

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No. 2899/DEL/2018 [A.Y. 2013-14]

ITA No. 2900/DEL/2018 [A.Y. 2014-15]

IL & FS Energy Development Ltd
1st Floor, Corporate Office Tower
Ambience Mall Complex,
Ambience Island, National Highway - 8
Gurgaon, Gohana, Haryana

Vs.

The A.C.I.T
Circle - 12(1)
New Delhi

PAN - AABCI 6885 K

(Applicant)

(Respondent)

Assessee By : Shri Rohit Jain, Adv
Shri Sakham Singhal, Adv
Ms. Shaily Gupta, CA

Department By : Shri Waseem Arshad, CIT-DR

Date of Hearing : 07.02.2024

Date of Pronouncement : 09.02.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned two separate appeals by the assessee are preferred against two separate orders of the CIT(A) - 35, New Delhi dated 27.02.2018 and CITA - 22, New Delhi dated 26.03.2018 pertaining to A.Ys 2013-14 and 2014-15 respectively.

2. Since both the appeals pertaining to same assessee were heard together and common grievance is involved, they are disposed of by this common order for the sake of convenience and brevity.

3. The common grievance relates to the disallowance of interest u/s 36(1)(iii) of the Income-tax Act, 1961 [the Act, for short] though the quantum may differ. In A.Y 2013-14 disallowance of Rs. 6,48,70,479/- was confirmed and in A.Y 2014-15, the same is Rs. 3,18,09,558/-.

4. Briefly stated, the facts of the case are that the assessee is engaged in providing consultancy services and earned interest and some other miscellaneous income. During the course of scrutiny assessment proceedings for A.Y 2013-14, the assessee was asked to

submit complete details of loans taken and interest debited to the profit and loss account alongwith business exigency and purpose. The assessee was also asked to explain the business purpose for advancing huge amount of loans and advances to sister concern and further explain how the loans and advances taken during the year have been utilized for business purpose.

5. The assessee filed detailed reply explaining that total loan received during the year was Rs. 983.70 crores on which interest of Rs. 42.14 crores has been paid. It was explained that all the loans have been used for the purpose of business in the form of investment in debentures and by way of giving loan to subsidiary companies on which the assessee earned interest income of Rs. 26.20 crores.

6. Reply of the assessee was duly considered by the Assessing Officer who found that the assessee has been earning interest in the range of 7% to 16% and on the loans given to associates/subsidiary companies, interest has been earned in the range of 15% to 16%. The Assessing Officer further found that the assessee has obtained loans from banks and certain other financial institutions @ 12-12.5% whereas the assessee has obtained loans from group companies @ 15%.

7. The Assessing Officer, accordingly, disallowed incremental interest u/s 36(1)(iii) of the Act and computed disallowance of Rs. 6,48,70,479/- in A.Y 2013-14 and Rs. 3,18,09,558/- in A.Y 2014-15.

8. The assessee challenged the additions before the Id. CIT(A) but without any success.

9. Before us, the Id. counsel for the assessee vehemently contended that the Assessing Officer has accepted that loan taken by the assessee has been utilized for the purpose of business and no doubt has been raised towards the genuineness of the loan obtained and interest paid. Therefore, in our considered opinion, the assessee has successfully discharged the onus cast upon it by provisions of section 36(1)(iii) of the Act.

10. It would be pertinent to mention here that during the assessment proceedings for A.Y 2013-14, the matter was referred to the TPO for determination of ALP of the international transactions and specified domestic transactions and the TPO did not propose any variation vide order dated 26.09.2016 framed u/s 92CA of the Act.

11. Interest has been disallowed only on the basis that rate of interest paid on loans obtained from related parties which is 15% was higher than the rate of interest paid to banks @ 12.5%. In our considered opinion, the only requirement for claiming deduction u/s 36(1)(iii) of the Act is that the loan is borrowed for the purpose of business of the assessee and interest is paid thereon.

12. The contention of the ld. DR that the assessee ultimately wrote off the loans given to its associate concern because of the order of NCLT, Mumbai Bench is of no substance as the Assessing Officer has not raised this issue in the assessment order and the Revenue is not in appeal before us.

13. Moreover, we find that the assessee has been paying interest to related entities for the last many years and the said interest payments have never been disputed by tax authorities in the past and rate of interest has been accepted while passing the assessment order for A.Ys 2011-12 and 2012-13.

14. Considering the facts of the case in totality, we do not find any merit in the impugned disallowances made by the Assessing Officer. Therefore, the Assessing Officer is directed to delete the disallowances from both the A.Ys under consideration.

15. In the result, both the appeals of the assessee in ITA Nos. 2899/DEL/2018 and ITA No. 2900/DEL/2018 are allowed.

The order is pronounced in the open court on 09.02.2024.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 09th FEBRUARY, 2024

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	