IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE "A" BENCH, BANGALORE

Before Shri George George K., Vice President
and
Ms. Padmavathy S., Accountant Member

ITA No. 1349/Bang/2024 (Assessment Year: 2018-19)		
Deccan Charters Pvt. Ltd. #1, Bellary Road Jakkur Aerodrome Bengaluru 560064 PAN – AACCD9105G	vs.	DCIT, Circle - 2(1)(2) Bengaluru
(Appellant)		(Respondent)

Assessee by:	Shri V. Srinivasan, Advocate
Revenue by:	Ms. Neha Sahay, JCIT-DR

Date of hearing:	16.10.2024
Date of pronouncement:	21.10.2024

O R D E R

Per: Padmavathy S., A.M.

This appeal is against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [CIT(A)] dated 27.06.2024 for Assessment Year (AY) 2018-19.

2. The assessee has raised the following grounds of appeal: -

"*1 The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

2. The learned CIT[A] is not justified in upholding the disallowance made u/s.36[1][iii] of the Act of Rs.2,56,98,485/- without appreciating that the appellant had sufficient non-interest bearing funds for making the advance to M/s. Deccan Emerging Cargo Ventures, a group entity, which

advance was given for the purpose of business of the appellant in the earlier years and therefore, the disallowance made ought to have been deleted.

3. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

3. The assessee is a private limited company and is engaged in the business of providing aviation services by operating and maintaining aircrafts at various locations and having base at Bengaluru. The assessee filed its return of income for AY 2018-19 on 30.10.2018 declaring total loss of Rs. 10,93,70,970/-. The return was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer (AO) noticed from the audited financial statements that the assessee has made advances to related concerns and no interest has been charged on the said advances. The AO further noticed that the assessee has borrowed loans from banks and other financial institutions on which interest is paid and debited to the P&L Account. The AO called on the assessee to furnish details with regard to the interest free advances extended to the related concerns. The AO after considering the submissions made by the assessee made a disallowance u/s. 36(1)(iii) of the Income Tax Act, 1961 (the Act) to the tune of Rs. 2,56,98,485/-.

4. Aggrieved, assessee filed further appeal before the CIT(A). The assessee submitted before the CIT(A) that the impugned advances were extended by the assessee to its sister concern M/s. Deccan Emerging Business Ventures Pvt. Ltd. during the financial year relevant to AY 2012-13. The assessee further submitted that during AY 2012-13 when the advance was extended, the assessee had sufficient interest free funds out of which the advances were extended. The assessee submitted the financial statements for

AY 2012-13 and other relevant details to submit that the balance in the impugned advance account have since been decreasing and no new advance was extended during the year under consideration. Accordingly, the assessee submitted that no disallowance u/s. 36(1)(iii) is warranted. The CIT(A) did not accept the submissions of the assessee and upheld the disallowance made by the AO stating that during the year under consideration the assessee did not have sufficient interest free funds. Aggrieved, assessee is in appeal before the Tribunal.

5. The learned A.R. reiterated the submissions made before the CIT(A). The learned A.R. drew our attention to the financial statements of the assessee for the year ended 31.03.2012 to submit that the interest free funds during the said financial year net of loss was Rs. 61,60,35,571/- and that the assessee had given an advance of Rs. 28 crores during the said financial year out of the said interest free funds (pages 113 to 115). The learned A.R. further submitted that the outstanding balance of the advance given to the sister concern has been decreasing year on year and the balance which stood at Rs. 38,47,87,979/- as on 31.03.2012 is reduced to Rs. 22,54,25,309/- for the year ended 31.03.2018. Therefore the learned A.R. submitted that the disallowance u/s. 36(1)(iii) made in the year under consideration on the ground that sufficient own funds were not available is not tenable.

6. The learned D.R. on the other hand, vehemently argued that the assessee cannot take shelter on the ground that when the advance was extended the assessee had sufficient own funds. In this regard the learned D.R. submitted that under the Companies Act there is a restriction that advances to sister concerns cannot exceed 60% of the reserves and surplus and since in the given case the advance is more than 60% the claim that the same is out of out of own funds is not correct. The ld DR further argued that when there is a

statutory restriction on extending advances to sister concerns, the entire loan cannot be treated as extended out of own funds. Accordingly the ld DR supported the order of the AO in making the disallowance u/s. 36(1)(iii) of the Act.

