

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' A '**

**BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

I.T. A. No.2678/Bang/2017
(Assessment Year : 2013-14)

ICICI Venture Funds Management Co. Ltd.,
Prestige Obelisk, 10th Floor, No.3,
Kasturba Road, Bangalore-560 001. Appellant.

Vs.

The Dy. Commissioner of Income Tax,
LTU, Bangalore. Respondent.

Appellant By : Shri H. N. Khincha, C.A.
Respondent By : Shri B.R. Ramesh, JCIT (D.R)

Date of Hearing : 9.4.2018.
Date of Pronouncement : 18.04.2018.

O R D E R

Per Shri Jason P Boaz, A.M. :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-14, Bangalore dt.13.10.2017 for the Assessment Year 2013-14.

2. Briefly stated, the facts of the case are as under :-

2.1 The assessee, a company engaged in asset management / advisory services, filed its return of income for Assessment Year 2013-14

on 30.11.2013 declaring income of Rs.33,04,42,560. The case was taken up for scrutiny and the assessment was completed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dt.29.12.2015; wherein the income of the assessee was determined at Rs.36,46,46,930 in view of the following additions / disallowances :-

| | | |
|------|-----------------------------------|-----------------|
| i) | Claim of excess expenditure | Rs.2,54,74,924. |
| ii) | Disallowance of deduction u/s.80G | Rs.15,84,250 |
| iii) | Disallowance u/s.43B | Rs.23,557 |
| iv) | Disallowance u/s.40(a) | Rs.72,21,641 |

2.2 Aggrieved by the order of assessment dt.29.12.2015, for Assessment Year 2013-14, the assessee filed an appeal before the CIT (Appeals) -14, Bangalore. The learned CIT (Appeals) dismissed the assessee's appeal vide the impugned order dt.13.10.2017 both for non-prosecution and also ostensibly on merits.

3. Aggrieved by the order of the CIT (Appeals) dt.13.10.2017 for Assessment Year 2013-14; the assessee has filed this appeal wherein it has raised the following grounds :-

1. The Learned Assessing officer had erred in passing the order in the manner passed by him and the learned CIT(A) has erred in confirming the same. The orders as passed are bad in law and are liable to be quashed.
2. The learned Commissioner of Income Tax (Appeals) has erred in dismissing the appeal in limine on the ground that the appellant is not interested in prosecuting the appeal. The action of CIT(A) being contrary to facts and law applicable is to be rejected and the impugned order passed by the CIT(A) is liable to be quashed.

3. In any case and without prejudice, the learned CIT(A) has erred in holding that the grounds of appeal filed by the appellant are not relevant to the additions made in the assessment order and related to 14A disallowance. A perusal of grounds of appeal would show that the appellant has not taken any ground on 14A disallowance. The appellant having raised valid grounds relevant to the issues in appeal, the Conclusion of the CIT(A) is totally misconceived and such conclusion is liable to be rejected.

4. In any case and without prejudice, the learned assessing had erred in making various disallowances / additions to the income returned. On the facts and circumstances of the case and the law applicable, the disallowance as made being erroneous are to be deleted.

5.1 The learned assessing officer had erred in disallowing the year end provision to the extent of Rs.2,54,74,924/- holding that the appellant has claimed excess expenditure. On the facts and circumstances of the case, the appellant having consistently following the policy of making year end provisions, same should have been accepted and disallowance as made is to be deleted.

5.2 In any case, the learned Assessing Officer had erred in not appreciating the fact that the appellant is following mercantile system of accounting and year end provisions for expenses were made as per the accrual concept and accepted accounting principles.

5.3 In any case, the disallowance as made by the Assessing officer is excessive.

5.4 In any case, if the disallowance of Rs. 2,54,74,924/- is sustained in the year under appeal, then same needs to be reduced from the income of the year in which reversal is done, wherever applicable.

5.5 In any case, the Assessing Officer had erred in not appreciating the rule of consistency and disallowing the provision made as excess expenditure.

6.1 The learned Assessing Officer had erred in disallowing a sum of Rs.15,84,250/- holding that the donations paid in subsequent years are not eligible for deduction u/s. 80G of the Act.

6.2 On proper appreciation of facts of the case, the appellant having not claimed any deduction on the said donations (paid in subsequent years) in the year under appeal, the disallowance as made is totally erroneous and is to be deleted.

6.3 In any case, the entire provisions of Rs. 20,00,000/- has been added to the Net Profit while computing the taxable income, by the appellant itself, disallowing Rs. 15,85,250/- out of provisions made amounts to double addition.

6.4 The appellant has rightly claimed the deduction u/s. 80G of the Act and same is to be allowed without any variation.

7.1 The learned Assessing Officer has erred in disallowing a sum of Rs. 72,21,641/- u/s. 40(a)(ia) of the Act holding that the appellant has not deducted tax at source on the said sum. On the facts and circumstances of the case, there is no violation of section 40(a)(ia) of the Act. The disallowance as made being contrary to facts and law is to be deleted.

