

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "बी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

श्री डी. करुणाकरा राव , लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI D.KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM**

आयकर अपील सं. / ITA Nos.459 & 460/PUN/2015
निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

DCIT, Circle-2(1),
Pune

.... अपीलार्थी/Appellant

Vs.

Shraddha Constructions & Power
Generation Pvt. Ltd.,
A-1, Plot No.887 A,
Shirole Road,
Pune – 411 004
PAN : AAICS6691L

.... प्रत्यर्थी / Respondent

Assessee by : Shri Kishor Phadke
Revenue by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 28.03.2018	घोषणा की तारीख / Date of Pronouncement: 11.04.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are 2 appeals filed by the Revenue under consideration against the combined order of CIT(A)-12, Pune, dated 30-01-2015, for the Assessment Years 2009-10 & 2010-11.

ITA No.459/PUN/2015
A.Y. 2009-10

2. Revenue raised common issues in both the appeals Therefore, grounds raised by the Revenue for A.Y. 2009-10 are extracted here as under :

"1. On the facts and circumstances of case and in law, the Ld.CIT(A) was not justified in allowing rent paid to Raj Infrastructure on account of machinery hired as it is clearly noticeable that excessive payment was made by the assessee company.

2. *On the facts and circumstances of case and in law, the Ld.CIT(A) erred in allowing interest on borrowed funds which were utilised by the assessee for non-business purpose, i.e. investment in agricultural land. The Ld.CIT(A) also failed to appreciate that the assessee is in the business of contracting on hire and corresponding borrowed funds needs to be disallowed.*

3. *On the facts and circumstances of case and in law, the Ld.CIT(A) erred in allowing interest on borrowed funds which were utilised by the assessee for non-business purpose, i.e. giving loans to some business concerns having no business nexus with the assessee company. The Ld.CIT(A) also failed to appreciate that the assessee is in the business of contracting and hence corresponding interest on borrowed funds which were utilised for non-business purpose was rightly disallowed by the AO.*

4. *The order of Ld.CIT(A) may be vacated and that of the Assessing Officer be restored.*

5. *The appellant craves leave to add, alter, amend and modify any of the above grounds of appeal.”*

3. Briefly stated relevant facts are that assessee is a company engaged in the business of execution of Civil contracts of Irrigation Department and Generation of energy from windmills. There was search and seizure action on the assessee on 08-09-2010. Assessee disclosed an amount of Rs.10,39,375/- for the A.Y. 2009-10 and Rs.31,45,000/- for the A.Y. 2010-11. The disclosure was given in the context of cash payments made to the farmers and the brokers in connection with the transaction of transfer of 432 acres 26 guntas of land at Ambi Kadave Village, Taluka Haveli, Dist. Pune.

In response to the notice u/s.153A of the Act, assessee filed the revised returns of income declaring the loss of Rs.33.14 crores (rounded off) against the claim of loss of Rs.33.04 crores as disclosed in the original return of income for the A.Y. 2009-10. However, in the return for A.Y. 2010-11, assessee disclosed the total income of Rs.34.27 crores. At the end of the assessment proceedings u/s.153A r.w.s. 143(3) of the Act, AO made the following additions in the assessment for the A.Yrs. 2009-10 and 2010-11. Details of the additions are given below :

<i>Sl.No.</i>	<i>Particulars</i>	<i>A.Y. 2009-10</i>	<i>A.Y. 2010-11</i>
1	<i>Transaction with Raj Infrastructure Developers</i>	29,60,610	29,40,000
2	<i>Interest on Loans & Advances</i>	77,778	17,99,119
3	<i>Interest on Investment in Agricultural Land</i>	9,99,182	10,19,087
	Total	40,37,570	57,28,206

Aggrieved with the order of AO, assessee filed an appeal before the CIT(A).

4. In the First Appellate proceedings, CIT(A) partly allowed the appeals of the assessee. Assessee is not in appeal for these assessment years. However, against the relief granted by the CIT(A) Revenue filed the present appeals under consideration. The issue-wise adjudication is given in the following paragraphs.

5. The first issue raised by the Revenue in the appeal for A.Y. 2009-10 is on the allowability of rent paid to M/s. Raj Infrastructure Developers on account of machinery hired. The facts include that the assessee hired two Tata Hitachi Ex-300 machines from M/s. Raj Infrastructure Developers on a monthly rent of Rs.2,50,000/- per machine. Agreement dated 17-04-2008 was entered into w.e.f. 01-05-2006. The cost of the machine in the hands of M/s. Raj Infrastructure Developers is Rs.13.26 lakhs each. The cost of new machine is around Rs.1.40 crore. However, the annual rent earned by the said concern for the A.Y. 2009-10 and for the A.Y. 2010-11 are Rs. 59,21,220/- and Rs.58,80,000/- respectively. Considering the disproportionality of the cost of acquisition of the machines of income earned by the concerns from the assessee over the period of time, AO scrutinised these transactions and held that the payments made by the assessee in the form of rent is excessive and unreasonable except the fact that parties are not covered by the provisions of section 40A(2)(b) of the Act. AO

invoked the provisions of section 37 of the Act and made disallowance. The disallowance for the year A.Y. 2009-10 works out to Rs.29,60,610/- and Rs.29,40,000/- for the A.Y. 2010-11. CIT(A) deleted the said additions and therefore, the Revenue is in appeal before us.