7. We have heard the rival contentions and perused the material on record. The assessee in the financial statements for the year under consideration has shown a sum of Rs. 22,54,25,309/- as advance to related parties. Since the reserves and surplus of the assessee was less than the advance given to related parties, the AO made a disallowance u/s. 36(1)(iii) of the Act. The assessee contended that the advance was not given during the year under consideration and that the balance shown is the outstanding carried forward from earlier years. The assessee is also contending that no advance was given during the year under consideration make a disallowance u/s. 36(1)(iii) in the year under consideration on the ground that the outstanding balance in the advances to related parties is more than the own funds of the assessee is not correct. In this regard we notice that there was an opening outstanding balance of Rs. 10,47,87,979/- as on 01.04.2011 and the assessee had given an advance of RS.28 crores during the financial year relevant to AY 2012-13. We further notice that the balance is the reserve and surplus stood at Rs. 61,60,35,571/- as on 31.03.2012. We also notice that the outstanding balance in the impugned advance account has been decreasing YoY. Therefore there is merit in the contention of the ld AR that no new advance is extended to sister concern and that the revenue did not bring anything on record to controvert the said contention. In this regard we notice that a similar issue has been considered by the Hon'ble Karnataka High Court in the case of CIT vs. Brindavan Beverages Pvt. Ltd. (ITA No. 67 of 2015 dated 26.10.2016) where it has been held that: -

> *"3. However, he submitted that inadvertently he could not formulate and place on record another question for disallowance of interest, which was*

contended before the Tribunal and he submitted that he may be permitted to add a question for disallowance of the interest out of the total interest claim considering it non specific and for such purpose he has tendered addition of question as under: -

"Whether the Tribunal was correct in holding that the assessee is entitled to deduction of interest on loans when assessee has extended interest free loans to directors & sister concerns and when assessee has failed to establish the nexus between the interest free funds available with it and non-interest bearing advances/loans recorded perverse finding ?"

4. We permit the learned Advocate to amend the memo of appeal by raising the aforesaid question.

5. As the learned Advocate has restricted the present appeal only on the new question formulated and as question Nos.1 and 2 are not pressed, we find that only aspect to be considered is newly added question. The relevant discussion of the Tribunal on the aforesaid question is at paragraph Nos.22 and 23 which reads as under :-

> *"22. We have perused the orders and heard the rival contentions. Balance sheet of the assessee placed at PB page-53, show its share capital reserved & surplus as under;*

	As on 31.03.2008	***As on 31.03.2909***	***Increase***
Share capital	*24,53,000*	*24,53,000*	*Nil*
Reserves &Surplu	*1,55,43,00,078*	*1,64,19,66,727*	*87666649*
TOTAL	*1,55,67,53,078*	*1,64,44,19,727*	*87666649*

There cannot be any dispute that at least share capital and *reserves are own funds of the assessee. The position of the loans and advances as on 31.03.2008* and *31.03.2009 were as under;*

	31.03.2008 Rs.	***31.03 2009 Rs.***	***Increase/Decrease Rs.***
Loans/advances to Directors & Sister Concern	*26,17,61,903*	*19,26,50,342*	*(6,91,11,561)*

Thus not only has assessee own funds, well covering the loans and advances, but in the previous year the advances had gone down. In none of the earlier assessment year viz. by 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 & 2008-09 were any disallowance for interest on loans for non-business purpose made.

23. As for the decision of the Hon'bie P & H High Court in Abhishek Industries Ltd., (supra) is concerned, this was followed by the very same High Court, while confirming a similar disallowance in the case of Munilal Sales Corpn. Vs CIT 298 ITP 288. Hon'ble Apex court reversed the latter in 298 ITR 298 and hence judgment in Abhishek Industries Ltd., will not further revenue's case any way. On the other hand, assessee is well supported by the decision of Hon'ble Mumbai High Court in the case of Reliance Utilities & Power Ltd., (supra) as well as Hon'ble Gujarat High Court in the case of Raghuvir Synthetics Ltd.,(supra). We thus. do not find any reason to interfere with the order of the CIT (A) in this regard. In the result ground 4 of the revenue is dismissed."

6, The aforesaid discussion shows that the Tribunal has found that the decision upon which reliance has been placed by the Revenue in the case of ***PUNJAB AND HARYANA HIGH COURT IN ABHISHEK INDUSTRIES LTD.,*** *i3 already reversed by the Apex Court in the case of* ***MUNILAL SALES CORPN. VS. CIT 298 ITR 283*** *and further the Tribunal has also found that the stand of the assessee is supported by the decision of* ***MUMBAI HIGH COURT in the case of RELIANCE UTILITIES AND POWER LTD.,*** *(313 ITRR 340) as well as Gujarat High Court in the case of* ***RI GHUVIR SYNTHETICS LTD*** *(354 ITR 222).*

7. In our view, when both the issues are covered by the decisions of two High Courts, we do not find that any substantial question of law would arise for consideration, hence the appeal is ***dismissed."***

4. Since the facts in assessee's case as enumerated herein above are similar, in our considered view the ratio laid down in the above decision is applicable to assessee's case also. Accordingly we hold that the AO is not correct in making the disallowance u/s. 36(1)(iii) of the Act and direct the AO to delete the disallowance made in this regard.

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

Order pronounced in the open Court on 21st October, 2024.

Sd/	Sd/-
(George George K.)	**(Padmavathy S.)**
Vice President	**Accountant Member**

Bengaluru, Dated: 21st October, 2024
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
5. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Bangalore