IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI SHAILENDRA KUMAR YADAV,
JUDICIAL MEMBER
AND SHRI G.S. PANNU, ACCOUNTANT MEMBER

ITA No.1810/PN/2013
(A.Y:2010-11)

PCS Technology Ltd.,
S.No.1A, Irani Market Compound,
Yerawada, Pune – 411006

PAN: AABCP0316J                                        Appellant

Vs.

Dy.CIT, Circle 4, Pune                                        Respondent

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|---|---|---|
| Appellant by | : | Shri C.H.Naniwadekar |
| Respondent by | : | Shri P.S. Naik |
| Date of hearing | : | 24.09.2014 |
| Date of pronouncement | : | 24.09.2014 |

ORDER

PER SHAILENDRA KUMAR YADAV:

This appeal has been filed by the assessee against order of the Commissioner of Income Tax (Appeals)-II, Pune dated 10.05.2013 for A.Y. 2010-11 on the following grounds.

> In the fact and the circumstances of case, and in law, the learned Commissioner of Income-tax (Appeals)-II, Pune, erred in confirming the additions and observations made by the assessing officer in the assessment order in respect of following points. He erred:
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> 1. In respect of disallowance of Rs.6,26,000/- out of interest paid:
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> a) In confirming the disallowance of Rs.6,26,000 out of interest paid.
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> b) In not appreciating that in view of the position of the net owned funds of the appellant company as also the interest free funds available with the company, the disallowance made by the assessing officer was not justified.

c) Without prejudice to above, in not accepting that the disallowance out of interest ought to have been made on a proportionate basis

2. The appellant craves leave to add, modify or withdraw any of the grounds of appeal at the time of hearing

2. The assessee is a Company engaged in the activity of manufacture and marketing of computer systems which includes providing computers on lease basis, providing computer hardware, software maintenance and repair services and providing consultancy services. The assessee filed the return on 08.09.2009 declaring income of Rs.3,84,72,890/- which was processed u/s.143(1) of the Act and the same was assessed u/s.143(3) of the Act by the Assessing Officer determining total income at Rs.3,90,98,890/-. During the assessment proceedings, the Assessing Officer has observed that the assessee had advanced interest free advances to M/s. PSC Positioning Ltd. amounting to Rs.2,60,00,000/- and out of this Rs.2,50,00,000/- was received back from the said company. It was noticed that the assessee had huge interest burden and had failed to justify the business purpose of expediency of the amount advanced. The Assessing Officer thus, held that the assessee failed to establish that the funds were utilized for the purpose of the business and, therefore, disallowed a sum of Rs.6,26,000/- being 12% of the total advances on a proportionate basis.

2.1 The matter was carried before first appellate authority, wherein the various contentions were raised on behalf of the assessee. The CIT(A) has upheld the order of Assessing Officer following the decision in assessee's own case for A.Y. 2009-10 vide appellate order No.PN/CIT(A)-II/JCIT R-4/277/2011-12 dated 02.07.2012.

2.2 Before us, the learned Authorized Representative has pointed out that in A.Y. 2009-10, the Tribunal has decided the issue in favour of the assessee by observing as under:

> "9. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. There is no dispute to the fact that the assessee has advanced interest free loan of Rs.40,50,000/- to Mr. Pratap Hegde and Rs.2,60,00,000/- to M/s. PCS Positioning Pvt. Ltd. whereas it has incurred interest expenditure of Rs.7,68,38,548/- on account of borrowed funds. Since the assessee could not establish the commercial expediency of such interest free loan advanced to the above 2 parties, the Assessing Officer disallowed interest of Rs.36,06,000/- being 12% interest on the aforesaid advances which has been upheld by the CIT(A). It is the submission of the Ld. Counsel for the assessee that since the total interest free funds, i.e. share capital and interest free loan from directors amounting to Rs.128.47 crores is more than the interest free advance of Rs.3,00,50,000/- (i.e. 40,50,000 + 2,60,00,000/-), therefore, in view of the decision of Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities and Power Ltd., no amount of interest can be disallowed. It has been held in the aforementioned decision that if there were funds available both interest free and overdrafts and/or loans taken, then a presumption would arise that investments should be out of interest free funds generated or available with the company if the interest free funds were sufficient to meet the investments. As has already been noted in the order of the CIT(A) at Page 3 and 4, the assessee had given the details of interest free loan from directors at Rs.57.87 crores and the shareholders funds as on 31-03-2009 at Rs.70.60 crores (after deducting the revaluation reserve of Rs.7.95 crores). Thus, the total interest free funds available with the assessee comes to Rs.128.47 crores which is much more than the interest free advances given to the 2 parties amounting to Rs.3,00,50,000/-.
>
> 10. We find the Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. (Supra) has observed as under :
>
> > "Apart from that we have noted earlier that both in the order of the Commissioner of Income-tax (Appeals) as also the Appellate Tribunal, a clear finding is recorded that the assessee had interest-free funds of its

own which had been generated in the course of the year commencing from April 1, 1999. Apart from that in terms of the balance-sheet there was a further availability of Rs. 398.19 crores including Rs. 180 crores of share capital. In this context, in our opinion, the finding of fact recorded by the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal as to availability of interest-free funds really cannot be faulted.

If there be interest-free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest-free funds available. In our opinion, the Supreme Court in East India Pharmaceutical Works Ltd. v. CIT [1997] 224 ITR 627 had the occasion to consider the decision of the Calcutta High Court in Woolcombers of India Ltd. [1982] 134 ITR 219 where a similar issue had arisen. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in Woolcombers of India Ltd.` s case [1982] 134 ITR 219 the Calcutta High Court had come to the conclusion that the profits were sufficient to meet the advance tax liability and the profits were deposited in the over draft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there was sufficient material and the assessee had urged the contention before the High Court. The principle, therefore, would be that if there are funds available both interest-free and over draft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this presumption is established considering the finding of fact both by the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal."

10.1 Since in the instant case the interest free funds available with the assessee company at Rs.128.47 crores is much more than the interest free advances given, therefore, respectfully following the decision of the Jurisdictional High Court cited (Supra) we hold that no disallowance is warranted in the instant case. We accordingly set-aside the order of the CIT(A) and direct the Assessing Officer to delete the addition.

11. In the result, the appeal filed by the assessee is allowed."

2.3 Nothing contrary has been brought to our knowledge on behalf of the Revenue. Facts being similar, so following the same reasoning the Assessing Officer is directed to delete the disallowance of Rs.6,26,000/- out of interest paid as discussed above.

3. In the result, the appeal of the assessee is allowed as indicated above.

Pronounced in the open Court on this the 24th day of September, 2014.

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| Sd/- | Sd/- |
| (G.S. PANNU) | (SHAILENDRA KUMAR YADAV) |
| ACCOUNTANT MEMBER | JUDICIAL MEMBER |

Pune, Dated the 24th September, 2014
GCVSR

Copy to:-

1) Assessee
2) The Department
3) The CIT(A)-II, Pune
4) The CIT-II, Pune
5) The DR, "B" Bench, I.T.A.T., Pune.
6) Guard File

By Order

//True Copy//

Assistant Registrar
ITAT, Pune.