



ITA No.3264 to 3266/Mum/2010
M/s. Livewire Programme Trading Co. Pvt. Ltd.
Assessment Years :2002-03 to 2004-05

आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI

BEFORE JUSTICE SHRI P. P. BHATT, PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.3264/Mum/2010
(निर्धारण वर्ष / Assessment Year: 2002-03)

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आयकर अपील सं./ I.T.A. No.3265/Mum/2010
(निर्धारण वर्ष / Assessment Year: 2003-04)

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आयकर अपील सं./ I.T.A. No.3266/Mum/2010
(निर्धारण वर्ष / Assessment Year: 2004-05)

ACIT-11(1) Room No.439 Aaykar Bhavan M.K. Marg Mumbai-400 020.	बनाम/ Vs.	M/s. Livewire Programme Trading Co. P. Ltd. Star House, Dr. E. Moses Road Mahalaxmi, Mumbai-400 011.
PAN: AAACL-0864-E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

C.O. No.23/Mum/2011
(Arising out of ITA No. 3264/Mum/2010)
(निर्धारण वर्ष / Assessment Year: 2002-03)

&

C.O. No.24/Mum/2011
(Arising out of ITA No.3265/Mum/2010)
(निर्धारण वर्ष / Assessment Year: 2003-04)

&

C.O. No.25/Mum/2011
(Arising out of ITA No.3266/Mum/2010)
(निर्धारण वर्ष / Assessment Year: 2004-05)

M/s. Livewire Programme Trading Co. P. Ltd. Star House, Dr. E. Moses Road Mahalaxmi, Mumbai-400 011.	बनाम/ Vs.	ACIT-11(1) Room No.439 Aaykar Bhavan M.K. Marg Mumbai-400 020.
PAN: AAACL-0864-E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)



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Assessee by	:	Ms. Aarti Sathe-Ld. AR
Revenue by	:	Shri V. Vinod Kumar -Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	30/09/2020
घोषणा की तारीख / Date of Pronouncement	:	05/10/2020

आदेश / ORDER

Per Bench

1. Aforesaid appeals by revenue for Assessment Years [in short referred to as 'AY'] 2002-03 to 2004-05 contest separate order of learned first appellate authority on certain common grounds of appeal. The facts as well as issues are stated to be pari-materia the same in all the 3 years and therefore, the appeals were heard together and are now being disposed-off by way of this consolidated order for the sake of convenience and brevity. The assessee has filed cross-objections against the same which would be adjudicated along with revenue's appeals.

2. The Ld. counsel for Assessee, Ms. Aarti Sathe, at the outset, submitted that the sole issue involved in all the 3 years is interest disallowance u/s 36(1)(iii). The issue of interest disallowance, on merits, is squarely covered in assessee's favor by the decision of this Tribunal in assessee's own case for AYs 2005-06 & 2006-07, revenue's appeal ITA Nos.632 & 2866/Mum/2010 common order dated 13/05/2015. A copy of the same has been placed on record. The coordinate bench, in the said order, has dismissed revenue's appeals for AYs 2005-06 & 2006-07. On the other hand, Ld. Sr. DR, Shri V. Vinod Kumar, relied on the orders of



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Ld. AO in making the disallowance. But the fact that issue on merits, at present, is squarely covered by the aforesaid decision of the Tribunal, remain uncontroverted before us.

3. In the background, first we take up appeal as well as cross-objection for AY 2002-03. The revenue has contested the order of Ld. Commissioner of Income Tax (Appeals)-3, Mumbai [CIT(A)], Appeal No. CIT(A)-3/ACIT-11(1)/IT-26/2009-10 order dated 23/02/2010 on following grounds of appeal: -

1. On the facts and in the circumstances in the case and in law, the Ld. CIT(A) erred in directing to allow the interest paid to Star India Pvt. Ltd. amounting to Rs.4,48,51,000/- as business expenditure.
2. The appellant prays that the order of CIT(Appeals) on the above grounds be set aside and that of the Assessing Officer restored.

The assessee, by way of cross-objection, has challenged the legality of reassessment proceedings. As evident from revenue's grounds, the revenue is aggrieved by deletion of interest disallowance of Rs.448.51 Lacs as made by Ld. AO while framing assessment for the year under consideration.

4.1 The material on record would show the assessee was subjected to reassessment proceedings for the year under consideration. Accordingly, an assessment was framed u/s 143(3) read with Section 147 on 19/11/2009 wherein the assessee was saddled with interest disallowance of Rs.448.51 Lacs. The reassessment proceedings were triggered pursuant to assessment proceedings for AY 2005-06 wherein the assessee was saddled with certain interest disallowance. Therefore, to make similar disallowance in AY 2002-03, the assessee was subjected to reassessment proceedings.



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4.2 The assessee had debited interest on bank overdraft for Rs.300.92 Lacs and other interest of Rs.147.59 Lacs for the year under consideration and claimed deduction of the same u/s 36(1)(iii). The assessee being resident corporate assessee was stated to be engaged in trading of rights of cinematographic films and television programme software etc. It procured rights in respect of various genres of films from third parties such as producers, license holders etc. and sold the same in its entirety to its associate enterprise namely SGL Entertainment Ltd. (SGL).

4.3 The assessee borrowed inter-corporate deposits (ICD) from another entity namely M/s Star India Private Limited (SIPL) and also availed bank overdraft from the bank for the purposes of carrying out of its business. Accordingly, the interest on ICDs and Bank-overdraft was claimed as deduction u/s 36(1)(iii). During the course of assessment proceedings, the assessee submitted that SIPL was not a related party within the meaning of Section 40A(2) of the Act and further, SIPL was a resident in India for tax purposes. The interest so earned by SIPL was offered to tax during the subject AY. Therefore, the deduction was allowable to the assessee. Reliance was placed, *inter-alia*, on the decision of Hon'ble Supreme Court in **S.A. Builders V/s CIT 289 ITR 26** to support the various submissions.

4.4 However, it was the allegation of Ld. AO that M/s SGL, M/s SIPL and the assessee were part of the same Newscorp group. The assessee was expected to take sufficient advance from its principal and manage its liquidity concerns. Instead of doing the same, it took loan from alleged



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non-Sec. 40A (2) concern to ensure that no income is taxed in the hands of Indian companies. Further, the transactions were not declared in Form 3CEB as per the Transfer Pricing Regulations. Therefore, the interest payment aggregating to Rs.448.51 Lacs was held to be not in business expediency and not mandated by business exigencies. Finally, the same was disallowed while framing the assessment.

5.1 Before Ld. CIT(A), the assessee while challenging the legality of reassessment proceedings, assailed the interest disallowance on merits also. However, not convinced with assessee's legal grounds, Ld. CIT(A) upheld the reassessment proceedings since the original return of income filed by the assessee was processed u/s 143(1) only and the conditions of reopening were duly fulfilled.

5.2 The issue, on merits, however, was decided in assessee's favor by relying upon the appellate order for AY 2005-06 wherein the disallowance so made by Ld. AO for that year was deleted by first appellate authority. It was noted that Ld. AO had not disputed the use of loans and therefore, the disallowance was to be deleted.

5.3 Aggrieved as aforesaid, the revenue is under further appeal before us on admissibility of interest expenditure. The assessee, in its cross-objections, has pleaded that reassessment proceedings were invalid and bad in law.

6. We have carefully heard the rival submissions and perused relevant material on record including the cited decision of coordinate bench of Tribunal in assessee's own case for AYs 2005-06 & 2006-07. Upon perusal of the same, we find that the adjudication of Ld. CIT(A) in



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deleting the interest disallowance in AY 2005-06 was agitated by the revenue before this Tribunal on merits. However, the stand of Ld. CIT(A) in deleting the disallowance was upheld and revenue's appeal was dismissed by coordinate bench by observing as under: -

4. We have considered rival contentions and found from the record that the financial statements of assessee evidenced utilization of borrowed funds for procuring rights in respect of various genres of films from third parties for sale to SGL Entertainment. As such borrowed funds on which interest has been paid were utilized for purpose or business entitling assessee to claim deduction u/s 36(1)(iii). Regarding A.O.'s observation that the act of borrowing funds from SIPL is not in business expediency and with a view to avoid taxability in the hands or the assessee, we found that funds were borrowed from SIPL for business purpose, the expenses being wholly and exclusively for the purpose of business based on commercial expediency. Interest expenses were incurred for purpose of assessee's own business, profits of which are chargeable to tax under the provisions of the Act. Further whether a particular expenditure is necessary considering commercial expediency has to be decided from the point of view of businessman alone and not by the Revenue authorities. For this purpose reliance can be placed on decision of Hon'ble Supreme Court in the case of DCIT v/s Core Health Care Ltd.(2 TR 194), S.A.Builders Ltd. v/s CIT (288 ITR 01), CIT v/s Panipat Woollen & General Mills Co. Ltd. (103 ITR 66), Bombay Samachar Ltd. (74 ITR 723), CIT v/s Sales Magnesite (Pvt) Ltd (1995) (214 ITR 1) (Bom), CIT v/s Chandulal Keshavlal & Co. (1960) (38 ITR 601), Bombay Steam Navigation Co. Pvt. Ltd. v/s CIT (1965) (56 ITR 52), Calcutta Landing & Shipping Co. Ltd. v/s CIT (1967) (65 ITR 1) Cal), JK Commercial Corpn. Ltd. v/s CIT (1969) (72 ITR 296) (All), CIT vis Dalmia Cement (B.) Ltd (2002) (254 ITR 377) (Del.), DCIT v/s M/s Parry And Company Ltd. (2008- TIOL-555-ITAT-MAD), Hatiwala Silk Mills v/s Assessing Officer (2002) (19 TTJ 284) (Ahm.), CIT vis Walchand and Co. Pvt. Ltd. (1967) (65 ITR 381) (SC), and CIT v/s Rajaram Bandekar (1994) 208 ITR 503 (Bom). As per the finding recorded by the CIT(A), M/s Star India Pvt. Ltd. is not coming within the purview of Section 40A(2), therefore, it cannot be said that interest so paid to a related party so as to avoid burden of tax on the assessee. The detailed findings of the CIT(A) recorded at para 2.3 and 2.3.1 has not been controverted by department by bringing any positive material on record. Accordingly, we do not find any reason to interfere in the order of CIT(A) deleting disallowance on interest.

It was observed by the bench that borrowed funds were utilized for business purposes entitling assessee to claim deduction u/s 36(1)(iii). Whether a particular expenditure was necessary considering commercial expediency was to be decided from the point of view of businessman alone and not by the Revenue authorities. Further, M/s SIPL was not



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coming within the purview of Sec. 40A(2). Finally, the revenue's appeal was dismissed.

7. From the enumeration of facts in proceeding paragraphs for the year under consideration, it is quite evident that the reassessment proceedings were triggered based on interest disallowance in AY 2005-06. The said disallowance, has ultimately been deleted by the Tribunal for AY 2005-06. Nothing on record would suggest that the said decision was not applicable to the facts of the present case. No change in material facts have been brought on record. In fact, the reassessment proceedings were triggered in this year on the basis of disallowance made in AY 2005-06. The relief has been given by Ld. CIT(A) by relying upon the appellate order for AY 2005-06 which has finally been affirmed by the Tribunal. In such a scenario, no fault could be found in the impugned order and no disallowance would survive against the assessee for the year under consideration. Therefore, by confirming the stand of Ld. CIT(A), we dismiss the appeal.

8. The Ld. AR has submitted that since issue on merits is squarely covered in assessee's favor, the assessee do not wish to press for its cross-objections. Hence, the same stand dismissed being *infructuous*.

9. Resultantly revenue's appeal as well as assessee's cross-objections stands dismissed.

ITA No.3265/Mum/2010 & CO. No.24/Mum/2011 (AY 2003-04):

10. Facts are pari-materia the same in this year. An assessment was framed u/s 143(3) r.w.s. 147 on 19/11/2009 wherein the assessee was saddled with interest disallowance of Rs.283.17 Lacs. Upon further



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appeal, Ld. CIT(A) held that reopening u/s 147 was not sustainable since original assessment was framed u/s 143(3) and there was application of mind by Ld. AO on the issue of interest disallowance during scrutiny assessment proceedings. Consequently, the issue on merits was not adjudicated. The said adjudication has given rise to revenue's appeal and assessee's cross-objections before us. The revenue, in its appeal, has contested the adjudication of Ld. CIT(A) whereas the assessee, in its cross-objections has pleaded that it reopening was to be upheld, the interest expenditure, on merits, would be an allowable expenditure.

11. Since the facts are pari-materia the same as in AY 2002-03 except for the fact that Ld. CIT(A) has quashed the reassessment proceedings and not adjudicated the issue on merits. Nevertheless, the issue, on merits, is squarely covered in assessee's favor by the cited decision of Tribunal for AY 2005-06. Resultantly, the assessee's cross-objections which contest the issue on merits stand allowed. The same would render deliberations on revenue's appeal merely academic in nature. Consequently, the revenue's appeal stands dismissed as being *infructuous*. The assessee's cross-objections stands allowed whereas the revenue's appeal stands dismissed.

ITA No.3266/Mum/2010 & CO. No.25/Mum/2011 (AY 2004-05):

12. Facts are pari-materia the same in this year. An assessment was framed u/s 143(3) r.w.s. 147 on 09/12/2009 wherein the assessee was saddled with interest disallowance of Rs.350.66 Lacs. Upon further appeal, Ld. CIT(A), while upholding the reassessment proceedings, adjudicated the issue in assessee's favor by relying upon appellate order



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for AY 2005-06. The same has given rise to revenue's appeal and assessee's cross-objections before us wherein identical grounds have been raised as in AY 2002-03.

13. Since the facts in this year are pari-materia the same as in AY 2002-03, our adjudication therein shall *mutatis-mutandis* apply to this year. Resultantly, the revenue's appeal as well as assessee's cross-objections stands dismissed.

Conclusion

14. The revenue's appeals ITA Nos. 3264 to 3266/Mum/2010 as well as assessee's CO. Nos.23 & 25/Mum/2011 stands dismissed. The assessee's CO. No. 24/Mum/2011 stand allowed.

Order pronounced on 05th October, 2020.

Sd/-
(Justice P.P. Bhatt)
President

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 05/10/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.