

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.2032/Bang/2019
Assessment Year : 2015-16

Wave Mechanics Pvt. Ltd. V-3, I Main, I Phase Peenya Industrial Area Bangalore 560 058  <b>PAN NO : AAACW3621J</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Circle-7(1)(2) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Sharath Rao, A.R.
<b>Respondent by</b>	:	Shri Kannan Narayanan, D.R.

Date of Hearing	:	01.04.2021
Date of Pronouncement	:	28.06.2021

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The Assessee has filed this appeal challenging the order dated 16.7.2019 passed by Ld. CIT(A)-7, Bengaluru and it relates to the assessment year 2015-16. The assessee is aggrieved with the decision of Ld CIT(A) in confirming the disallowance on interest expenditure of Rs.54,32,211/- made by the A.O.

2. The facts relating to the issue are stated in brief. During the course of assessment proceedings, the A.O. noticed that the assessee has made investment of Rs.2.71 cores in a company named M/s. ComAvia System Technologies Pvt. Ltd. He also noticed that the

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assessee has also given interest free loan of Rs.3 crores to others. (During the course of hearing before us, the Ld A.R submitted that the above said amount of Rs.3.00 crores was also given to M/s ComAvia System Technologies P Ltd). The AO noticed that the assessee has not charged any interest on the loans given. The A.O. noticed that the assessee was claiming interest expenditure of Rs.54,32,211/-. The A.O. took the view that the assessee has diverted its interest bearing funds for making above said investment and giving interest free loan. Accordingly, he proposed to disallow interest expenditure relatable to the above said investment & Loan. He calculated interest @ 12.5% on the investment & loan amount, which worked out to Rs.71,42,730/-. Since the assessee was claiming interest expenditure of Rs.54,32,211/- only, the A.O. restricted the disallowance to Rs.54,32,211/-. The Ld. CIT(A) also confirmed the same. Aggrieved, the assessee has filed this appeal before us.

3. We heard the parties and perused the record. The ld. A.R. advanced his arguments at length on different limbs in order to contend that the interest disallowance was not justified. One of his arguments was that the own funds available with the assessee was more than the value of investment and amount of loan. Hence no disallowance of interest is called for, since the presumption is that the assessee has used its own funds for making investment and giving loan. In this regard, the ld A.R invited our attention to the Balance Sheet placed in the paper book. We notice from the Balance Sheet that the interest free funds available with the assessee as at the beginning and end of the year was Rs.9.78 crores and Rs.10.02 crores respectively. The aggregate amount of investment made and interest free loan given by the assessee was Rs.5.71 crores.

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Admittedly, own funds available with the assessee is in excess of value of investment and loan given interest free.

4. The Ld. A.R. invited our attention to the decision rendered by Hon'ble Karnataka High Court in the case of CIT Vs. Brindavan Beverages Pvt. Ltd. (2017) 393 ITR 261, wherein the Hon'ble jurisdictional High Court held that Tribunal was justified in deleting the interest disallowance when the assessee had sufficient own funds covering loans and advances made to its directors and sister concerns. The Ld. A.R. submitted that an identical issue was examined by the Hon'ble Bombay High Court in the case of CIT Vs. Reliance Industries Ltd (2017) 86 Taxmann.com 24, wherein the Bombay High Court has expressed the following view:

*“30. We have carefully perused this paragraph and the reasoning therein.*

*31. The facts were that, the assessee had given interest free loans to its subsidiaries aggregating to the sum specified in para 7.2 as on 31-3-2003 and the corresponding figures of such interest free loans as on 31-3-2002 stood at Rs.2988.98 crores. Thus, the differential loans given to the subsidiaries during the year under consideration were worth Rs.3,727.14 crores. The net profit after tax and before depreciation was arrived at by the Tribunal and which exceeded not only the differential/incremental loan given to subsidiaries during the year but also exceeds the total interest free loans of Rs.6,716.12 crores given to the subsidiaries as on 31-3-2003. Considering these facts, the Tribunal found that the position is no different from the prior Assessment Year 2002-03.*

*32. The reasoning in paragraph 5.6 of the order dated 28-5-2012 of the Tribunal for the prior assessment year has been reproduced.*

*33. We do not see how when the Assessing Officer's views are that in cases of the interest free loans and interest given by the assessee to its subsidiary companies are in the above sums, still, the principle laid down by this Court that if there are funds available to them interest free and overdraft or loans taken, would not apply. This view of the Assessing Officer is ex facie contrary to the settled principle that a presumption would arise that the investment would be out of the interest free funds generated or available with the company. Then, the borrowed capital in hand in that case and interest expenditure was deductible under Section 36(1)(iii) of the I.T. Act, 1961. The*

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*Tribunal held that the interest free fund available to the assessee is sufficient to meet its investment. It can be presumed that investments were made from interest free funds available with the assessee. This position clearly emerges from the record and for the current assessment year as well. We do not see how a different view in the facts and circumstances can be taken. If the Tribunal had followed the earlier view and on facts, then, there is no perversity when nothing contrary to the factual material was brought on record by the Revenue. In such circumstances, the concurrent view on disallowance of interest was reversed and the appeal of the assessee to that extent was partly allowed. We do not see any substantial question of law arising from such a view of the Tribunal.”*

5. The above said view of the Hon'ble Bombay High Court has since been upheld by Hon'ble Supreme Court in the case of CIT Vs. Reliance Industries Ltd. (Civil appeal No.10 of 2019 dated 2.1.2019).

6. It is now well settled proposition of law that the interest disallowance is not called for when the own funds available with the assessee is more than the amount of interest free advance given. In the instant case, we have already seen that the own funds available with the assessee is in excess of the value of the amount of investment and interest free loan. Hence, the tax authorities are not justified in disallowing the interest claim made by the assessee. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete the disallowance.

7. The Ld. A.R. also advanced his arguments on the existence of commercial expediency in making the investment and also in giving loan. We do not find it necessary to address the same as we have already deleted the disallowance on the reasoning given in the preceding paragraph.

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8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 28<sup>th</sup> June, 2021

**Sd/-**  
**(George George K.)**  
**Judicial Member**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 28<sup>th</sup> June, 2021.  
VG/SPS

**Copy to:**

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.