

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARSIMHA CHARY, JUDICIAL MEMBER

ITA No. 310/Del/2020
(Assessment Year: 2016-17)

Priapus Developers Pvt Ltd, Plot No. 103-A, 1 st Floor, Mahipalpur Extension, New Delhi PAN: AAFCP2747R (Appellant)	Vs.	ACIT, Circle-20(1). New Delhi (Respondent)
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Assessee by :	Shri S. K. Tulsian, Adv Ms. Bhoomija Verma, Adv
Revenue by:	Ms. Sushma Singh, Sr. DR
Date of Hearing	03/08/2020
Date of pronouncement	03/09/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT (A)-7, New Delhi dated 27.11.2019 for the Assessment Year 2016-17 wherein disallowance of interest u/s 36 (1) (iii) of ₹ 257,270,727/- made by the learned assessing officer in assessment order passed u/s 143 (3) of the income tax act dated 24th of December 2018 was confirmed. Therefore assessee is aggrieved and has raised following grounds of appeal:-

1. *That on the facts and in the circumstances of the case, the Id CIT (A) has grossly erred in law and in facts in upholding the disallowance of interest expenses u/s 36(1)(iii) of Rs. 257270727/- made by the AO in the assessment order u/s 143(3).*
2. *On the facts and in the circumstances of the case and in law, the Id CIT (A) has grossly erred in law and in facts by alleging that the interest cost did not have any nexus with the interest income earned by the appellant.*
3. *That on the facts and in the circumstances of the case, the Id CIT (A) has grossly erred in law and in facts in upholding the disallowance of interest expenses u/s 36(1) (iii) of Rs. 257270727/- made by the AO in the assessment order u/s 143(3) in ignorance of*

the terms of amalgamation of erstwhile companies with the appellant company.

4. *That on the facts and in the circumstances of the case, the Id CIT (A) has grossly erred in law and in facts by not providing sufficient opportunity to the appellant to establish the linkage of borrowing cost to the interest income earned by the appellant company."*
2. Brief facts of the case shows that assessee is a private limited company which is engaged in the business of development of infrastructure, including the undertaking and/or purchase, sale, development, construction and hiring or otherwise acquiring of real estate for personal estate projects/properties. The assessee filed its return of income on 18th of September 2017 declaring income of Rs Nil. The case of the assessee was selected for scrutiny and necessary notices were issued.
3. On looking at the computation of total income, the learned assessing officer noted that assessee has earned dividend income on units of mutual fund of ₹ 120,644/- and dividend income on equity shares of ₹ 386,904,285/-. Both these income or claimed as exempt income. The assessee has shown the income from interest of ₹ 37,69,51,117/- which is disclosed under the head income from other sources. Assessee has also earned advisory income of ₹ 9 lakhs that is disclosed as profits and gains of business and profession. AO noted that in the balance sheet the assessee has reflected all the above income under the head 'other income' and has not declared anything under the head 'revenue from operations'. Therefore the AO reached at the conclusion that assessee has not commenced any business.
4. Therefore the learned assessing officer asked the assessee about the disallowance u/s 14 A of the act read with provisions of Section 36 (1) (iii) of the act. Assessee submitted its reply on 20 August 2018 stating that no expenses are attributed to dividend income earned by the assessee, as it did not incur any expenses. However, assessee submitted that it has Suo moto disallowed a sum of ₹ 3,874,249/- towards the earning of the exempt income. Assessee also submitted that the loans taken by it are all for the business purposes and not for the purpose of any investment. It was also submitted that assessee has not made any investment during the year under consideration. Further, the amount of

