

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member
and Shri Sandeep Gosain, Judicial Member**

ITA Nos. 6975 & 6976/Mum/2013

(Assessment Years: 2009-10 & 2010-11)

DCIT, Circle - 9(3) Room No. 229, 2 nd Floor Aayakar Bhavan, M.K. Road Mumbai 400020	Vs.	M/s. Vicksos Steels P. Ltd. 2, Sabhapati Bhavan Gr. Floor, 19, Meerabagh Santacruz (W), Mumbai 400054 PAN - AAACV3517E
--	-----	--

Appellant

Respondent

ITA Nos. 6739 & 6740/Mum/2013

(Assessment Years: 2009-10 & 2010-11)

M/s. Vicksos Steels P. Ltd. 2, Sabhapati Bhavan Gr. Floor, 19, Meerabagh Santacruz (W), Mumbai 400054 PAN - AAACV3517E	Vs.	DCIT, Circle - 9(3) Room No. 229, 2 nd Floor Aayakar Bhavan, M.K. Road Mumbai 400020 PAN - AAACV3517E
--	-----	--

Appellant

Respondent

Revenue by:	Shri Mukundraj Chotse
Assessee by:	Shri Bharat Jeswani

Date of Hearing:	03.03.2016
Date of Pronouncement:	16.03.2016

ORDER

Per Jason P. Boaz, A.M.

The aforesaid are cross appeals filed by the Revenue and the assessee against the impugned orders dated 11.09.2013 and 12.09.2013, passed by the CIT(A)-20, Mumbai in respect of the orders of assessment passed under section 143(3) of the Act for A.Y. 2009-10 and 2010-11, respectively.

Revenue's appeals in ITA Nos. 6975 & 6976/Mum/2013 for assessment years 2009-10 & 2010-11

2. We will first proceed to dispose of Revenue's appeals in which the following grounds on similar issues are raised : -

2.1 For A.Y. 2009-10

- “1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in restricting the disallowance u/s. 14A to Rs.3,16,301/- without appreciating the fact that the disallowance was worked out as per provisions of section 14A of the I T Act read with Rule 8D of the I T Rules?
2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in concluding that interest expenditure is not attributable to exempt income without appreciating the fact that expenditure on account of interest was also considered by the assessee while working out the disallowance of Rs.3,16,301/- and the difference in disallowance is due to the non-inclusion of unquoted equity shares in the average value of investments and total assets.
3. The appellant prays that the order of the CIT(A) on the grounds be set aside and that of the Assessing Officer be restored.
4. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

2.2 For A.Y. 2010-11

- “1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in restricting the disallowance u/s. 14A to Rs. 1,76,788/- without appreciating the fact that the disallowance was worked out as per provisions of section 14A of the I T Act read with Rule SD of the I T Rules?
2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in concluding that interest expenditure is not attributable to exempt income without appreciating the fact that expenditure on account of interest was also considered by the assessee while working out the disallowance of Rs. 1,76,788/- and the difference in disallowance is due to the non-inclusion of unquoted equity shares in the average value of investments and total assets.
3. The appellant prays that the order of the CIT(A) on the grounds be set aside and that of the Assessing Officer be restored.
4. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

3. At the outset, it is noticed that the disputed amount is only ₹18,89,466/- for A.Y. 2009-10 and ₹18,71,527/- for A.Y. 2010-11 and the tax effect on these amounts is much below the specified monetary limit of ₹10 lakhs. As per the latest CBDT Circular No. 21 of 2015, dated 10th December, 2015, new guidelines of monetary limit for filing of appeals by the

Department has been issued, whereby the tax effect for filing of appeal before the ITAT has been prescribed at ₹10 lakhs. In the said Circular, it has been specifically clarified that the said instruction will apply retrospectively to all the pending appeals. Accordingly, these appeals filed by the Revenue for assessment years 2009-10 and 2010-11 are not maintainable and are dismissed in limine.

Assessee's appeals in ITA Nos. 6739 & 6740/Mum/2013 for assessment years 2009-10 & 2010-11

4. In the appeals for A.Y. 2009-10 & 2010-11 the assessee has raised the following similar grounds: -

4.1 For A.Y. 2009-10

- “1. The order dated 11-09-2013 passed u/s 250 of the Income Tax Act, 1961 by CIT(A) is bad in law and illegal. The CIT(A) has erred both the facts and in law. It is submitted that the additions be deleted now.
2. The CIT(A) has erred on both the facts and in law, the addition made by the Income Tax Officer of Rs.82,350/- u/s 40A(2)(b) of Interest paid to parties has not been deleted by the CIT(A). It is submitted that the additions be deleted now.
3. Further it is requested not to start penalty proceedings u/s. 271(1)(c) and to the IT Act, 1961 till the conclusion of this appeal proceedings.
4. Your appellant craves for leave to add, to alter and/or amend all or any grounds of appeal.”

4.2 For A.Y. 2010-11

- “1. The order dated 12-09-2013 passed u/s 250 of the Income Tax Act, 1961 by CIT(A) is bad in law and illegal. The CIT(A) has erred both the facts and in law. It is submitted that the additions be deleted now.
2. The CIT(A) has erred on both the facts and in law, the addition made by the Income Tax Officer of Rs.98497/- u/s 40A(2)(b) of Interest paid to parties has not been deleted by the CIT(A). It is submitted that the additions be deleted now.
3. Further it is requested not to start penalty proceedings u/s. 271(1)(c) and to the IT Act, 1961 till the conclusion of this appeal proceedings.
4. Your appellant craves for leave to add, to alter and/or amend all or any grounds of appeal.”

