the extent of investment then the addition can be made under Section 36(1)(iii) of the Act on account of disallowance of interest expenses as made by the AO in this case.

5. On the other hand, the Id. AR supported the impugned order relevant to the issue under consideration and also relied upon the following decisions:

- (i) S. A. Builders Ltd. Vs. CIT 288 ITR 01 (SC)
- (ii) CIT Vs. Spencers & Co. Ltd. & Co. Ltd. (2013)
359 ITR 644 (Mad.);
- (ii) CIT Vs. Phil Creations Ltd. & Anr.
244 CTR (Bom.) 226;
- (iii) CIT Vs. Tulip Star Hotel Ltd. (2011)
338 ITR 482 (Del.);
- (iv) Kejriwal Enterprises & Anr. Vs. CIT (2003)
260 ITR 341 (Cal)

6. Having heard the parties and perusing the material available on record, the Ld. Commissioner deleted the addition of Rs.2,18,26,743/- made by AO under Section 36(1)(iii) of the Act on account of disallowance of interest expenses by holding as under:

"6.14 The Hon'ble Supreme Court had held that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the Assessee itself), the Tax Authority could not justifiably claim to put itself in the arm-chair of the businessman or in the position of the Board of Directors and assume the role to decide how much was reasonable expenditure having regard to the circumstances of the case. The Apex Court had held that no businessman could be compelled to maximize his profit. The Income Tax Authorities were directed to put themselves in the shoes of the Assessee and see how a prudent businessman would act. It was also held that the Authorities should not look at the matter from their own view point but that of a prudent businessman. The Hon'ble Court held that the Authorities has to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits.

6.15 The material facts of the case at the same in the instant year in the case of the appellant. In accordance with the principle of consistency, the doctrine of judicial discipline and respectfully following the order of the Hon'ble Supreme Court in the case of S.A. Builder v/s CIT in Appeal (Civil) 5811 of 2006 dated 14.12.2006, the AO/TPO is directed to delete the addition made on account of notional interest on advances given to its sister concerns."

6.2 We may observe that the Hon'ble Apex Court in S. A. Builders Ltd. Case (supra) dealt with the identical issue in broader terms and observed that *'once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the Assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide*

how much is reasonable expenditure having regard to the circumstances of the case.'

6.3 The Ld. Commissioner thoroughly considered the contentions of the Assessee to the effect *that the Assessee has invested the amount in its Joint Venture Company, group and subsidiary companies as strategic investment which had direct nexus with the business objectives of the Assessee* and deleted the disallowance under consideration, while relying upon decision in S. A. Builders Ltd. Case (supra).

6.4 Coming to the contention of the Ld. D R that the Assessee was not having sufficient interest-free funds available to the extent of investment and therefore the addition made under Section 36(1)(iii) of the Act on account of disallowance of interest expenses is liable to be sustained. We find the Hon'ble Apex Court in S. A. Builders Ltd. Case (supra) itself dealt with deduction of interest on borrowed funds given to subsidiary company and held that *'where it is obvious that a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the Assessee would, in our opinion, ordinarily be entitled to deduction of interest on its borrowed loans.'*

6.5 Even Hon'ble Madras High Court in CIT Vs. Spencers & Co. Ltd. & Co. Ltd. (supra) and Bombay High Court in CIT Vs. Phil Corporation Ltd. & Anr. (supra) has allowed deduction of interest u/s 36(1)(iii) of the Act, paid on borrowings and overdraft which were utilized for investment in subsidiary company. Hence in view of the aforesaid judgments of the Hon'ble High Courts also, the contention of the Ld. DR is untenable.

6.6 In conclusion the Id. Commissioner thoroughly analyzed the peculiar facts and circumstances and deleted the said addition by following the judgment of the Hon'ble apex Court rendered in the case of S. A. Builders Ltd. Case(supra). Hencein our considered view, the impugned order relevant to the instant appeal does not suffer from any infirmity and therefore no interference is called for. Consequently the appeal of Revenue is liable to be dismissed, hence ordered accordingly.

ITA. No. 7302 (Del) of 2019 (Assessee's Appeal)

7. The Assessing Officer made the addition of Rs.73,69,830/- qua Transfer Pricing Adjustment on account of providing corporate guarantee by the Assessee to its overseas associated enterprises/companies, namely, PCI Asia Pacific Pvt. Ltd. and PCI Middle East FZE by treating the interest rate of 1.3% based on average fees charged by State Bank of India.

8. The said action of the Assessing Officer was challenged by the Assessee before the Id. Commissioner and it was claimed that 'corporate guarantee' is not an 'international transaction' as per Section 92 of the Act. However, the Id. Commissioner did not get impressed and following the judgment of the Hon'ble Bombay High Court in the case of **CIT Vs. Everest Kanto Cylinder Ltd. (2015) 378 ITR 57 (Bom.)** partly affirmed the addition qua 'corporate guarantee' while reducing to 0.5% instead of 1.3% as determined by the AP/TPO.

8.1 Though the Assessee has preferred the instant appeal against the impugned order on this particular issue in hand, however accepted the factual position as submitted by the Id. DR to the effect that vide order dated 10th December, 2020 the Hon'ble Madras High Court dealt with the identical issue in hand in the case

of Pr. CIT Vs. M/s. Redington (India) Ltd. 430 ITR 298 and has clearly held that the '**corporate guarantee**' is covered within the definition of 'International Transaction'.

The Hon'ble High Court in the said case has also considered the Explanation introduced in Section 92B of the Act with effect from 1st April, 2002 by the Finance Act (2012) wherein it is clarified that the expression 'International Transaction' shall include 'guarantee' and held the same as retrospective.

As per judgment of the Hon'ble Madras High Court, the addition can be made qua 'corporate and bank guarantee'.

8.2 Considering the undisputed fact to the effect that Hon'ble Bombay and Madras high Court in the cases referred above held the 'Corporate Guarantee' as 'International Transaction', we do not find any reason to interfere with the findings of the Ld. Commissioner for partly sustaining the addition under consideration and therefore the same is upheld. Consequently the Appeal of the Assessee is dismissed.

9. Resultantly, both the cross appeals filed by the Revenue-Department and the Assessee are dismissed.

Order pronounced in the open Court on : **22/12/2021**.

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Sd/-
(N. K. CHOUDHRY)
JUDICIAL MEMBER

Dated : 22/12/2021.

MEHTA

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1. Appellants;
2. Respondents;
3. CIT

4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	14.12.2021
Date on which the typed draft is placed before the dictating member	14.12.2021
Date on which the typed draft is placed before the other member	17.12.2021
Date on which the approved draft comes to the Sr. PS/ PS	17.12.2021
Date on which the fair order is placed before the dictating member for pronouncement	22.12.2021
Date on which the fair order comes back to the Sr. PS/ PS	22.12.2021
Date on which the final order is uploaded on the website of ITAT	22.12.2021
date on which the file goes to the Bench Clerk	22.12.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	