investment shown by the assessee of India Bulls Housing Ltd shares are because of the scheme of amalgamation and on other investment, assessee has not earned any dividend. On 26 November 2018, AO further asked assessee to provide calculation of the disallowance of ₹ 38.74 lakhs made by u/s 14 A of the. On 4 December 2018, assessee submitted that it is 1 % of exempt income claimed by assessee that also included depository charges. Assessee submitted that the depository charges paid or of ₹ 1,539,525 and commission and brokerage charges are ₹ 408,449/-. It reiterated submissions made earlier. On 10th of December 2018, learned assessing officer raised query about long-term borrowings, which were explained by the assessee on 13 December 2018 and on 21 December 2018. By above 2 submissions it raised several contentions with respect to the disallowance u/s 14 A of the income tax act. The learned assessing officer analyzed the balance sheet of the assessee and found that assessee has funds, out of which 45.94% forms part of shareholders funds, 53.96% shares are long-term borrowings, 0.10% is current liabilities. Out of this, noncurrent investments are 63.12%, long-term loans and advances are 36 percentage. Therefore, he reached at a conclusion that 45.94% of the total funds available of shareholders funds out of the total funds whereas the amount blocked in non-current investment are 63.12%; therefore, it is clear that funds of long-term borrowings are also blocked with non-current investments. Therefore, he reached at a conclusion that the contention of the assessee that borrowed funds were not used for non-current investment is not correct.

5. As per the computation of total income, the assessee has declared interest income earned of ₹ 37,69,51,117 and claimed against that interest income, the interest expenditure of ₹ 376,982,874. This expenditure was claimed by the assessee u/s 57 (iii) of the act. This claim of the assessee was examined by the learned AO.
6. On the basis of above findings, the learned assessing officer adopted two different approaches for making a disallowance u/s 14 A of the act. This he has termed as various alternatives. In alternative I, he worked out the disallowance holding that finance cost is also covered for disallowance u/s

14 A of the act. Therefore, in that alternative, he worked out the proportionate finance cost of ₹ 376,982,874/-, took proportionate of average investment of ₹ 5,993,469,528/-, computed average total of ₹ 9,495,543,885/-. Thus, adopting a ratio of total average investment / average total asset and divided total finance cost of ₹ 376,982,874 and worked out a sum of ₹ 257,270,727 as disallowance u/s 14 A of interest expenditure. The sum he added the direct expenditure of ₹ 1,947,974/- and further 0.5% of average investment amounting to Rs. 107,38,540/-. Thus computed disallowance u/s 14 A of ₹ 269,957,241/-. Based on the above calculation out of the total finance cost of ₹ 376,982,874/-, as he has already disallowed finance cost u/s 14 A of ₹ 257,270,727/-, he granted the deduction of the balance interest expenditure of ₹ 119,712,147/- against the total income earned Under income from other sources of ₹ 376,951,117/-. Similar proposition he applied for professional expenditure. Accordingly, he computed income under the head's profits and gains of business of ₹ 840,000, income from other sources of ₹ 253,897,238 as income from other sources. The resultant sum of ₹ 254,737,238 was computed is gross total income of the assessee.

7. He also took second alternative where finance cost is not covered for disallowance u/s 14 A of the act. He computed disallowance u/s 14 A of Rs 1,26,86,514/-. However as he has excluded the finance cost for working out disallowance u/s 14 A of the act, he invoked the provisions of Section 36 (1) (iii) disallowed interest expenditure of ₹ 257,270,727 out of the total finance cost of ₹ 376,982,874/-. Therefore, in that alternative he computed the income Under head the head profits and gains of business of ₹ 840,000 and income from other sources of ₹ 253,897,238/- . Thus according to him, in both the options, the assessee is entitled to the deduction of interest expenditure against income from other sources of ₹ 119,712,147/- out of the total expenditure of ₹ 376,982,874/-. Thus, in second alternative the gross total income of the assessee was also computed at ₹ 254,737,238/-.

8. Therefore, the crux of the issue is disallowance of ₹ 257,270,727/- out of the finance cost of ₹ 376,982,874/-.
9. Thus, the impugned disallowance of ₹ 25.72 crores was made by the learned assessing officer. The reason for making this disallowance by the learned assessing officer was that on perusal of the audited accounts of the assessee for the year ended on 31st of March 2016 he noted that since long-term borrowings on which the interest expenses of ₹ 37.69 crores have been paid is appearing as ₹ 512 crores in the balance-sheet and therefore an entire interest income of ₹ 37.69 crores could not have been incurred by the appellant against the long-term borrowing since the loans and advances provided to sister concern and related parties by the appellant is only ₹ 334 crores. In nutshell, AO was of the view that when the interest is paid on ₹ 512 crores of the borrowed funds, it cannot be granted as deduction against the interest income earned by the assessee on investment of ₹ 334 crores. AO was also of the view that identical disallowance is also required to be made while computing the book profit under provisions of Section 115 JB of the act.
10. Accordingly, the learned assessing officer passed an order u/s 143 (3) of the act on 24th of December 2018 at ₹ 254,977,238/-. Subsequently there was a mistake apparent from the record in computation in para number seven of the assessment order, which was rectified by the learned assessing officer as per order u/s 154 read with Section 143 (3) of the act on 5th February 2019. However, there was no change in the assessed income.
11. Aggrieved with the order of the learned assessing officer assessee preferred an appeal before the learned Commissioner of income tax. He passed an order on 27th of November 2019. Before the learned CIT - A, assessee objected to the disallowance u/s 14 A of the act in the normal computation of total income on both the alternatives as well as the addition to the book profit u/s 115 JB of the act. Assessee also contested assessment order on some technical issues. The CIT - A rejected the objection of the assessee on technical issues. The learned CIT - A deleted the disallowance u/s 14 A of the act following the order of the coordinate

bench for assessment year 2015 – 16 in assessee's own case wherein it has been held that shares of India Bulls Housing Finance Ltd which were acquired by the assessee by way of amalgamation and therefore it cannot be said that the assessee has incurred in direct expenses for earning dividend income out of those shares held by it. Therefore, he directed the learned assessing officer to delete the disallowance. He also held that the addition of the above amount to the book profit computed u/s 115 JB is also not sustainable in view of the decision of the special bench in case of ACIT versus Vireet investments private limited (ITA number 502/del/2012). However, with respect to the allowance of interest expenditure restricted by the assessing officer to ₹ 119,712,147/- and disallowance of the remaining interest expenditure of ₹ 257,270,727/- u/s 36 (1) (iii) of the act he confirmed the same as per paragraph number 4.5 of his order as Under:-

“ in this regard, I have gone through reasoning given by the AO in assessment order for the purpose of restricting the allowance of interest expenditure u/s 57 of the act. The AO in the assessment order has rejected the claim of the appellant that entire interest expenditure was incurred for the purpose of earning interest income under the head 'other sources' on the ground that the interest income is earned out of loans and advances given to various concerns aggregate of which comes to ₹ 344 crores reflecting under the head long-term loans and advances in the balance-sheet, however, the long-term borrowings, on which the interest cost of ₹ 376,982,874/- was incurred by the assessee, is appearing at ₹ 512 crores in the balance-sheet of the appellant company. Accordingly, the AO observed that the entire interest cost of ₹ 376,982,874/- cannot be said to be incurred for the purpose of earning interest income on the loans and advances of ₹ 344 crores. In this regard, the AO has computed the proportionate disallowance of interest expenditure at ₹ 119,712,147/- and

has disallowed the remaining finance cost u/s 36 (1) (iii) of the act.