6. Before us, Ld. Departmental Representative for the Revenue filed written note dated 22-11-2017 stating that the AO was justified in invoking the provisions of section 37(1) of the Act for making disallowance on the ground of unreasonableness or excessiveness. For this proposition, he relied on various decisions justifying the disallowance is proper when the same are made for extra commercial considerations. He also relied on certain decisions mentioned in the judgment of Gujarat High Court in the case of CIT Vs. Navsari Cotton and Silk Mills 135 ITR 546 (Guj.)

7. On the other hand, Ld. Counsel for the assessee also relied on various decisions. He also filed a written note and submitted that the judgments so relied on by the Ld. DR for the Revenue are distinguishable on facts and prayed for confirming the order of the CIT(A). Further, he brought our attention to the order of Pune Bench of the Tribunal in assessee's own case for the A.Yrs. 2006-07 and 2008-09 – ITA Nos. 457 & 458/PUN/2015 dated 28-11-2017 and submitted that the claim of the assessee stands allowed for those years although the Tribunal dismissed the appeals of the Revenue on technical/legal grounds. For the proposition, he brought our attention to the contents of Para No.4 and 5 of the order of the Tribunal. Further, he brought our attention to the contents of Para No.21.1 to 21.7 of the order of CIT(A) and submitted that the order of CIT(A) is fair and reasonable. Further, he filed the copy of judgment of Hon'ble jurisdictional High Court in the case of CIT Vs. Salitho Ores 344 ITR 0161 (Bom.) and submitted that

the onus is on the AO to demonstrate that the excess payment made if any towards the rent for hiring of 4 dozers constitutes a way of diversion of funds. When the same is not discharged, the deduction should be allowable. The entire lease rent paid by the assessee should be allowable as deduction as business expenditure.

8. On hearing both the sides on this issue, we find the undisputed facts include that the assessee hired 2 excavators for the business purpose of the assessee, the payment made by the assessee by way of banking channels to M/s. Raj Infrastructure Developers, taxability of the same in both the hands etc. It is the suspicion of the AO that the rental payments qua the cost of acquisition of the assets by the owner of the assets are on higher side. However, no information is brought on to the record that the payment of rent of Rs.2,50,000/- per vehicle is excessive or unreasonable. Infact, there is an evidence from the assessee's side to demonstrate that there are cases of obtaining a quotation of A.K. Constructions and Manisha Infrastructure Pvt. Ltd. to the tune of Rs.3,25,000/- and 3,40,000/- respectively per Ex-300 excavator per month (pages 64A, 64B and 64C of the paper book are relevant). Letter dt. 26-03-2013 addressed by the Ld. AR to the DCIT, Circle-2(1) constitutes forwarding of the quotations received from A.K. Constructions and Manisha Infrastructure Pvt. Ltd. for comparison of reasonableness of rent paid by assessee to M/s. Raj Infrastructure Developers. Therefore, in our view, no case is made out by the AO to demonstrate that the payments made by the assessee constitutes excessive and unreasonable. Further, we examined the applicability of the decision of jurisdictional High Court in the case of CIT Vs. Salitho Ores (supra) and find the same is relevant for the following proposition :

“As long as expenditure is incurred bona fide in pursuit of a business and not by way of diversion of funds, it has to be allowed as a deduction”

entire lease rent paid by the assessee for hiring the dozers for using them in its business was allowable as a business expenditure even though assessee did not actually use 3 out of the 4 hired dozers.”

9. From the above, the spirit of the legal proposition is amply clear that the onus is on the AO to demonstrate that that the payments made by the assessee are excessive which constitute a case of diversion of funds. In the present case, AO merely opined the excessiveness of the payments against the assessee without having strength of any incriminating material, leave-alone third party information. As such, no case is made out about the in-genuineness of the transaction, i.e. payment of rent to M/s. Raj Infrastructure Developers of hiring of 2 Ex-300 Excavators. Considering the same, we are of the opinion that the order of CIT(A) on this issue is fair and reasonable and does not call for any interference. Accordingly, Ground No.1 raised by the Revenue is dismissed.

10. Ground Nos.2 and 3 by the Revenue relate to allowing of interest on borrowed funds which were utilized by the assessee for non-business purposes (i.e. investment in agricultural lands and giving loans to some business concerns having no business nexus with the assessee company.

