

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : B : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.939/Del/2015
Assessment Year : 2009-10

ITO,
Ward-5(3),
New Delhi.

Vs. Caraf Builders & Constructions
Pvt. Ltd.,
I-E, Naaz Cinema Complex,
Jhandewalan Extension,
New Delhi.

PAN; AACCC8696F

(Appellant)

(Respondent)

Assessee By : Shri R.S. Singhvi, CA
Department By : Ms Rachna Singh, CIT, DR

Date of Hearing : 26.02.2018
Date of Pronouncement : 27.02.2018

ORDER

PER R.S. SYAL, VP:

This appeal filed by the Revenue is directed against the order passed
by the CIT(A) on 14.12.2012 in relation to the assessment year 2009-10.

2. This appeal is time barred by 38 days. The ld. AR did not raise any objection to the late filing of the appeal. As such, the delay is condoned and the appeal is admitted for hearing.

3. Two issues have been raised in this appeal viz., one, towards confirmation of disallowance u/s 14A to the tune of Rs.75,89,66,443/- instead of Rs.145.22 crore and the second, against the allowing of set off of interest expenditure against interest income u/s 57(iii) of the Act.

4. Briefly stated, the facts of the case are that the assessee earned dividend income of Rs.19,25,655/- which was claimed as exempt u/s 10(34) of the Act. The assessee also voluntarily made disallowance u/s 14A to the tune of Rs.70,20,602/-. The Assessing Officer applied the provisions of Rule 8D and worked out disallowance u/s 14A at Rs.144.52 crore. Thereafter, it was observed that the assessee earned interest income of Rs.41.81 crore and had paid interest of Rs.153.08 crore. After setting off interest expenditure against the interest income, no interest income was offered under the head 'Income from other sources.' The Assessing Officer, on perusal of the assessee's balance sheet, observed that it had raised a term

loan of Rs.1000/- crore from HDFC Bank in the year relevant to assessment year 2008-09 which was repaid during the year under consideration. It was noticed that interest income was earned from loans and advances given by the assessee to its sister concern, namely, DLF Info City Developers (Kolkata) Ltd. and M/s DLF Info City (Chandigarh) Ltd. Interest of Rs.138.51 crore was found to have been paid in relation to the term loan of Rs.1000/- crore taken from HDFC Bank. The AO allowed interest of Rs.8.55 crore as expenditure against the interest income of Rs.41.81 crore and computed 'Income from other sources' at Rs.33.25 crore (Rs.41.81 crore minus Rs.8.55 crore). The Id. CIT(A) set off interest expenditure of Rs.44.81 crore against the interest income and hence deleted the addition made by the Assessing Officer under the head 'Income from other sources.' As regards the computation of disallowance u/s 14A, the Id. CIT(A) reduced such disallowance to Rs.75,89,66,443/- by considering interest expenditure of Rs.75.84 crore and other expenses at Rs.5.15 lac. That is how, the Revenue is aggrieved against the impugned order.

5. We have heard both the sides and perused the relevant material on record. It is noticed from the assessee's balance sheet, a copy of which has been placed on record, that apart from share capital of Rs.1.02 lac, the only other loan liability is that of Rs.10,46,08,34,442/-, being the amount of unsecured loans. Thus, it is seen that apart from certain current liabilities, the assessee had unsecured loans available with it to the tune of Rs.1,046.08 crore. It is only such amount of unsecured loans which was at its disposal, out of which advances were made to sister concerns on which the assessee earned interest income. As such, it is clear that there is a close nexus between the interest expenditure and interest income and, hence, the Id. CIT(A) was right in making appropriate set off.

6. As regards the confirmation of disallowance u/s 14A, in our considered opinion, the Id. CIT(A) has rightly treated the interest of Rs.75.89 crore, as relating to the exempt income and accordingly made such disallowance u/s 14A. The Id. AR also candidly accepted that such disallowance sustained in the first appeal at Rs.75.89 crore, despite there being exempt income only of Rs.19.25 lac and the *suo motu* disallowance at Rs.70.20 lac, is in order. We, therefore, uphold the impugned order.

7. In the result, the appeal of the Revenue is dismissed.

The order pronounced in the open court on 27.02.2018.

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
VICE PRESIDENT

Dated, 27th February, 2018.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.