The appellant in its return submission has submitted that AO has used an erroneous and illegal approach to apportion ₹ 257,270,727/- out of total finance cost incurred by it has business expenditure and therefore disallowing the sum as per the provisions of Section 36 (1) (iii) of the act holding that the same was not incurred for the purpose of its business. The appellant has further challenged the reasoning given by the AO for the purpose of restricting the allowance of interest expenditure u/s 57 of the act to ₹ 119,712,147/-. On perusal of the submission of the appellant, it is noticed that the submission of the appellant is twofold, wherein it has first challenged the disallowance of a portion of interest cost of ₹ 257,270,727 u/s 36 (1) (iii) of the act on the ground that no such deduction of expenditure was claimed by it and accordingly there is no question of disallowance and in second part of the submission the appellant is challenging the allowance of interest expenditure u/s 57 of the act restricted by the AO at ₹ 119,712,147/- on the ground that the entire borrowed funds were attributed towards the earning of interest income and accordingly the borrowing cost is allowable as expenditure incurred for earning of interest income u/s 57 of the act. In support of its contention, the appellant has also referred to the assessment completed in the preceding assessment year i.e. assessment year 2015 – 16 wherein no adverse inference was drawn on this aspect. On perusal of the written submissions and the observations of the AO in the assessment order, it is noticed that the AO has rightly analyzed the facts and figures appearing in the balance-sheet and observing that total borrowed funds of ₹ 512 crores cannot by any means/logic be said to be utilised for giving advances/ loans to the sister concerns of ₹ 344 crores,

accordingly, the AO was justified in computing the proportionate allowance of interest expenditure. Here, it is also noticed that the appellant has not pointed out any specific defect in the calculation of proportionate allowance of interest expenditure made by the AO in the assessment order. The appellant has failed to rebut the observations of the AO that the entire borrowed funds of ₹ 512 crore cannot be presumed to be utilised for giving advances of ₹ 344 crores. Merely, making a statement that entire borrowing cost was incurred for the earning of interest income from the sister concerns without any corroborative evidence it cannot be accepted as a logical submission of the appellant. Further, the decisions given by CIT (A) and honourable ITAT in the preceding year will also not come to the rescue of the appellant in the year under consideration in the assessment year 2015 - 16. Accordingly, it cannot be said that the honourable ITAT/CIT (A) has already formed a view in favour of the assessee on the said aspect. Further, the facts of each year are different. It is not the case of the appellant where it has brought on record corroborative evidence in the form of fund flow etc. to substantiate its stand that borrowed funds were only utilised for giving loans and advances to the sister concerns. In absence of any such evidence/working, the AO was justified in presuming that the partial borrowed funds must have been utilised for making non-current investment and remaining borrowed funds would have been utilised for giving advances to the sister concerns. As far as the argument of the appellant that this disallowance u/s 36 (1) (iii) cannot be made, I agree with the contentions of the appellant that since no such deduction was claimed by the appellant, however even if the facts of the case are appreciated correctly then also hard fact is that interest cost to the extent of ₹ 257,270,727/- claimed by the appellant u/s 57 of the act is untenable in law and

cannot be allowed as deduction since, the interest cost to the extent of ₹ 257,270,727/- has no nexus with the interest income earned by the appellant in the year Under consideration in view of the detailed analysis of source of funds and utilisation of funds made by the AO in the assessment order. Accordingly, the disallowance of interest expenditure to the extent of ₹ 257,270,727/- is confirmed.”

12. Therefore, assessee aggrieved with that order and finding of confirming the disallowance of interest expenditure to the extent of ₹ 257,270,727/- is in appeal before us.
13. The learned authorised representative submitted that there is a basic flaw in the computation of the disallowance vis a vis the amount of interest free funds available with the assessee. It is submitted that out of the long-term borrowing of ₹ 512 crores, ₹ 147.37 crores is in the form of unsecured interest-free loans taken from the directors, shareholders of the appellant company. Therefore, the comparison of the borrowing of ₹ 512 crores with the investment of ₹ 344 crores is not correct.
14. It was further submitted that during the year the assessee has only borrowed ₹ 175 crores, whereas ₹ 190 crores were borrowings carried forward from the previous financial year. He referred to balance sheet of the assessee to demonstrate the above facts. He further referred to the various items of the balance sheet and submitted that out of the fresh loan of ₹ 175 crores, out of which has been utilised ₹ 154.32 crores for giving loans and advances on interest to the related parties and sister concerns during the year. Balance ₹ 20.68 crores have been utilised towards repayment to the shareholders and directors. He referred to this by reference to the increase and decrease in the outstanding loan to the sister concerns as well as unsecured loan from the directors. He also submitted that the old outstanding interest-bearing loan of ₹ 190 crores is completely locked in the loan to sister concern bearing interest amounting to ₹ 1,900,993,699/- appearing in balance sheet for assessment year 2015 – 16. He also submitted a detailed interest income showing that on the outstanding loan to the sister concern in the last year

