

IN THE INCOME TAX APPELLATE TRIBUNAL
"K" Bench, Mumbai
Before S/Shri B.R. Baskaran (AM) & Sandeep Gosain (JM)

I.T.A. No. 685/Mum/2014 (Assessment Year 2008-09)

M/s. Virgo Engineering Ltd. (Now merged with Virgo Valves & Controls Pvt. Ltd.) 7B, 3 rd Floor, Sambhava Chambers, Sir P.M. Road Fort, Mumbai-400 001. PAN:AAACV1586H	Vs.	Addl. CIT 10(3) Aayakar Bhavan M.K. Road Mumbai-400020.
(Appellant)		(Respondent)

Assessee by	Shri Hiro Rai
Department by	Shri Saurabh Deshpande
Date of Hearing	14.3.2018
Date of Pronouncement	20.4.2018

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 6.11.2013 passed by the learned CIT(A)-15, Mumbai and it relates to A.Y. 2008-09. Grounds urged by the assessee give rise to following issues :-

- (a) Disallowance made u/s.14A of the Act.
 - (b) Addition of ₹ 1,74,090/- on account of unreconciled income from ITS record.
 - (c) Addition of income based on TDS certificate.
 - (d) Transfer pricing adjustment
 - (e) Disallowance of mark to market loss of forward derivate contracts.
2. The assessee-company is engaged in the business of manufacturing of industrial valves and accessories. Assessment for the year under consideration was completed by the Assessing Officer u/s. 143(3) read with section 144C(3) of the Act by making various additions. In the appellate proceedings before

learned CIT(A), the appeal of the assessee was partly allowed. Still aggrieved, the assessee has filed this appeal before the Tribunal.

3. First issue relates to disallowance made u/s. 14A of the Act. The Assessing Officer noticed that the assessee has earned dividend income of ₹ 550 lakhs and the assessee has disallowed a sum of ₹ 50,000/- only u/s. 14A of the Act. When questioned, the assessee submitted that it has invested a sum of ₹ 1 crore in his subsidiary company named M/s. Virgo Valves & Controls Ltd. in the earlier years out of its own funds and the dividend was received from the above said company. Accordingly, it was submitted that there was no much investment activity and hence disallowance made at ₹ 50,000/- would meet the requirements of sec.14A of the Act. The Assessing Officer took the view that the disallowance has to be computed in accordance with rule 8D of the I.T. Rules. Accordingly, the Assessing Officer worked out disallowance at ₹ 4,55,191/-, which included the disallowance out of interest expenditure as per Rule 8D(2)(ii). The AO, however, did not give set off of disallowance of Rs.50,000/- made by the assessee.

4. The learned CIT(A) agreed with the view taken by the Assessing Officer and accordingly confirmed the working of the Assessing Officer. It was submitted before the learned CIT(A) that the Assessing Officer has not given set off of the amount of ₹ 50,000/- voluntarily disallowed by the assessee, the learned CIT(A) directed the Assessing Officer to examine the claim of the assessee and allow set off as prayed by the assessee.

5. We have heard the parties on this issue and perused the record. From the financial statement furnished by the assessee, we noticed that the assessee is having own funds of ₹ 5461.25 lakhs and ₹ 6396.66 lakhs as at the beginning and as at the end of the year respectively. The value of investments stands at ₹ 1101.21 lakhs as at the beginning and also as at the end of the year. The above fact shows that the own funds available with the assessee is in far excess of the value of investments and hence as per the decision rendered

by Hon'ble Jurisdictional Bombay High Court in the case of HDFC Bank Ltd. (366 ITR 505), no disallowance out of interest expenditure is called for. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to delete the disallowance under rule 8D(2)(iii) out of interest expenditure. We have already noticed that the assessee itself has disallowed a sum of ₹ 50,000/- under rule 8D(2)(iii). Accordingly, we direct the Assessing Officer to sustain disallowance u/s. 14A of the Act to the extent disallowed by the assessee.

6. The next issue relates to addition of ₹ 1,74,090/- on the basis of ITS record. The Assessing Officer noticed from the information system of the department called "ITS" that the assessee has been given a sum of ₹ 13,26,883/- on which TDS was deducted. However, the accounts of the assessee showed a receipt of ₹ 11,52,793/- only, resulting in a difference of ₹ 1,74,090/-. The Assessing Officer asked the assessee to reconcile the difference. The assessee submitted that the data in ITS is uploaded by third parties and they might have committed error in uploading the data. The assessee stood by its accounts and submitted that the above said addition should not be made in the hands of the assessee. The assessee also submitted that the difference has mainly arisen on account of accrued interest receivable from banks, viz., Bank of Baroda and Canara Bank, as there might be difference between the amount booked by the assessee and by the banks. It was submitted that the assessee had requested those banks to reconcile but could not get any response from the banks. The assessee further submitted that it is accounting for accrued interest on deposits every year and when deposits are closed, the differential interest is accounted. Accordingly, it was submitted that the difference between ITS data and accounts of the assessee, if any, would get automatically adjusted in the subsequent year when the deposits are closed. The above said explanation of the assessee was not convincing to the AO and hence the Assessing Officer added the difference amount of ₹ 1,74,090/- and the same was also confirmed by the learned CIT(A).

7. We have heard the parties on this issue and perused the record. We noticed that neither the Assessing Officer nor the assessee has given details of breakup of receipts shown in the ITS record and the accounts of the assessee. Before the tax authorities, the assessee has pointed out that the difference has mainly arisen on account of "accrued interest on deposits" kept with the Bank of Baroda and Canara Bank. But those details have not been furnished. Hence, in the absence of relevant details, we are unable to express any view on this issue. In any case, if the difference has arisen for the reason as stated by the assessee alone, then we are of the view that there is merit in the contention of the assessee. As submitted by the assessee the difference, if any, would automatically get adjusted when concerned deposits are closed. We have already noticed that neither of the parties have brought on record the details of deposits, details of accrued interest accounted by the assessee and that was uploaded by the bank, difference between both the figures etc. Accordingly, we are of the view that any kind of decision can be taken only if these details are examined, which requires verification at the end of the Assessing Officer. If the difference has arisen on account of accrued interest on deposits kept with the banks, we are of the view that no addition is called for. Accordingly, we restore this issue to the file of the Assessing Officer with the direction to examine these details and take decision as per discussion made supra.

8. The next issue relates to addition of ₹ 1,24,282/- being the difference between income booked by the assessee and income shown in TDS certificate.

9. At the time of hearing, learned AR submitted that mismatch has arisen mainly on account of mistake committed by other party. In the alternative, he submitted that if income of ₹ 1,24,282/- is assessed in the hands of the assessee, corresponding TDS should be given credit. We find merit in the alternative contention of the assessee and accordingly, we direct the Assessing Officer to give corresponding TDS credit to the assessee.

10. The next issue relates to addition of ₹ 1,82,598/- on account of TP adjustment.

11. The Assessing Officer noticed that the assessee has entered into international transactions of giving advances to its AE named Virgo Valves and Controls (UK) Ltd., and hence, the Assessing Officer referred the matter to the Transfer Pricing Officer (TPO). The TPO noticed that the assessee has not charged any interest on the above said advance. When questioned, the assessee submitted that its AE is a subsidiary company, which was newly established and it was doing marketing efforts for sale of its products in UK. During the year under consideration, the assessee got orders worth ₹ 60.80 lakhs from UK as a result of marketing efforts of the subsidiary AE. It was submitted that the assessee did not give any commission to its AE. It was submitted that if it had paid commission @ 5%, it would have paid a sum of ₹ 3.04 lakhs. In case interest is charged on the advances given to its AE, it would have charged interest @ 4.5%, which would work out to ₹ 1,82,598/- only. Since the probable interest receivable is lower than the probable commission payable, the assessee pleaded that no TP adjustment is required.

12. Above said explanation was not acceptable to the TPO. He noticed that the assessee has availed loans on the security of its business assets and the average interest charged by the lenders on such loans worked out to 10% p.a. Accordingly, the TPO determined arms length interest rate at 9% and computed interest on the advance given to AE and accordingly proposed addition of ₹ 1,82,598/-. The Assessing Officer accordingly made addition. The learned CIT(A) also sustained the same.

13. Before us, the learned AR reiterated the submissions made before the learned CIT(A). The Learned DR, on the contrary, placed reliance on the order passed by the learned CIT(A).

14. We have heard the parties on this issue. We noticed that the assessee has tried to justify non-collection of interest from its AE by submitting that it did not pay commission to its AE on the sale procured by it. However, we noticed that the assessee has not brought on record any material to substantiate its claim that its AE did some marketing efforts on behalf of the assessee. No correspondence exchanged between the parties that both the parties are waiving their right to collect interest/commission in view of cross services, was shown to tax authorities or to us. In the absence of any material to support the submissions, we are unable to accept the oral submissions. In any case, as submitted by learned DR, loan transactions and the agency transaction, if any, are two different transactions. Since alleged marketing efforts cannot be linked to the advance given by the assessee interest free, we are of the view that the explanation of the assessee for not charging interest to its AE is not appealing. Accordingly, we are of the view that the learned CIT(A) was justified in confirming the addition made on account of TP adjustment.

15. The last issue relates to the disallowance of mark to market loss of forward contracts. The Ld A.R submitted that the underlying assets to forward contracts, being export receivables, have also been revalued and the income has been offered to tax. Accordingly he submitted that the loss arising on revaluation of outstanding forward contracts should be allowed. The Ld A.R placed reliance on the decision rendered by Hon'ble Bombay High Court in the case of CIT Vs. D. Chetan and Co (390 ITR 36) and the decision rendered by Hon'ble Supreme Court in the case of Woodward Governor India P Ltd (312 ITR 254). The ld D.R supported the order passed by Ld CIT(A).

16. We heard the parties on this issue. We notice that the assessee has also revalued the underlying asset, i.e., export receivables and credited the income in the profit and loss account. In that situation, the loss arising on revaluation of forward contract, in our view, deserves to be allowed. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow the claim of the assessee.

17. In the result, the appeal filed by the assessee is partly allowed.
Order has been pronounced in the Court on 20.4.2018.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 20/4/2018

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.

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BY ORDER,
(Senior Private Secretary)
ITAT, Mumbai