IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH 'F', MUMBAI

BEFORE SHRI B. RAMAKOTIAH, ACCOUNTANT MEMBER &
SHRI VIVEK VARMA, JUDICIAL MEMBER

I.T.A. NO. 3093/Mum/2011
Assessment Year : 1988-89

Forbes and Company Limited (Formerly known as Forbes Gokak Ltd.) Ground Floor, Forbes Bldg., Charanjit Rai Marg, Fort, Mumbai 400 001. **PAN: AAACF 1765 A**	Vs.	The Income Tax Officer – 1(1)(4), Mumbai.
(Appellant)		(Respondent)
Appellant by	:	Mr. Girish Dave.
Respondent by	:	Mr. M. Rajan (CIT DR)

Date of Hearing: 21-06-2012.

Date of Pronouncement: 08-08-2012.

O R D E R

Per Vivek Varma, JM:

The appeal pertaining to assessment year 1988-89 has been filed by the assessee against the order of CIT(A), Mumbai, dated 02-11-2010.

2. As per the orders of the revenue authorities, it is seen, that the instant appeal is in its second round. In the first round of appeal, the appeal, before the co-ordinate Bench at Mumbai, was filed by the revenue, wherein the impugned orders were set aside with certain directions to the AO with regard to own fund position vis-a-vis amounts

advanced to subsidiary company and amounts parked in IRFC and levy of interest u/s 201(1A).

3. With regard to the instant appeal, the following grounds have been raised for our consideration.

> Disallowance of interest on borrowings of Rs. 9,10,000 in respect of interest free advances to Bradma India Ltd.
>
> *1. The learned CIT(A) erred in confirming the action of the Income-tax Officer 1(1)(4), Mumbai (ITO) with respect to the disallowance of interest on borrowings amounting to Rs. 9,10,000 on the ground that the borrowed funds were utilized in giving interest free advances to Bradma India Ltd (being the sister concern of the appellant).*
> *2. The learned CIT(A) further erred in holding that the appellant has not been able to substantiate / provide evidence with respect to the claim that the advances were made out of appellant's own funds and not from the borrowed funds. The appellant prays that the disallowance of interest on borrowings of Rs. 9,10,000 be deleted.*
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> Disallowance of interest of Rs. 9,10,000 in respect of the investments made in instruments yielding tax free income.
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> *3. The learned CIT(A) erred in confirming the action of the ITO with respect to the disallowance of the interest of Rs. 9,10,000 on the ground that part of the borrowed funds were utilized for investments in the instruments yielding tax free income.*
> *4. The learned C1T(A) further erred in holding that the appellant has not been able to substantiate / provide evidence with respect to the claim that the advances were made out of appellant's own funds and not from the borrowed funds. The appellant prays that the disallowance of the interest of Rs. 9,10,000 be deleted.*
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> Interest under section 201(1A) of the Act.
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> *5. The learned CIT(A) erred in not directing the ITO to delete the levy of interest under section 201(1 A) of the Income-tax Act. The appellant prays that the ITO be directed to delete the levy of interest & under section 201(1 A) of the Act.*

4. The Authorised Representative pointed out that before the AO, the assessee made the following submissions along with the details,

> *The assessee vide its letter dated 24.2.2006 has stated that -*
> *During the year the company has invested Rs. 210 lacs in tax free bonds of Indian Railway Finance Corporation. The said investment has been made out of cash surpluses generated by the company from time to time during the relevant year. We attach statement of sources and application of funds in this behalf and also the accounts for the period 1.7.1986 to 30.6.1987, which. shows a cash surplus of Rs. 673 lacs i.e. profit before depreciation*

> *but after tax. Thus it can be seen that no part of borrowed funds have been utilized for making this investment. Apart from this the net worth of the company as on 30.6.1986 was Rs. 1346 lacs whereas as on 30.6.1987 was Rs. 1739 lacs resulting in incremental reserves and surplus of Rs. 393 Lacs".*

and the AO came to the following conclusion :