5. Since common issues are raised, the assessee's appeals for both assessment years 2009-10 & 2010-11 are being disposed off together.

6. **The grounds raised at S.Nos. 1 & 4** in both the appeals for assessment years involved being general in nature, no adjudication is called for thereon.

7. **In ground No. 3** for both assessment years, the assessee has requested that the penalty proceedings initiated under section 271(1)(c) of the Act be stayed till the conclusion of appellate proceedings. This ground, in our view, is not maintainable as there is no cause of grievance to assessee as neither such penalty has been levied in the case on hand nor does this issue emanate from the impugned orders of the learned CIT(A). This ground being not maintainable, it is accordingly dismissed for both assessment years 2009-10 & 2010-11.

8. **Ground No. 2 - Disallowance under section 40A(2)(b)**

8.1 In this ground, the assessee assails the impugned orders of the learned CIT(A) for upholding the disallowance made by the Assessing Officer (AO) under section 40A(2)(b) of the Act to the extent of ₹82,350/- for assessment years 2009-10 & ₹98,497/- for A.Y. 2010-11 on account of interest paid to parties. The learned A.R. for the assessee was heard in this matter and reiterated the averments in the written submissions put forth before the learned CIT(A).

8.2 Per contra, the learned D.R. for Revenue placed strong reliance on the findings on this issue in the impugned orders of the learned CIT(A) and prayed for dismissal of the assessee's appeals on this issue.

8.3.1 We have heard the rival contentions and perused and carefully considered the material on record. On an appreciation of the facts on record, it is seen that in the course of assessment proceedings, the AO noticed that the assessee had claimed expense of ₹67,75,339/- and ₹55,54,346/- respectively on account of interest paid on loans taken from various persons in assessment years 2009-10 & 2010-11. On examination thereof, it was found that on loans taken from related parties, as specified under section 40A(2)(b) of the Act, interest was paid @18% per annum whereas interest

was paid to other unrelated parties @16% per annum. Before the AO, vide AR's letter dated 12/.10.2012, it was admitted that the payment of interest to other parties @16% was as per the prevailing market rate in respect of unsecured loans. The AO was of the view that in these factual circumstances, the assessee was unable to justify the payment of interest to related parties @18% as against the payment of interests to unrelated parties @ 16%. In that view of the matter, the AO proceeded to come to the finding that the assessee had paid 2% excessive interest to related parties which he proceeded to disallow under section 40A(2)(b) of the Act; ₹82,350/- for A.Y. 2009-10 and ₹98,490/- for A.Y. 2010-11.

8.3.2 On appeal, the learned CIT(A), after considering the submissions of the assessee and the views of the AO in the matter, concurred with the view of the AO and dismissed the assessee's appeal on this issue. The findings of the learned CIT(A) in both the assessment years concerned being the same, we extract hereunder the relevant portion of para 5.3 in A.Y. 2009-10: -

“5.3 I have considered the finding of the Assessing Officer and rival submission of the appellant, carefully. I find that Ld. Assessing Officer has rightly disallowed excessive interest expenditure of ₹82,350/- because of the reason that normal rate of interest at that time was nearer to 12% and bank have charged not more than that. The contention of the A.R. that interest has also been paid @21% to other persons, hence 18% interest is not excessive one, is not tenable argument because 21% interest has been given to only four persons who are not related one whereas interest @16% has been given to near about 30 persons and furthermore interest @16% has been given to the Director's relatives namely Amit Jam, Beena Paliwal, S. K. Narayanan and Krishna Paliwal, hence it cannot be argued that interest shown in the name of other related persons @18% is not excessive one. Contrary to the argument of the Ld. AR., facts as refer to the hereinabove reveal that in normal case rate of interest was not more than 16% and moreover these 11 persons are specified one u/s. 40A(2)(b), hence Assessing Officer is well within his jurisdiction to see whether comparatively, excessive expenditure has been claimed, if so, he is entitled to disallow such expenditure. I find that Ed. Assessing Officer has very rightly disallowed excessive claim of interest, hence the disallowance of expenditure of ₹82,350/- is well within provision of law u/s. 40A(2)(b), thus, disallowance of excessive interest is sustained.”

8.3.3 Taking into account the facts and circumstances of the case from a careful perusal of the orders of the authorities below and the submissions of the learned A.R. for the assessee before us, we are of the considered view

that the assessee has failed to controvert the adverse factual findings of the authorities below. We, therefore, finding no reason to interfere with or deviate from the factual findings of the AO/CIT(A), uphold the order of the learned CIT(A) in respect of disallowance of excess interest expenditure to related parties as specified under section 40A(20(b) of the Act. Consequently ground No 2 for both assessment years 2009-10 and 2010-11 stand dismissed.

9. In the result, the assessee's appeals for assessment years 2009-10 & 2011 are dismissed.

10. To sum up, both Revenue's and the assessee's appeals for assessment years 2009-10 & 2010-11 are dismissed.

Order pronounced in the open court on 16th March, 2016.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Jason P. Boaz)
Accountant Member

Mumbai, Dated: 16th March, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) – 26, Mumbai*
4. *The CIT – 15 Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.