IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO.491 OF 2017

The Pr. Commissioner of Income Tax-9 … Appellant

Vs

M/s.E-City Investments & Holdings Company Private Limited … Respondent

Mr.Tejveer Singh for the Appellant

Mr.Ravi Sawana I/b PPS Legal for the Respondent

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATED: JULY 22, 2019

P.C.:

1. This Income Tax Appeal is filed by the Revenue challenging the order of the Income Tax Appellate Tribunal. The following question is presented for our consideration:

i) Whether on the facts and circumstances of the case and in law, the ITAT erred in not upholding the decision of the learned CIT (A) in allowing assessee's claim for deduction of interest on borrowed fund when the same is utilised to give interest free loan/share application money to subsidiary companies?

2. We notice that a similar issue had come up for our consideration before this Court in the case of the very same assessee in Income Tax Appeal No.213 of 2017 and the appeal was dismissed making following observations:

> “2. Respondent-assessee is a private limited company and is engaged in the business of financing. During the scrutiny assessment of the assessee’s return for the assessment year 2008-09. Assessing Officer noticed that the assessee had claimed expenditure of interest paid on borrowed funds. The assessee had also funded its sister concern without charging interest. The Assessing Officer therefore disallowed the interest expenditure. The issue eventually reached the Tribunal. The Tribunal by the impugned judgment held in favour of the assessee. The Tribunal referred to and relied upon the decision of the Supreme Court in case of **S.A. Builders Ltd. Vs.CIT**[1] and concluded as under: -
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>> “If the aforesaid ratio laid down by Hon’ble Apex Court is analyzed by keeping the same in juxtaposition with the facts of the present appeal, firstly, we find that there is no finding by the Assessing Officer that the funds were not utilized for business purposes and secondly, we note that advancing loan to the sister-concern was for the purposes of “Commercial Expediency”, thus, we find merit in the contention of the ld. Counsel for the assessee. So far as, the issue of commercial expediency is concerned, the decision has to be taken by the assessee and the Assessing Officer is not expected to sit in the chair of the assessee and to decide the business interest. The assessee is to watch its business interest well. Once it is established that there was nexus between the expenditure and purpose of the busienss (which need not necessarily be the business of the assess3ee itself) the Revenue cannot

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> justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize his profits."

> 3. We do not find any error in view of the Tribunal. The entire issue is quarely covered in favour of the assessee in case of **S.A. Builders Ltd. (supra).** The Tribunal correctly held that the assessee's decision to fund its subsidiaries driven by business exigency.

> 4. In the result, no question of law arises. Income Tax Appeal is dismissed."

3. In the result, this Appeal is also dismissed.

(S.J. KATHAWALLA, J.) **(AKIL KURESHI, J.)**