> *"The assessee has also submitted the details of interest paid on borrowings with rate of interest and statement of sources and applications of funds. However, while going through the statement, the assessee has not submitted the details of the interest free loan given to its subsidiary company and has only submitted a statement from which it can not be determined whether the interest free loan has been given out of its own funds or out of borrowed funds. Under the circumstances, the disallowance of interest as discussed by the Dy. C.I.T Spl. Rg. 18, Mumbai in his original order remains the same. However, considering interest paid on borrowed funds varying from 10% to 17%. I disallow the interest 14% on the loan of Rs. 65 lakh given to M/s Bradma India Ltd., which works out Rs. 9,10,000/-".*

With regard to the investments in IRFC Bonds, the AO came to the following conclusion :

> *"Similarly, the assessee has invested Rs. 1,61,00,000/- in 10% tax free debentures of Indian Railways Finance Corp. Ltd and Rs. 49,00,000/- in 9% tax free debentures of the same corporation. Thus the total investment made during the year in this account is Rs. 2,10,00,000/-. Since the interest on these debentures are tax free, the assessee has claimed exemption u/s 10(15) of the I.T.Act.*
> *As per the order of the Ld. ITAT the disallowance of interest of Rs. 11,70,000/- for the above tax free investment is also directed to be reviewed. As per the order of the Dy.CIT, Spl. Range 18 dated 27.03.1991, Spl. Range 18, has discussed the disallowance in detail. The reason for disallowance of interest as per point 1(a) above is also applicable to the investment made in tax free bond as discussed above. I consider the disallowance of rate of interest at 14% instead of 18% which works out to Rs. 9,10,000/-".*

5. The assessee took the issue before the CIT(A), who sustained the disallowance made by the AO.

6. Aggrieved, the assessee is now before the ITAT.

7. Before us, the Authorised Representative reiterated the submissions made before the AO and CIT(A) and submitted that despite all the facts on record, which included, the funds position of the assessee company as per its balance sheet, showed, that own and interest free funds far exceeded the investments made in the

subsidiary company and IRFC Bonds, the revenue authorities ignored all these facts, only to make the disallowances.

8. The DR placed strong reliance on the orders of the revenue authorities.

9. We have heard the two sides and have visited the orders of the revenue authorities and coordinate Benches in the preceding years and subsequent year. We find that the orders of the revenue authorities are typical and without any consideration. The assessee before the AO and before the CIT(A) submitted,

> *"The relevant portion of the AO's order is extracted hereinbelow:*
>
> *"The assessee has also submitted the details of interest paid on borrowings along with rate of interest and statement of sources and applications of funds. However, while going through the statement, the assessee has not submitted the exact details of the interest free loan given to its subsidiary company and has only submitted a statement from which it cannot be determined whether the interest free loan has been given out of its own funds or out of borrowed funds. Under the circumstances, the disallowance of interest as discussed by the DCIT, Spl. Rg. 18, Mumbai in his original order remains the same. However, considering the interest paid on borrowed funds varying from 10% to 17% I disallow the interest @ 14% on the loan of Rs. 65 lakh given to M/s Bradma India Ltd, which works out to Rs. 9,10,000/-".*
> *4.2 During the appellant proceedings, the appellant AR has filed written submission in support of his contention. The relevant portion of the appellant AR's submission is extracted hereinbelow :-*
> *"He failed to appreciate and ought to have held that :*
> *i. The interest free advance given to sister concern were out of surplus / own funds and not from borrowed capital;*
> *ii. The appellant had net worth, which was more than the interest free advances given to its sister concern and as such were given out of own funds and not out of borrowed funds;*
> *iii. The interest was not a direct expense for earning tax free income and no disallowance can be made on proportionate basis by attributing the same towards tax free income;*
> *iv. No nexus has been established by the AO between the borrowed funds and investments made;*
> *v. Where no expenditure has been actually incurred, no estimation can be made to disallow expenditure for earning dividend Income;*
> *vi. Borrowings were utilized for the purpose of business and as such the conditions envisaged by s. 36(1)(iii) as applicable to year under appeal have been fulfilled, entire interest should have been allowed as a deduction.*
> *The appellant, therefore, prays that the addition of Rs. 9,10,000/- to business profits on the alleged ground that the borrowed funds e utilized in giving advances to its sister concern be deleted."*

10. The CIT(A) held as under :

> *"I have considered the A.O.'s order as well as the appellant's A/R submission. Having considered both, I do not find any force in the appellant's submission. The perusal of A.O's order clearly suggest that the appellant did not even comply with the necessary requirements as suggested by the jurisdictional ITAT to substantiate its claim as it was raised through ground No. 6 in the order decided by the jurisdictional ITAT. Even during the appellate proceedings, the appellant AR has not furnished any details to substantiate its claim that such loan on which the AO has made disallowance was made out of appellant's own fund. Merely stating that the appellant has capital more than the loan advanced will not prove that the appellant company has made this advance out of capital amount. The appellant has to substantiate its claim with support of statements for said assertion. Even though after providing sufficient opportunity by the department in interest of natural justice, the appellant failed miserably in providing the details in support of its claim. Accordingly, I am of the considered view that the AO was completely justified in his action. Thus, the addition so made by the AO is confirmed."*

11. We find that details of amounts advanced to Bradma and interest received from IRFC Bonds, on the investment made therein, had been submitted with both the revenue authorities. The only grievance that emanates from the impugned order is that the assessee has not given the break down of accounts, this, according to us, seems to be extremely far-fetched and an impossible task for any concern, who has mixed bag of funds, both own and borrowed funds. We could have accepted the revenue authorities approach without any hitch, had there been an indication that the assessee's own fund position was less than the borrowings. But here in the instant case, we find that the AO has reproduced the fund position, giving out details that against the investment of Rs. 67 lacs to Bradma India Ltd. (subsidiary company) and investment of Rs. 161 lacs in IRFC Bonds there was a cash surplus of Rs. 673 lacs and incremental increase in reserves by Rs. 393 lacs. This patently shows that own funds far exceeded the outgoings. Thus,

we do not find, that could be any occasion for the assessee to have advanced loan to its subsidiary company and invested in Bonds from interest bearing funds. This factual position had been accepted by the coordinate Bench in the assessee's own case in assessment year 1989-90 in I.T.A. No. 7086/Mum/2006. Even the Hon'ble jurisdictional High Court in the case of CIT vs Reliance Utilities & Powers Ltd., reported in 313 ITR 340 (Bom), wherein the Hon'ble High Court held (head note), "*……that if there were funds available both interest free and overdraft and/or loan taken, then presumption would arise that investment would be out of interest free funds generated or available with the company if the interest free funds were sufficient to meet the investments"* .

12. From the details reproduced by the AO in the assessment order and respectfully relying upon the decision of the coordinate Bench in the assessee's own case in assessment year 1989-90 and the Hon'ble High Court's decision in Reliance Utilities case *(supra)*, we set aside the order of CIT(A) and direct the AO to delete the addition of Rs. 9,10,000/- made under section 36(1)(iii) and allow the of exemption of interest claimed u/s 10(15) at Rs. 9,10,000/- received from investment made in IRFC Bonds.

13. The CIT(A) has not adjudicated on the issue of interest charged u/s 201(1A) saying that it does not emanate from the order of the AO. We find that the AO has mentioned the same in the assessment order and it does arise from the assessment order. In such a situation, we

set aside the order of the CIT(A) on this issue and direct him to give an appropriate finding on the issue of interest chargeable under section 201(1A).

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

Order pronounced in the open Court on this day of 08/08/2012.

Sd/-	Sd/-
(B.RAMAKOTIAH)	**(VIVEK VARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai: 08/08/2012.
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