

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 620 of 2006****TO****TAX APPEAL NO. 625 of 2006****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE K.J.THAKER**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

COMMISSIONER OF INCOME TAX....Appellant(s)

Versus

TORRENT LEASING & FINANCE PVT.LTD.....Opponent(s)

Appearance:

MR.VARUN K.PATEL, ADVOCATE for the Appellant(s) No. 1

MR BS SOPARKAR, ADVOCATE WITH MRS SWATI SOPARKAR,
ADVOCATE for the Opponent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE KS JHAVERI
and
HONOURABLE MR.JUSTICE K.J.THAKER

Date : 17/12/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. Being aggrieved and dissatisfied with the impugned judgment and order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench (hereinafter referred to as 'the Tribunal'), the revenue has preferred the present Tax Appeals assailing the following orders

Tax Appeal No.	Date of Tribunal's order	ITA No.	Assessment Year
620/2006	29.10.2004	1984/Ahd/1998	1993-94
621/2006	29.10.2004	2135/Ahd/1998	1993-94
622/2006	29.10.2004	2136/Ahd/1998	1994-95
623/2006	29.10.2004	2000/Ahd/1998	1995-96
624/2006	29.10.2004	2219/Ahd/1998	1995-96
625/2006	29.10.2004	464/Ahd/2002	1996-97

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1.1 These appeals were admitted by this Court on 11.10.2006 for consideration of the following substantial question of law:

“Whether the Appellate Tribunal is right in law and on facts in holding that interest free funds were available with the assessee and thereby deleting the disallowance of interest made by the Assessing Officer u/s. 36(1)(iii)

of the Act?”

2. The assessee filed their return of income for the respective assessment years in question. During the course of assessment proceedings the Assessing Officer made disallowances/addition with regard to interest amount and stamp charges.

2.1 Being aggrieved by the same, the assessee filed appeal before CIT(A). The CIT(A) partly allowed the appeals. The assessee as well as revenue therefore preferred appeals before the Tribunal. The Tribunal deleted the disallowance of interest amount which is being challenged by the revenue in the present set of appeals.

3. Mr. Varun Patel, learned advocate appearing for the revenue contended that the Tribunal has not assigned any reasons for allowing the appeals filed by the assessee and therefore the appeals may be remanded to the Tribunal for reconsideration of the matters and decision afresh with cogent and convincing reasons.

4. Mr. B.S. Soparkar, learned advocate appearing for the respondents supported the impugned order passed by the Tribunal and submitted that the Tribunal has not committed any error in passing the same. He has drawn our attention to paragraphs no. 3.1, 3.2, 3.4 & 3.5 of the impugned order and contended that the Tribunal has considered each and every aspect of each of the matters in detail and the transactions carried out between M/s. Mehta Financiers. He submitted that since the interest free funds available with the assessee

were much more than the balance no disallowance of interest was called for.

3.1 In support of his submissions, Mr. Soparkar has relied upon the decision of this Court in the case of **Commissioner of Income-tax vs. Raghuvir Synthetics Ltd reported in [2013] 354 ITR 222** and in the case of **Commissioner of Income-tax - I vs. Amod Stamping (P.) Ltd reported in [2014] 45 taxmann.com 427 (Gujarat)**.

5. We have heard learned advocates for the parties and gone through the records of the case. At the outset we think it appropriate to have a look at section 36(1)(iii) of the Act and the same is reproduced hereunder:

"(iii) the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession. Explanation.- Recurring subscriptions paid periodically by shareholders, or subscribers in Mutual Benefit Societies which fulfil such conditions as may be prescribed, shall be deemed to be capital borrowed within the meaning of this clause; "

5.1 An identical issue had come up before this Court in the case of **Amod Stamping (supra)** and this Court has observed as under:

"[3.2] Similar observations are made by the learned ITAT with respect to the assessment years 2005-06 and 2006-07. In the case of Reliance Utilities and Power Ltd. (Supra), the Bombay High Court has held that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free funds generated or available with the company, if the interest-free

funds were sufficient to meet the investments and therefore, interest was deductible. Similar view has been taken by the Division Bench of this Court in the case of **Commissioner of Income-Tax vs. Gujarat State Fertilizers and Chemicals Ltd.** reported in [2013] 358 ITR 323 [Guj]. Applying the ratio/law laid down by the Bombay High Court in the case of Reliance Utilities and Power Ltd. (Supra) as well as Division Bench of this Court in the case of Gujarat State Fertilizers and Chemicals Ltd. (Supra) to the facts of the case on hand and when it has been found that the assessee was having interest-free funds far in excess of investments and therefore, it can be said that the investments are made out of interest-free funds and therefore, the AO was not justified in making additions and/or making disallowance under section 36(1)(iii) of the IT Act. Under the circumstances, no error and/or illegality has been committed by the learned ITAT in deleting the disallowance made by the AO under section 36(1)(iii) of the IT Act. No question of law much less substantial question of law arise with respect to deletion of the disallowance made by the AO under section 36(1)(iii) of the IT Act. “

5.2 Similarly in the case of Raghuvir Synthetics Ltd (supra), this Court has held as under:

“9. We may refer to the judgment of Apex Court at this stage given in case of **S.A.Builders Ltd. v. Commissioner of Income Tax (Appeals)** reported in 288 ITR 1 (SC) where the question was whether interest on funds borrowed by the assessee to give an interest free loan to sister concern should be allowed as deduction and the Apex Court ruled thus :

“We have considered the submission of the respective parties. The question involved in this case is only about the allowability of the interest on borrowed funds and hence we are dealing only with that question. In our opinion, the approach of the High Court as

well as the authorities below on the aforesaid question was not correct.

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In our opinion, the High Court in the impugned judgment, as well as the Tribunal and the Income Tax Authorities have approached the matter from an erroneous angle. In the present case, the assessee borrowed the fund from the bank and lent some of it to its sister concern (a subsidiary) on interest free loan. The test, in our opinion, in such a case is really whether this was done as a measure of commercial expediency.

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The expression "commercial expediency" is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency.

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We agree with the view taken by the Delhi High Court in CIT vs. Dalmia Cement (Bhart) Ltd. (2002) 254 ITR 377, 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. No businessman can be compelled to maximize its profit. The Income Tax Authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must

not look at the matter from their own viewpoint but that of a prudent businessman. As already stated above, we have 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.”

10. Accordingly, the question is answered in favour of the assessee by the Apex Court. In this Tax Appeal it is to be specified here that considering the material on record and keeping in view substantial interest free funds and business expediency that the CIT(A) and Tribunal held the issue in favour of assessee.

6. The question raised in the present appeals is squarely governed by these two abovementioned decisions. In view of the above, we are of the opinion that the Tribunal was justified in holding that interest free funds were available with the assessee and thereby deleting the disallowance of interest made by the Assessing Officer u/s. 36(1)(iii) of the Act. The Tribunal has rightly considered that the assessee has clearly demonstrated that it had interest free funds available and the balance amount of interest free advances after reducing the advance of M/s. Mehta Financiers was given for purchase of shares. The Tribunal proceeded on the footing that if total interest-free advances including debit balances of partners do not exceed the total interest-free funds available with the assessee, no interest is disallowable on account of utilisation of fund for non-business purposes and if it exceeds, the proportionate disallowance can be made. We are in complete agreement with the findings of fact arrived at by the Tribunal.

7. In the premises aforesaid, we answer the question raised in the present appeals in the affirmative i.e. in favour of assessee and against the revenue. We hold that the Tribunal was justified in holding that the interest free funds were available with the assessee and thereby deleting the disallowance of interest made by the Assessing Officer u/s. 36(1)(iii) of the Act. The impugned order passed by Tribunal is confirmed. Appeals stand dismissed accordingly.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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