7.2 The appellant having complied with the provisions of section 40(a)(ia) of the Act, the disallowance as made is to be deleted.

7.3 The observation of Assessing Officer that a sum of Rs. 1,68,56,988/- should have been disallowed u/s. 40(a) of the Act for non deduction / remittance of TDS is without any basis, totally erroneous on facts and the law applicable is to be disregarded in toto.

7.4 In any case the disallowance as made is erroneous and excessive.

8. The learned Assessing Officer had erred in not granting the full TDS credit as claimed by the appellant. The Appellant has rightly claimed the TDS credit as per law as same is to be allowed to the appellant.

9. In view of the above and on other grounds to be adduced at the time of hearing, it is requested that the order passed be quashed or atleast;

- (i) the various disallowance made be deleted,
- (ii) the returned income as declared by the appellant be accepted.
- (iii) full credit of TDS as claimed by the appellant be given.
- (iv) refund as claimed by the appellant be granted to the appellant.

4. **Ground Nos.2 & 3.**

4.1 At the outset, in respect of Ground No.2 (supra), the learned Authorised Representative for the assessee challenged the action of the learned CIT (Appeals) in dismissing the assessee's appeal in limine on the ground that the assessee is not interested in pursuing the appeal. According to the learned Authorised Representative, the first hearing fixed for the appeal was admittedly attended by the assessee's counsel and the case was adjourned. It is submitted that the notices fixing the next two hearings listed were not received and the last hearing was not attended due to unavoidable reasons and immediately thereafter the order of dismissal was passed by the learned CIT (Appeals). It was contended that the failure on the part of the assessee to attend these hearings before learned CIT (Appeals) was neither intentional nor deliberate but due to unavoidable circumstances as listed in the Affidavit dt.9.4.2018 filed before the Bench. It is submitted by the learned Authorised Representative that the reasons cited for non-appearance in the hearings before CIT (Appeals) amounted to reasonable and sufficient cause. It was prayed that, in the circumstances of the case as laid out

above, the impugned order be set aside and the matter restored to the file of the learned CIT (Appeals) for consideration and disposal on merits of the issues raised in that appeal.

4.2 In respect of Ground No.3 (supra), the assessee contends that the learned CIT (Appeals); while disposing off the appeal on merits, erred in holding that the grounds of appeal raised by the assessee are not relevant to the additions made in the order of assessment and related to disallowance under Section 14A of the Act. According to the learned Authorised Representative, a perusal of the grounds of appeal raised before the learned CIT (Appeals) would go to show that the grounds at S.Nos.1 to 7 raised by the assessee did not pertain to disallowance under Section 14A of the Act as mentioned by the learned CIT (Appeals), but to three of the four additions / disallowances made in the order of assessment in excess of Rs.3 Crores, which are -

- i) Disallowance of year-end provision : Rs.2,54,74,924.
- ii) Disallowance of deduction u/s.80G : Rs.15,84,250.
- iii) Disallowance u/s.40(a)(ia) : Rs.72,21,641.

It is contended that the finding of the learned CIT (Appeals) at para 6 of the impugned order that the grounds of appeal raised relate to provision of Sec.14A of the Act is factually incorrect and evidences absolute lack of application of mind by the learned CIT (Appeals) in disposing off the assessee's appeal erroneously on merits. It was pleaded by the learned Authorised Representative that in view of the above erroneous order of the learned CIT (Appeals) and in the interest of substantial justice, the impugned order of the learned CIT (Appeals) be set aside and remanded to his file for consideration and disposal on the merits of the issues raised in the grounds before him.

4.3 Per contra, the learned Departmental Representative for revenue supported the impugned order of the learned CIT (Appeals).

4.4.1 We have heard the rival contentions on the aforesaid grounds Nos.2 & 3 (supra) and have perused and carefully considered the material on record. In our considered view the reasons cited by the assessee in the Affidavit dt.9.4.2018 for non-appearance in the hearings before the learned CIT (Appeals) on account of non-receipt of notices and due to unavoidable circumstances were neither intentional or

deliberate and constitute reasonable and sufficient cause; especially considering that huge additions amounting to over Rs.3 Crores had been made in the order of assessment for Assessment Year 2012-13 which were the subject matter of appeal before the learned CIT (Appeals). It is trite law that the ultimate object of assessment is to bring to tax an assessee's correct income.

4.4.2 In the case on hand, we also find an absolute lack of application of mind by the learned CIT (Appeals) while purportedly disposing off the appeal on merits by rendering erroneous finding in respect of grounds raised. This will be evident when we extract hereunder the grounds of appeal raised by the assessee before the CIT (Appeals) and the learned CIT (Appeals) 's order in the matter at para 6 of the impugned order.

4.4.3 The grounds of appeal raised by the assessee before the learned CIT (Appeals) are as under :-

1. The learned Assessing Officer has erred in passing the order in the manner passed by him. The order passed is bad in law and is liable to be quashed.
2. Without prejudice, the learned assessing has erred in making various disallowances / additions to the income returned. On the facts and circumstances of the case and the law applicable, the disallowance as made being erroneous are to be deleted.

3.1. The learned assessing officer has erred in disallowing the year end provision to the extent of Rs.2,54,74,924/- holding that the appellant has claimed excess expenditure. On the facts and circumstances of the case, the appellant having consistently following the policy of making year end provisions, same should have been accepted and disallowance as made is to be deleted.

3.2 In any case, the learned Assessing Officer has erred in not appreciating the fact that the appellant is following mercantile system of accounting and year end provisions for expenses were made as per the accrual concept and accepted accounting principles.

3.3 In any case, the disallowance as made by the Assessing officer is excessive.

3.4 In any case, if the disallowance of Rs. 2,54,74,924/- is sustained in the year under appeal, then same needs to be reduced from the income of the year in which reversal is done, wherever applicable.

3.5 In any case, the Assessing Officer has erred in not appreciating the rule of consistency and disallowing the provision made as excess expenditure.

4.1 The learned Assessing Officer has erred in disallowing a sum of Rs.15,84,250/- holding that the donations paid in subsequent years are not eligible for deduction u/s. 80G of the Act.

4.2 On proper appreciation of facts of the case, the appellant having not claimed any deduction on the said donations (paid in subsequent years) in the year under appeal, the disallowance as made is totally erroneous and is to be deleted.

4.3 In any case, the entire provisions of Rs. 20,00,000/- has been added to the Net Profit while computing the taxable income, by the appellant itself, disallowing Rs. 15,85,250/- out of provisions made amounts to double addition.

4.4 The appellant has rightly claimed the deduction u/s. 80G of the Act and same is to be allowed without any variation.

5.1 The learned Assessing Officer has erred in disallowing a sum of Rs. 72,21,641/- u/s. 40(a)(ia) of the Act holding that the appellant has not deducted tax at source on the said sum. On the facts and circumstances of the case, there is no violation of section 40(a)(ia) of the Act. The disallowance as made being contrary to facts and law is to be deleted.

5.2 The appellant having complied with the provisions of section 40(a)(ia) of the Act, the disallowance as made is to be deleted.

5.3 The observation of Assessing Officer that a sum of Rs. 1,68,56,988/- should have been disallowed u/s. 40(a) of the Act for non deduction / remittance of TDS is without any basis, totally erroneous on facts and the law applicable is to be disregarded in toto.

5.4 In any case the disallowance as made is erroneous and excessive.

6. The learned Assessing Officer has erred in not granting the full TDS credit as claimed by the appellant. The Appellant has rightly claimed the TDS credit as per law as same is to be allowed to the appellant.

7. In view of the above and on other grounds to be adduced at the time of hearing, it is requested that the order passed be quashed or atleast;

- (i) the various disallowance made be deleted,
- (ii) the returned income as declared by the appellant be accepted.
- (iii) full credit of TDS as claimed by the appellant be given.
- (iv) refund as claimed by the appellant be granted to the appellant.

4.4.4 Para 6 of the impugned order where the learned CIT (Appeals) purportedly disposed of the grounds of appeal raised by the assessee on merits reads as under :-

“6. Even though there is no representation, the ground of appeal are examined and it is found that the grounds of appeal raised relate to provisions of Sec. 14A in the assessment order. There has been no discussion with reference to Sec. 14A and, hence, the grounds of appeal are not relevant to the additions made in the assessment order. Hence, these ground of appeal are dismissed.”

4.4.5 In the light of the factual matrix and circumstances of the case, as discussed above, in our view, it is imperative in the interest of substantial justice that the impugned order of the learned CIT (Appeals) being passed / disposed off on merits for factually erroneous reasons is liable to be set aside and the matter remanded to the file of the learned CIT (Appeals) for consideration and adjudication of the grounds raised by the assessee in the appeal before him. Needless to add, the learned CIT (Appeals) will dispose off the appeal on merits only after affording the assessee adequate opportunities of being heard and to file details / submissions required, which shall be duly considered. We hold and direct accordingly. Consequently, Grounds 2 & 3 of assessee's appeal disposed off.

5. In view of the findings rendered above on grounds 2 and 3 of this appeal (supra), there is no requirement for us to adjudicate the other grounds raised on merit at Nos.1, 4 to 7.4 of this appeal (supra).

6. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on the 18th day of April,2018.

Sd/-
(N.V. VASUDEVAN)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore,
Dt.18.04.2018.

*Reddy gp

Copy to :

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|---|------------|---|---------------------|
| 1 | Appellant | 4 | CIT(A) |
| 2 | Respondent | 5 | DR. ITAT, Bangalore |
| 3 | CIT | 6 | Guard File |

Senior Private Secretary
Income Tax Appellate Tribunal
Bangalore.