11. After hearing both the sides on these issues, we find the Revenue in assessee's own case filed appeals for the A.Yrs. 2006-07 and 2008-09 on similar grounds and the Tribunal vide ITA Nos. 457 & 258/PUN/2015, dated 28-11-2007 dismissed the said grounds and in favour of the assessee. We find it relevant to extract the said findings of the Tribunal given at Para Nos. 10 to 14 of the same. The said paras are reproduced here as under :

“10. Referring to Ground Nos. 2 and 3 raised by the Revenue, Ld. Counsel for the assessee submitted that there is no dispute about the

absence of any incriminating material on these two items of disallowance. Therefore, the CIT(A) is justified in deleting the additions for this legal reason also.

11. Ld. Counsel for the assessee, deviating from the above line of arguments, submitted that similar disallowances were made by the AO in the regular assessment u/s.143(3) of the Act and the adjudication is now pending before the CIT(A). For bringing finality early on these issues, Ld. Counsel for the assessee submitted that he shall have no objection if the findings of CIT(A) are reversed and the Ground Nos. 2 & 3 of the Revenue are allowed notwithstanding the strong case the assessee has on all these issues. Ld. Counsel for the assessee gives concession in this regard only in view of early finality on the issues. He conceded the same in these appeals and opined to a request to the Ld.CIT(A) with appropriate request for granting relief in the appeals pending with him on the similar additions. In this regard, Ld. Counsel filed written submissions and relied on the contents of Para Nos. 4 and 5 of his synopsis. For the sake of completeness, the same are extracted as under :

“As such, the regular assessment order dated 26-11-2008 (and the appeal filed against the same filed in year 2008) does not abate. In other words, the said appeal ought to continue as such, and the relief (if any) against the said appeal ought to be reaped in the said appeal only. It is submitted, an assessee ought not to get relief against the regular assessment in the search based appeal for such year, since such a year is not pending before the assessing authority.

5. Conclusion – As such, the assessee feels, the grounds of appeal No.3 of the revenue for A.Y. 2006-07, challenging relief of Rs.4,09,201/- ought to be allowed and be decided as such.”

12. On hearing both the parties on the issues discussed above, we find that the Revenue is aggrieved with the relief granted by the CIT(A) with regard to (1) the disallowance of rent paid by the assessee to M/s. Raj Infrastructure Developers vide Ground No.1 as well as (2) the disallowance of interest received by the assessee on borrowed funds when utilized for non-business purposes vide Ground Nos. 2 & 3 of appeal of Revenue. During the proceedings before us, assessee raised an oral ground supported by the written synopsis relating to the disallowability of additions on legal reasoning relating to absence of any incriminating material and unsustainability of such additions not supported by any incriminating material. As such, it is an admitted fact that the blank letter heads are the only seized material pertaining to this issue. We have already held that such blank letter heads do not amount to the incriminating material. Therefore, we are of the opinion that Ground No.1 of Revenue needs to be dismissed on this legal reasoning.

13. Regarding the Ground Nos. 2 & 3 of the Revenue, we find the CIT(A) granted relief on finding the existence of excess own funds of the assessee. Notwithstanding the above, Ld. Counsel for the assessee submitted that assessee has conceded and requested for reversal of the finding of the CIT(A) on this issue and decide the issue against the assessee. We find the said concession is not in tune with the settled legal position on the issue. Therefore, we dismiss the same.

14. On perusal of the above written submissions filed by the assessee on these issues qua the disallowance of interest on part borrowed capital, we are of the view that the finding of the CIT(A) is fair and reasonable as the said decision has the backing of the jurisdictional High Court judgment in the case of CIT Vs. Reliance Utilities and Power Ltd. reported in 313 ITR 340 and CIT Vs. HDFC Ltd. reported in 366 ITR 505. Thus,

the decision given by the CIT(A) stands confirmed. Thus, Ground Nos. 2 & 3 raised by the Revenue are dismissed.”

12. Considering the above settled nature of the issues in the assessee’s own case, we dismiss the ground Nos. 2 and 3 raised by the Revenue.

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

ITA No.460/PUN/2015
A.Y. 2010-11

14. Both the Counsels mentioned that the grounds, facts, findings of the CIT(A), submissions, counter submissions are same as that of ITA No.459/PUN/2015 for A.Y. 2009-10. Therefore, the findings of the Tribunal on the said issues shall apply to this A.Y. 2010-11 too.

15. After hearing both the sides, we find the grounds raised by the Revenue are similar in verbatim to the appeal for A.Y. 2009-10. We have already dismissed all the three issues raised by the Revenue and dismissed the said grounds. Therefore, on the basis of our findings given in A.Y. 2009-10, we dismiss the grounds raised by the Revenue for this assessment year too.

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

17. To sum up, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on this 11th day of April, 2018.

Sd/-

Sd/-

(VIKAS AWASTHY)
न्यायिक सदस्य / JUDICIAL MEMBER

(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 11th April, 2018
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-12, Pune
4. CIT-12, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B Bench" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune