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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 459/2018 & CM APPL. 14552-14553/2018**

WITH

ITA 460/2018 & CM APPL. 14710-14711/2018

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL-3 ..... Appellant

Through: Mr. Ruchir Bhatia, Advocate.

versus

HFCL INFOTEL LTD. ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **16.04.2018**

A common question is urged in both these appeals with respect to the disallowance under the provisions of Section 36(1)(iii) of the Income Tax Act, 1961 (hereinafter 'the Act').

The Assessing Officer brought to tax certain amounts that according to him bore proportionately relation to the sums requiring to be capitalised since the deduction claimed by the assessee fell within the mischief of the proviso to Section 36(1)(iii) of the Act. According to the records the assessee had borrowed ₹604 crores and approximately had a larger sum of ₹694 crores of its own. Its interest payment was the subject matter of scrutiny; the AO attributed ₹23 crores towards the capital work in progress and disallowed 10% of that amount. The CIT(A) and the ITAT followed the ruling of the Bombay High Court in the case of *'CIT vs. Reliance Utilities & Power Ltd.'*, (2009) 313 ITR 340 in holding that the disallowance was unjustified.

Learned counsel for the Revenue relied upon a Full Bench ruling of the Punjab & Haryana High Court reported as *'Commissioner of Income Tax vs. Vardhman Polytex Ltd.,* 299 ITR 152 and submitted that the object of introducing the proviso to Section 36(1)(iii) of the Act was to exclude from deduction the component of interest paid on capital borrowed, till such time, the asset was not created or put into use.

This Court is of the opinion that in the circumstances of this case the lower Revenue Authorities cannot be faulted for applying the ratio of the decision in the case of *Reliance Utilities & Power Ltd.* (supra). After holding that the availability of share holders fund could not be readily ascertained, in the case of *Reliance Utilities & Power Ltd.* (supra), the Bombay High Court proceeded to hold that the disallowance was not justified, in the following terms:-

> *"13. 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."*

This Court sees that the fact situation in the circumstances of the present case is closely similar to that of in the case of *Reliance Utilities & Power Ltd.* (supra) in that the ability of the assessee to serve its interest obligation can be entirely discharged out of its own funds. In such facts and circumstances clearly that provision had no application.

For the above foregoing reasons, no substantial question of law arises. The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

APRIL 16, 2018
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