the assessee has earned interest of ₹ 187,271,090 and on the fresh loan assessee has earned interest of ₹ 189,680,027/- totaling to the overall interest income of the assessee of ₹ 376,951,117. He also submitted details of interest paid during the year submitting that out of total interest paid of ₹ 376,982,874/-, interest of ₹ 246,999,996/- is interest paid on the amount borrowed in last year and ₹ 129,982,877/- has been paid on interest borrowed during the year. He therefore submitted that there is a complete nexus of ₹ 175 crores borrowed during the year and its utilisation during the year for giving loan to sister concerns, therefore his submission was that interest expenditure of ₹ 376,982,874 is allowable to the assessee as deduction u/s 57 (iii) of the act completely. He also supported the argument that interest income and interest expenses have rightly been claimed Under the head income from other sources and no fresh investments have been made by the assessee other than those described above during the year. He also submitted that assessment order for assessment year 2015 - 16 dated 30 December 2017 passed by the learned assessing officer was challenged before the learned CIT (A) which travelled up to the level of the coordinate bench and full relief was granted to the assessee. He extensively referred to the order of the coordinate bench dated 12 March 2019 in case of the assessee reported in (2019) 71 ITR (T) 113 (Delhi - ITAT) stating that the interest income and interest expenditure Under the head of income from other sources stands accepted in earlier years and has attained finality. He also supported the same relying on the decision of the honourable Supreme Court in case of Radhasoami Satsang versus CIT (1992) 193 ITR 321 (SC). He also submitted that assessee has adequate own funds which are non-interest-bearing in the form of share capital and free reserve of ₹ 436.16 crores as available from the balance sheet, invoking the disallowance u/s 36 (1) (iii) is unwarranted in view of the decision of the honourable Supreme Court in case of Commissioner of income tax (large taxpayers unit) versus Reliance Industries Ltd (2019) 410 ITR 466 (SC). He also submitted a chart showing the case of the assessee compared with the case of the issue before the honourable

Supreme Court and submitted that no disallowance is warranted. Therefore, he submitted that total interest expenditure of ₹ 376,982,874/- is allowable to the assessee under the head income from other sources completely. Thus, he submitted that the orders of the lower authorities are not sustainable.

15. The learned Commissioner of income tax (DR) vehemently supported the order of the learned AO and CIT – A. She submitted that assessee needs to prove that the above expenditure is laid down and expended wholly and exclusively for the purpose of making or earning interest income to claim the allowability u/s 57 (iii) of the act. He relied upon the decision of the coordinate bench in case of Dinesh H Valecha V DCIT 109 taxmann.com 331, JCIT versus Sumathinath enterprises 1 SOT 312 to support her contention.
16. We have carefully considered the rival contention and perused the orders of the lower authorities. Only reason of disallowance given by learned lower authorities is that assessee has incurred interest cost of ₹ 376,982,874/- on unsecured loans amounting to ₹ 512 crores and assessee has earned interest of ₹ 376,951,117/- on loans and advances of ₹ 344 crores, therefore, it is apparent that the difference of ₹ 512 crores of unsecured loan on which interest is paid is not commensurate in with interest received on loans and advances of ₹ 344 crores. Above finding of the learned lower authorities are not correct because of the reason that out of ₹ 512 crores, a sum of ₹ 147.37 crores is in the form of unsecured interest-free loans taken from directors and shareholders of the appellant company on which no interest is paid. Therefore, to that extent, the unsecured loan on which interest is paid taken by the lower authorities of ₹ 512 crores is required to be reduced by a sum of ₹ 147.37 crores. This fact is evident from note 5 of the balance sheet submitted before us at page number 119 of the paper book. This clearly is now to be seen with respect to interest-bearing funds of ₹ 364 crores (Rs 512 Cr- Rs 147 Crs) and is required to be compared with interest-bearing advances of ₹ 344 crores. This leaves us with the difference of ₹ 20 crores. This is also answered at same note number 5 of the balance

sheet which clearly shows that at the beginning of the year the unsecured loan which does not have any interest cost of Rs 166 crores is reduced to ₹ 1 47 crores at the end of the year. Further there is an increase of 20 crores in interest bearing advances. Therefore, it cannot be doubted that assessee has utilised the borrowings during the year in reutilizing above funds. It is further apparent that ₹ 190 crores is outstanding in last year borrowed from India Bulls and housing finance Ltd which is locked in advances of ₹ 120 crores in IIC Ltd and ₹ 70 crores in Rattan and India Power Ltd. On both these unsecured loan and unsecured advances the rate of interest paid and received is @ 13%. Further during the year assessee has borrowed ₹ 175 crores, out of which ₹ 75 crores is borrowed from STCI Ltd at 11% interest rate and further Rs 100 crores from Citibank at the rate of 10%. Out of this, assessee has granted loan of Rs 104 crores to IIC Ltd at the rate of 13%, ₹ 49.70 crores were advanced to Rattan India Power Ltd at the rate of 13% and to Ms Saroj Jain ₹ 75 lakhs at the rate of 12%. Therefore net utilisation of new loan of ₹ 175 crores is used in interest-bearing advances of ₹ 154 crores. Further, ₹ 20 crores have been advanced during the year at the rate of 13% to M/s yantra energetics private limited. These above facts are traceable and can be culled out from the balance sheets and notes thereto of the assessee on the face of it. Further, the assessee has also submitted a chart of interest charged which also supports the view that advances given to the sister concern or associated concerns at interest are sourced from interest-bearing loans obtained by the assessee. It is also undisputed fact that the total interest received by the assessee of ₹ 376,982,874/- is taxed under the head income from other sources by revenue. As assessee has utilised interest-bearing funds for the purpose of making investment/giving advances to the sister concern on interest, which is charged to tax Under the head income from other sources, assessee is entitled to deduction u/s 57 (iii) of the act of any expenditure which is not in the nature of capital expenditure, if it is laid out and expended wholly and exclusively for the purpose of making or earning such income. Undisputedly there is no claim by the revenue that

above expenditure is in the nature of capital expenditure. The interest income earned by the assessee is from loans and advances given to sister concern which is shown by the assessee to have been financed by obtaining loan on interest from other parties. Therefore, such interest paid on unsecured loan is laid out and expended wholly and exclusively for the purpose of making an earning such interest income.

17. Relevant judicial pronouncements placed before us by both the parties also canvass a view that any expenditure incurred by the assessee which is not in the nature of capital expenditure, if laid out and expended wholly and exclusively for the purpose of making or earning any income which is chargeable to tax Under head income from other sources is allowable as deduction to the assessee u/s 57 (iii) of the act.
18. In view of the above facts we allow ground number 1 – three of the appeal of the assessee and direct the lower authorities to delete the disallowance of interest expenditure of ₹ 257,270,727/- made by the learned assessing officer and confirmed by the learned CIT – A.
19. In view of our decision in ground number 1 – 3 of the appeal the ground number 4 of the appeal is infructuous and hence dismissed.
20. In the result appeal of assessee is partly allowed.
Order pronounced in the open court on 03/09/2020.

-Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 03/09/2020
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi