

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'E' NEW DELHI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.-3409/Del/2018  
(Assessment Year: 2013-14)

Mason Infrastructure Pvt.  
Ltd., RZ-D-5, Mahavir  
Enclave, New Delhi

DCIT, Circle 16(2)  
Vs. New Delhi.

**PAN No. AAECM7250P**  
**Appellant**

**Respondent**

**Assessee by** Ms. Hashneeta Matta, CA  
Sh. Mahesh Kumar, CA  
**Revenue by** Sh. Ramesh Kumar, SR DR

Date of hearing: 05/07/2021  
Pronouncement on 23/07/2021

**ORDER**

**PER K. NARASIMHA CHARY, JM**

Aggrieved by the order dated 19.03.2018 passed by the Commissioner of Income Tax (Appeals)-6, Delhi ("Ld. CIT(A)") in the case of M/s Mason Infrastructure Private Limited ("the assessee"), for the assessment year 2013-14, assessee preferred this appeal challenging the confirmation of the disallowance of the interest expenditure on the loan taken by the assessee to the tune of Rs. 1,35,25,521/-.

2. Brief facts of the case are that the assessee is a private limited company and is engaged in the business of purchase, sale and

development of land and other real estate activities. For the assessment year 2013-14, they have filed their return of income on 29/09/2013 declaring a total income of Rs. 56,63,080/-. During the course of assessment, learned Assessing Officer found that the assessee had debited an amount of Rs. 1,35,25,521/- in the P&L Account on account of interest expense. Assessee informed that a loan of Rs. 27,69,25,000/- was taken by them from Orris Infrastructure Private Limited (OIPL) a group company, carrying an interest of Rs. 18% per annum as per the agreement entered into. Further, assessee submitted that out of this amount, a sum of Rs. 17 crores was given on loan to M/s M/S. ABW Infrastructure, which also carries interest at 18% per annum. According to the learned Assessing Officer in spite of several opportunities given, assessee failed to submit the business uses details, except stating that they are engaged in the business of buying, selling, constructing properties/land etc. Learned Assessing Officer, therefore, observing that the claim of the assessee regarding interest cost of Rs. 1,35,25,521/- cannot be allowed because under the provisions of the Income Tax Act, 1961 interest expense is allowable as business expenditure only when the assessee incurs it in respect of uses of loan for the purpose of business.

3. Aggrieved by such an action of the learned Assessing Officer, assessee preferred an appeal before the Ld. CIT(A) and submitted that as per the loan agreement between the assessee and the OIPL, the loan was obtained from OIPL for the purpose of business and utilisation of the loan is within the commercial mandate as per the terms of the agreement with OIPL; that the term "commercial expediency" is of wider term and has to be taken in the facts and circumstances of the case. It was further submitted that the loan was advanced to M/S. ABW Infrastructure in

furtherance of the business interests of the assessee. It was further submitted by the assessee that the business relations with other entities in the similar line of business is also in the interest of the assessee. Lastly it was submitted before the Ld. CIT(A) that as against the loan that was obtained from OIPL and incurring the interest expense of Rs. 1,35,25,521/-, from lending the amount to M/S. ABW Infrastructure, the assessee and interest amount of Rs. 1,48,38,906/- which was offered to tax. Apart from this, OIPL also offered to tax the interest that was earned from the assessee. Ld. CIT(A), however, dismissed the appeal confirming the order dated 08,03.2016 passed u/s.143(3) of the Act. Aggrieved by such an order of the Ld. CIT(A), assessee preferred this appeal.

4. It is the submission of the Ld. AR that admittedly the assessee has been engaged in the business of real estate where the ask of funds is high and inter-company loans/advances/deposits are routine; that development of real estate projects is typically a collaborative venture between various companies, usually group companies and/or third parties. Since the assessee is holding 11.74 hectare land at Keshwana Rajput village in tehsil and district of Kothputli in the state of Rajasthan, in view of the business prospects the assessee company applied for change in land use of the said land for setting up industrial unit and then letting out purposes; that for such purpose they obtained loan from OIPL; that in the meanwhile pending approvals by different authorities, at the approach of M/S. ABW Infrastructure keeping in mind the utilisation of the funds lying with them, they lent a sum of Rs. 17 crores to M/S. ABW Infrastructure at an interest of 18% per annum; that the business of the assessee is not confined to the meeting of expenses for conversion of land use but it is something more to meet the expenses of which the assessee obtained the loan from OIPL and

therefore, the borrowing was for commercial expediency and the interest expense thereon is an allowable expenditure under section 36 (1)(iii) of the Act. In the alternative it is submitted that since the learned Assessing Officer did not disturb the offering of interest received from M/S. ABW to tax, the interest expense in relation to earning such income from other source could be deducted under section 57 (iii) of the Act.

5. She further submitted that the interest of Rs. 1,35,25,521/- paid by the assessee on the loan availed from M/s. OIPL is an allowable expense because the utilization of the loan from M/s. OIPL is within the commercial mandate as per terms of the Agreement with M/s. OIPL; that such loan has been spent on various business purposes of the assessee, including granting loan to a third-party real estate company driven by strategic interest and earning taxable income by way interest while ensuring utilization of interest-bearing funds; that the interest paid by the assessee to M/s. OIPL has been offered to tax. She, therefore, submitted that the interest of Rs.1,35,25,521/- paid by the assessee to M/s. OIPL is allowable under section 36(1)(iii) or 37(1) of the Act.

6. Alternatively, she pleaded that the loan/advance from M/s. OIPL has not been utilized for strategic purposes of the business of the assessee, the assessee is entitled to claim deduction u/s.57(iii) of the Act of the said interest expenses incurred, being directly relatable to the loan extended to M/S. ABW Infrastructure out of loan funds received from M/s. OIPL. Interest has been earned on the funds loaned to M/S. ABW Infrastructiur and the same has been offered to tax by the assessee as income from other sources u/s.56 of the Act. Ld. AR placed reliance on the decisions reported in S.A. Builders Ltd. 158 Taxman 74/288 ITR 1 (SC), CIT v. Dalmia

Cement Pvt Ltd. (2002) 254 ITR 377 (Del), and PCIT v. Reebok India Company[2018] 98 taxmann.com 413 (Delhi).

7. Per contra, it is the submission on behalf of the Revenue that the Ld. CIT(A) had taken into consideration the proximity of the transactions between OIPL and the assessee and the assessee and the M/S. ABW Infrastructure and is right in observing that the assessee appears to be just a passthrough entity and the conduct for passing the loan amount from OIPL to M/S. ABW Infrastructure and therefore there is no business expediency for the assessee to obtain the loan. Basing on the assessment order, Ld. DR submitted that the loan obtained is disproportionately high to the need to meet the conversion expenditure. Basing on the material available on record, Ld. DR submitted that there is no commercial expediency and the authorities below rightly denied the assessee the claim for deduction of the interest expenditure.

8. We have gone through the record in the light of the submissions made on either side. There is no dispute on the facts pleaded by the assessee. The assessee company holds land admeasuring 11.74 hectare at Village Keshwana Rajput in Tehsil and District Kothputli in State of Rajasthan; that there was no necessity for the assessee to apply for the change in land use of said land for setting up Industrial Units as a first step in the process of developing the said land in view of the fact that said region is an upcoming Industrial Town, with presence of leading industry players comprising of Ultratech Cement Limited, ODSUKA Chemicals, Dhanuka Fertilisers, Ramco Industries, Alstone Silicons, Emerge Glass India P. Ltd. etc. and in that respect pursuant to the resolutions dated 2/4/2009 assessee obtained loan to the tune of Rs. 14,72,25, 000/-whereas the opening balance of the loan amount from OIPL was Rs. 3,37,25,000/-

as on 1/4/2012 and the total amount available with the assessee was Rs. 18,09,50,000/-; that the assessee company was approached by M/S. ABW Infrastructure to lend a sum of Rs. 17 crores pending approvals/permission for change in land use while applied for, which were not received during the year under consideration and were awaited.

9. It is not the case of the Revenue that the conversion of the land use is the only one business purpose, which necessitates it to borrow any amounts. According to the assessee, besides the above Rajasthan project, for purposes of its expansion plans in the real estate sector, the assessee approached its sister concern M/s. OIPL for grant of loans of up to Rs.50 Cr. Agreement dated 01.04.2012 between the assessee and M/s. OIPL at the start of the financial year, could be found a part of the Paperbook. Clauses 1 & 3 of the agreement show that the loan from M/s.OIPL was for various business purposes of the assessee besides the Rajasthan project.

10. In the assessment order, learned Assessing Officer noted that a copy of the Board Resolution was submitted by the assessee. Further, other Board Resolutions dated 02.04.2009 of the assessee company filed before the assessing officer as alleged before us as Annexure 2 indicates that that the assessee could utilize surplus funds up to Rs.50 Cr for various investment activities, including granting of loans. According to the assessee, pending approvals/permission for change in land use, the assessee was exploring other opportunities related to its business of real estate and furthering its expansion plans into other upcoming regions, like Gurgaon, Haryana, Greater Noida, UP etc., and at the time M/S. ABW approached the assessee seeking an interest-bearing loan with an underlying security of developed property of M/S. ABW in Gurgaon since the ask of funds is high in real estate business. Assessee denies the

observations of the learned Assessing Officer that the assessee M/S. ABW Infrastructure is a group company. According to the assessee, M/S. ABW is a real estate developer company, with projects in Delhi NCR, and it is an unrelated third party, not being a sister concern of the assessee company or its group.

11. For the purpose of deciding the business expediency, it is necessary to look into the commercial relation between the parties from whom the loan was taken and to whom the loan was advanced. We are in agreement with the submission of the Ld. AR that there are various types of commercial relationships. A business would typically be prudent in creating relationships outside its group through its investments, particularly since the gestation period and risk, besides the amount invested, in real estate are high. Collaboration is typically preferred as it balances risk and return. All contemplations need not necessarily result in an upfront collaboration. Sometimes it is prudent to engage in a ring-fenced relationship. Therefore, after evaluating the projects of M/S. ABW Infrastructure in the financial terms, the assessee chose to grant the loan to M/S. ABW Infrastructure in the interim as the Rajasthan Industrial project was not in construction mode to utilize funds to earn interest income. There is nothing to dispute the submission of the Ld. AR that the advancing the loan to a third-party developer, viz., M/S. ABW Infrastructure, was for strategic purposes of business of the assessee as it helped in creation of business relationships in the real estate sector that may subsequently be converted either into acquisition of property, and in giving confidence in furthering the relationship into a prospective collaboration. It cannot be ignored that the loan was advanced to M/S.

ABW Infrastructure at the same rate of interest as was charged by M/s. OIPL to see that the entire transaction would be cost neutral.

12. It remains an undisputed fact that an amount of Rs. 14,72,25,000/- was taken by the assessee during the year under consideration; that an interest expense of Rs. 1,35,25,521/- was incurred whereas the interest earned was of Rs.1,48,38,906/- by charging the same at 18% p.a. from M/S. ABW Infrastrure and it was offered to tax as income from other sources by the assessee. Revenue also does not dispute that the interest of Rs. 1,35,25,521/- earned by M/s. OIPL at 18% p.a. from the assessee was offered to tax by M/s. OIPL. Reasons recorded by the authorities below for disallowance of interest expenses of Rs.1,35,25,521/- are that there was no commercial expediency in the loan taken from M/s. OIPL and loan given to M/s. M/S. ABW infrastructure and the land use conversion charges are very less than the loan from M/s.OIPL. According to the authorities below the advancement of loan has to be evaluated on the basis of commercial expediency and since the assessee is not in the business of financing, the loans/borrowings must be utilized for its own business, i.e., real estate.

13. The expression commercial expediency is inferred from the phrase "for purposes of business" which appears both in S.36(1)(iii) and S.37(1) of the Act, has been judicially interpreted in a number of cases by the Hon'ble High Court and also the Hon'ble Apex Court to mean the same under both the sections. In applying the test of commercial expediency for determining whether the expenditure was wholly and exclusively laid out for the purpose of the business, reasonableness of the expenditure has to be adjudged from the point of view of the businessman and not of the revenue, as has been held by the Hon'ble Apex Court in the case of CIT

v. Walchand & Co Pvt Ltd [1967] 65 ITR 381 (SC) on allowability of business expenditure u/s.37(1) of the Income-tax Act, 1961 which corresponds to S.10(2)(xv) of the Indian Income-tax Act, 1922.

14. In the case of CIT v. Dalmia Cement Pvt Ltd. (2002) 254 ITR 377 (Del), Hon'ble jurisdictional High Court of Delhi, on the aspect of the allowability of business expenditure u/s.37(1) and interest on borrowed capital u/s.36(1)(iii) as under held that the jurisdiction of revenue is confined to decide reality of expenditure, namely, whether amount claimed as deduction is factually expended as laid down and whether it is wholly and exclusively for purpose of business and once it is established that there is a nexus between expenditure and purpose of business, revenue cannot justifiably claim to put itself in armchair of a businessman or in position of Board of Directors and assume said role to decide how much is reasonable expenditure having regard to circumstances of case. In a case, where the learned Assessing Officer disallowed a part of interest paid by assessee on loan, holding that there was no need to borrow loan as a substantial amount was already lying with CDL, a selling agent of assessee, which was not claimed by assessee. Hon'ble High Court considered the issue whether if all requisite conditions for allowance of interest are fulfilled, is it open to revenue to make a part disallowance, unless there is a positive finding recorded that a part of amount borrowed is not used for purpose of business and held that in such circumstances, disallowance of interest was unjustified.

15. For the sake of completeness, we deem it necessary to extract and refer to the detailed observations of the Hon'ble Apex Court in the case of

S.A. Builders Ltd. 158 Taxman 74/288 ITR 1 (SC), which read as follows:

*"19. In this connection we may refer to section 36(1)(/77) of the Income-tax Act, 1961 (hereinafter referred to as the 'Act1) which states that "the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession" has to be allowed as a deduction in computing the income-tax under section 28 of the Act.*

*20. In Madhav Prasad Jantia v. Commissioner of Income Tax, U.P., AIR 1979 SC 1291, this Court held that the expression "for the purpose of business" occurring under the provision is wider in scope than the expression "for the purpose of earning income, profits or gains", and this has been the consistent view of this Court.*

*21. 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.*

*22. In our opinion, the decisions relating to section 37 of the Act will also be applicable to section 36(1)(iii) because in section 37 also the expression used is "for the purpose of business". It has been consistently held in decisions relating to section 37 that the expression "for the purpose of business" includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby.*

*23. Thus in Atherton v. British Insulated and Heisby Cables Ltd. [1925] 10 TC 155 (HL), it was held by the House of Lords that in order to claim a deduction, it is enough to show that the money is expended, not of necessity and with a view to direct and immediate benefit, but voluntarily and on grounds of commercial expediency and in order to indirectly facilitate the carrying on the business. The above test in Atherton's case (supra) has been approved by this Court in several decisions e.g. Eastern Investments Ltd. v. CIT r 19511 20 ITR i. CIT v. Chandulai Kesha via I and Co. ri9601 38 ITR 601 etc.*

*24. In our opinion, the High Court as well as the Tribunal and other Income-tax Authorities should have approached the question of allowability of interest on the borrowed funds from the above angle. In other words, the High Court and other authorities should have enquired*

*as to whether the interest free loan was given to the sister company (which is a subsidiary of the assessee) as a measure of commercial expediency, and if it was, it should have been allowed.*

*25. 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.*

*26. No doubt, as held in Madhav Prasad Jantia v. CIT {supra}, if the borrowed amount was donated for some sentimental or personal reasons and not on the ground of commercial expediency, the interest thereon could not have been allowed under section 36(1)(f) of the Act. In Madhav Prasad's case (supra), the borrowed amount was donated to a college with a view to commemorate the memory of the assessee's deceased husband after whom the college was to be named. It was held by this Court that the interest on the borrowed fund in such a case could not be allowed, as it could not be said that it was for commercial expediency.*

*27. Thus, the ratio of Madhav Prasad Jantia's case (supra) is that the borrowed fund advanced to a third party should be for commercial expediency if it is sought to be allowed under section 36(1)(f) of the Act.*

*28. In the present case, neither the High Court nor the Tribunal nor other authorities have examined whether the amount advanced to the sister concern was by way of commercial expediency.*

*29. It has been repeatedly held by this Court that the expression "for the purpose of business" is wider in scope than the expression "for the purpose of earning profits" vide CIT v. Malayalam Plantations Ltd. 1964 153 ITR 140, CIT v. Birla Cotton Spinning and Weaving Mills Ltd. 1971 82 ITR 166 etc.*

*30. The High Court and the other authorities should have examined the purpose for which the assessee advanced the money to its sister concern, and what the sister concern did with this money, in order to decide whether it was for commercial expediency, but that has not been done.*

*31. It is true that the borrowed amount in question was not utilized by the assessee in its own business, but had been advanced as interest free loan to its sister concern. However, in our opinion, that fact is not really relevant. What is relevant is whether the assessee advanced such amount to its sister concern as a measure of commercial expediency.*

*32. Learned counsel for the Revenue relied on a Bombay High Court decision in Phaltan Sugar Works Ltd. vs. Commissioner of Wealth-Tax*

*(1994) 208 ITR 989. in which it was held that deduction under section 36(1)(7V) can only be allowed on the interest if the assessee borrows capital for its own business. Hence, it was held that interest on the borrowed amount could not be allowed if such amount had been advanced to a subsidiary company of the assessee. With respect, we are of the opinion that the view taken by the Bombay High Court was not correct. The correct view in our opinion was whether the amount advanced to the subsidiary or associated company or any other party was advanced as a measure of commercial expediency. We are of the opinion that the view taken by the Tribunal in Phaltan Sugar Works Ltd. (supra) that the interest was deductible as the amount was advanced to the subsidiary company as a measure of commercial expediency is the correct view, and the view taken by the Bombay High Court which set aside the aforesaid decision is not correct.*

*33. Similarly, the view taken by the Bombay High Court in Phaltan Sugar Works Ltd. v. Commissioner of Wealth-Tax f 19951 215 ITR 562, also does not appear to be correct.*

*34. We agree with the view taken by the Delhi High Court in CJT v. Dalmia Cement (Bhart) Ltd. F20021 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.*

*35. We wish to make it clear that it is not our opinion that in every case interest on borrowed loan has to be allowed if the assessee advances it to a sister concern. It all depends on the facts and circumstances of the respective case. For instance, if the Directors of the sister concern utilize the amount advanced to it by the assessee for their personal benefit, obviously it cannot be said that such money was advanced as a measure of commercial expediency. However, money can be said to be advanced to a sister concern for commercial expediency in many other circumstances (which need not be enumerated here). However, 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."*

16. It is, therefore, clear that the expression "for purposes of business or profession" occurring in section 36(1(iii)) of the Act is wider in scope than the expression "for the purpose of earning income, profits or gains" as held in *Madhav Prasad Jatia v. CIT* [1979] 1 Taxman 477/118 ITR 200 as well as in *CIT v. Malayalam Plantations Ltd.* [1964] 53 ITR 140 (SC); that the expenditure incurred voluntarily and meeting the "commercial expediency" test is to be allowed as a deduction, and it is immaterial if a third party also benefits by the said expenditure. Further, the Revenue cannot assume the role and occupy the armchair of a businessman to decide whether the expenditure was reasonable.

17. In the case of *PCIT v. Reebok India Company*[2018] 98 taxmann.com 413 (Delhi), Hon'ble jurisdictional High Court upheld the view taken by a coordinate Bench of this Tribunal and held that the money borrowed to advance the same to a subsidiary for some business purpose would qualify for deduction of interest, so long as the money borrowed is not utilized by the assessee for personal benefit and not for business purpose.

18. In this case, while the loan was granted to a third-party real estate developer M/S. ABW Infrastructure with strategic intent, the loan per se was for the purpose of earning interest income in terms of Agreement for effective and secured deployment of interest-bearing funds, which did not result in acquiring any controlling interest in M/S. ABW Infrastructure. Though the authorities below observed that the immediate lending of the

borrowed funds to M/S. ABW Infrastructure indicate that there is business/commercial expediency for the assessee and the assessee acted only as a conduit for the flow of funds between OIPL and M/S. ABW Infrastructure, fact remains that the loan given to M/S. ABW Infrastructure was to earn interest, the income of which the assessee duly offered to tax.

19. In light of material evidence on record, and more particularly in the absence of any finding that the loan from M/s. OIPL on which interest expense has been incurred, was used for personal purposes of the assessee, keeping in view the proximity of time in obtaining loan from OIPL for the immediate necessity of meeting the expenditure for conversion of land uses and also other business prospects, and in lending the idle funds to M/s M/S. ABW Infrastructure for the purpose of earning of interest on the idle funds at the same rate of interest at which the loan was obtained, we are, however, of the considered opinion that the transactions are driven by business considerations and are part of the commercial expediency, we are of the considered opinion that the disallowance of interest expense of Rs. 1,35,25,521/- on loan taken for purposes of business and against which interest income has been earned and offered to tax is unwarranted and the same qualifies to be allowed u/s.36(1)(iii)/S.37(1). We find equal strength in the argument of the Id. AR and hold that even in the alternative, such an expense qualifies as a deduction u/s.57(iii) against the interest income of Rs.1,48,38,906/- offered to tax, being an expenditure incurred in relation to earning of the said income as the loan was taken from M/s. OIPL and then given to M/S. ABW Infrastructure.

20. We, therefore, find that the orders of the authorities below cannot be sustained and are liable to be reversed. We, accordingly, while allowing the appeal of the assessee, direct the learned Assessing Officer to delete the disallowance of the interest expenditure on the loan taken by the assessee to the tune of Rs. 1,35,25,521/-.

21. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this the 23<sup>rd</sup> day of  
July, 2021

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER  
Dated: 23/07/2021

Sd/-  
(K. NARSIMHA CHARY)  
JUDICIAL MEMBER