

INCOME TAX APPELLATE TRIBUNAL, MUMBAI-“H” BENCH

Before S/Shri. D.T. Garasia, Judicial Member & Ashwani Taneja, Accountant Member
ITA No.4175/Mum/2014
Assessment Year-2010-11

Surindra Engg Co. Ltd., Surindra House Safaid Pool, M.V. Road Andheri (East) Mumbai 400 072 PAN No.AAACM 4004 F	v.	ITO 8(3) – 2 Aaykar Bhavan M.K.Road Mumbai – 400 020
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(Appellant)

(Respondent)

Appellant by	Shri Sunil A. Desai
Respondent by	Shri M.C.Omi Ningshen

Date of hearing	: 24.01.2017
Date of pronouncement	: 03.02.2017

ORDER

PER D.T. GARASIA, JUDICIAL MEMBER

1. This appeal is filed by the filed against the order of CIT(A) dated 16.04.2014 for the assessment year 2010-11.

2. Following grounds are raised in the appeals read as under:-

1. “Disallowance of Rs.14,78,690/-

On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming action of the Assessing Officer to invoke provisions of Rule 8D read with Section 14A of Income Tax Act, 1961.

2. Disallowance of Rs.82,53,393/-

On the facts and circumstances of the case and in law, the Learned CIT (A) erred in confirming addition u/s 37 in respect of sundry balances written off.

3. The short facts of the case are as under. The assessee company has filed the return income on 28.09.2010 declaring total income of Rs.Nil/-. Assessee received exempt income being dividend income/share of profit of exempt u/s 10 (2A) of the I.T. Act. Assessee has

made investments in shares / mutual funds. Assessee was asked to explain as to why disallowance should not be made u/s. 14A of the I.T. Act read with rule 8D of the Act. The assessee has contended that the assessee's investment are very old and no dividend has been received. The assessee has also stated that assessee has not carried out any commercial investment activity and therefore there is no question of any incurring of expenditures of this account.

4. The Assessing Officer has verified the claim and found that assessee has made investments, opening value and closing value are shown at Rs. 11,29,49,590/- and the average value of the investments comes to Rs. 11,29,49,590/-. The assessee has claimed the expenses against the exempt income irrespective of the fact whether the investment is made out of borrowed funds or own sources. The majority part of the expenses is claimed under the head of administrative expenses and other expenses. The Assessing Officer was of the view part of the Administrative expenses also relate to earning of exempt income and cannot be distinguished and appropriate to the exempt income and taxable income. The assessee has not maintained segregation of expenses claim related to exempt income and taxable income to justify the claim that no expenses were incurred in respect of exempt income. Therefore Assessing Officer has calculated the disallowances u/s.14A of the Act.

i)	<i>The amount of expenditure directly relating to income which does not form part of total income</i>	<i>N.A</i>	<i>NIL</i>
ii)	<i>Proportionate of interest expenditure computed in accordance with the formula given in Rule 8D (ii)</i>	<i>10718839*</i> <i>112949590</i> <i>-----</i> <i>1324686943</i>	<i>Rs.9,13,943/-</i>
iii)	<i>Amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income as appearing in the Balance Sheet of the assessee on the first day and last of the previous year</i>	<i>11,29,49,590*0.5%</i>	<i>Rs.564,747/-</i>
		<i>Total</i>	<i>Rs. 14,78,690/-</i>

5. Matter carried out to CIT(A) and CIT(A) has dismissed the appeal of the assessee.

6. During the course of the hearing the Ld.A.R. Submitted that the issue in controversy is covered by the decision of the assessee's own case in A.Y. 2009-10 wherein the similar issue had come up before the tribunal and tribunal in assessee's own case in A.Y.2009-10 has allowed the claim of the assessee and deleted the addition. The Ld.A.R has drawn own attention to the 39th annual report on page 25 of the report and drawn our attention that assessee has made the investment of 820,000 shares in Mukat Pipes Ltd., 570,00 shares in Mukat Tanks & Vessels Pvt. Ltd., 1,461,500 shares in Muktanandan Pipes Ltd., and 100,000 share in Mukat Finance Ltd., they are all sister concern of the assessee and these are assessee's old investments and that investments is carried out from earlier years and this is a strategically investment. Therefore there is no question of making any expenses on the shares. Ld.A.R submitted that the share capital of the assessee in A.Y. 2009-10 and 2008-09 remains the same which is shown in the balance sheet of the assessee. Therefore when the tribunal has allowed the claim in earlier years this may be allowed.

7. The Ld.D.R. submitted that assessee has not maintained segregating of expenses claim related to exempted income. The assessee had shown considerable amount of administrative expenses and other expenses in profit and loss account. Therefore assessee's claim cannot be allowed.

8. We have heard the rival contentions of both the parties looking to the facts and circumstances of the case we find that the assessee had made investments of shares from earlier years and assessee had shares of his sister concern and that is statistical investment. Therefore no expenditure was incurred. Moreover assessee had not exempted income during the year under consideration. Therefore when assessee has not earned any dividend from exempted income and when the tribunal has allowed the claim of the assessee in earlier orders in ITA No.7433/Mum/2012 wherein the tribunal has following the decision of Delhi High Court has allowed as under:-

"We have carefully perused the orders of the authorities below. It is an admitted fact that during the year under consideration, the assessee has not earned any income which is exempt from tax. In a recent decision Hon'ble Delhi High Court in the case of Cheminvest Ltd. (IT Appeal No.749/2014 dated 02.09.2015 arising out of the order of the Delhi Benches of the Tribunal in ITA No. 87/Del/2008), it has held that no disallowance u/s. 14A can be made in a year in which no exempt income has been earned or received by the assessee. Respectfully

following the decision of the Hon'ble High Court of Delhi, we direct the Assessing Officer to delete the addition of Rs.11,73,666/-. Ground No.1 is accordingly allowed."

We respectfully following the decision of assessee's own case for A.Y. 2009-10. We allow the claim of the assessee.

9. During the course of hearing Id.A.R was asked to justify the agricultural income which was claimed to be exempted but no evidence was submitted. Moreover assessee do have exempted income. Therefore we disallow Rs.50,000/- which is an exempted income.

10. In the result assessee's appeal is partly allowed.

SECOND GROUND:

11. Second ground relates to making addition of Rs.82,53,393/- towards debit balance written off. The Assessing Officer has perused the details of sundry balance written off. It was observed that assessee has claimed sundry balance of written off amount to Rs.82,53,393/- in respect of several parties. The show cause notice was issued to the assessee to explain the reason of write-off along with the evidences.

12. The assessee has explained that all these related to the business of the assessee and where advances given to the contractors. Assessee has claimed as business loss. However assessee did not submit any evidence or any reason why the advances were write-off. The Assessing Officer observed that write-off amounts were deposited again to security deposit of Rs.22,99,089/-; Civil deposit of Rs.19,67,348/- and no names were given. Therefore AO has added the income of the assessee and CIT(A) has confirmed the same.

13. During the course of the hearing Ld.A.R submitted that the similar addition was made in A.Y.2009-10 and tribunal has restored this issue to the file of A.O. Therefore the Ld.A.R fairly considered that this issue may be restored to the file of A.O to verify that whether the said party is debtor or creditor. Therefore they have to be verified and if the amount has been write-off in the subsequent year same cannot be added in this year. Therefore this issue may be restored to the file of A.O. Ld.D.R fairly submitted that this issue may be restored to the file of A.O as per the decision of the tribunal.

14. We have heard the rival contentions of both the parties looking to the facts and circumstances of the case we found that the assessee has claimed the sundry balance write-off amounting to Rs.82,53,393/- in respect of the several parties. The assessee submitted that the write-off amount is business loss carried in course of business. Therefore we are of the view that when the tribunal has restored this file to A.O, we respectfully following the same we restore this file as per the decision of in the assessee own case in A.Y.2009-10 wherein the tribunal has held as under:-

“We have carefully perused the orders of the authorities below and have also gone through Annexure XIII of the statement of account, which is details of Sundry creditors – Unmoved. We find force in the contention of the learned counsel. The balance outstanding in the name of Accquatech Proflow Pipe Lining Pvt. Ltd, is not Rs. 19,84,908/- but Rs.9,67,180/- and as per the list of Sundry debtors, Tolani Fabricators is debtor and not creditor. Therefore, at least to this extent i.e. balance of Tolani Fabricators cannot be added U/s. 41(1) of the Act. We accordingly, direct the Assessing Officer to delete the addition of Rs.10,08,641/-. In so far as the balances of other creditors are concerned, in our considered opinion, the claim of the assessee needs to be verified at the assessment stage. We, therefore, restore the issue to the file of the Assessing Officer. The assessee is directed to demonstrate that the impugned creditors have been written back in the subsequent years to the satisfaction of the Assessing Officer and the Assessing Officer is directed to verify the same and if the claim of the assessee is found correct the additions should not be made. If the assessee fails to demonstrate then the Assessing Officer is free to decide the issue afresh as per the provisions of law. Ground NO.2 is treated as allowed for statistical purposes.”

We respectfully following the same we restore this issue to the file of A.O to decide as per law.

15. In the result the appeal is partly allowed.

Order pronounced in the open court on 03rd February, 2017.

Sd/-
(ASHWANI TANEJA)
ACCOUNTANT MEMBER

Sd/-
(D.T. GARASIA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Sd/-
(Dy./Asstt. Registrar)
ITAT, Mumbai