

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA. No. 924/JP/2017
निर्धारण वर्ष/ Assessment Years : 2014-15

Asstt. Commissioner of Income-tax Circle-1, Kota	बनाम Vs.	Shri Ankush Gupta D-28, New Colony Gumanpura, Kota
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AKFPG4060R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri J. C. Kulhari (JCIT)
निर्धारिती की ओर से / Assessee by : Shri Siddharth Ranka(Advocate)

सुनवाई की तारीख / Date of Hearing : 19/04/2018
उदघोषणा की तारीख / Date of Pronouncement : 24/04/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue against the order of Id. CIT(A), Kota dated 11.09.2017 for Assessment Year 2014-15 wherein the Revenue has taken the following grounds of appeal:-

- (i) *On the facts and circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 1,45,075/- made by the AO u/s 14A r.w.s Rule 8D."*
- (ii) *On the facts and circumstances of the cases, the CIT(A) has erred in deleting the addition of Rs. 39,79,257/- made by the AO u/s 36(1) (iii) of the Income tax Act, 1961.*

2. Regarding Ground No. 1, the facts of the case are that the assessee has made investment of Rs. 1,45,07,464/- in shares and mutual funds, income of respect of which is not includible while computing the total income. During the course of assessment proceedings, the AO observed that the assessee has not disallowed any expenses u/s 14A of the Act and thereafter seeking the response from the assessee, the AO proceeded and made a disallowance of Rs. 1,45,07,464/- applying Rule 8D as amended by Income tax (13th amendment) Rules, 2016 vide Notification No. 43/16 w.e.f. 02.06.2016.

3. Being aggrieved, the assessee carried the matter in appeal before the Id CIT(A). The Id. CIT(A) placing reliance on the decision of Hon'ble Delhi High Court in case of Cheminvest Ltd vs. CIT reported in 61 taxmann.com 118 and of the Special Bench of the Tribunal in case of ACIT vs. Vireet Investment dated 22nd June, 2017 has deleted the disallowance for the reason that no exempt income has been earned by the assessee during the year which will warrant any disallowance as per provisions laid down u/s 14A read with Rule 8D.

4. Heard both the parties. Firstly, it is noted that amended Rule 8D has been invoked by the AO. These amended rules are applicable w.e.f. 02.06.2016 and the same therefore, cannot be applied for the impugned assessment year 2014-15 as the same have to be read prospectively. Secondly, we do not see any infirmity in the findings in the Id. CIT(A) where he has followed the ratio laid down by the Hon'ble Delhi High Court and the Special Bench. Undisputedly, there is no income which has been earned on the subject investment and which has been claimed exempt while determining the total income for the impugned assessment year. In absence of any income being earned

and claimed exempt during the year, no disallowance is warranted under provisions of section 14A. In the result, ground taken by the Revenue is dismissed.

5. Regarding Ground No. 2, the facts of the case are that during the course of assessment proceedings, the AO observed that the assessee has given interest free loans and advances amounting to Rs. 9,65,70,894/- and the assessee has debited interest expenses to the tune of Rs. 39,79,257/- in the profit & loss account. A show cause notice was issued to the assessee as to why disallowance should not be made as no interest has been charged on the loans and advances given by him and that too for non-business purposes and at the same time interest expenses have been claimed on the borrowed fund. No response was however received from the assessee. The AO observed that the assessee is having own funds as well as borrowed funds and nexus between loans/advances and own/borrowed funds is not ascertainable and the AO thereafter computed disallowance u/s 36(1)(iii) of the I.T. Act by applying 12% rate of interest which was determined at Rs 71,30,408/- and restricted to actual interest debited in the profit/loss account of Rs. 39,79,257/-.

6. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A). During the course of appellate proceedings, the assessee submitted that the interest free advances were given out of its own sources and out of interest free funds available with the assessee. It was submitted that as against the interest free advances of Rs. 9,65,70,894/-, the assessee is having own funds to the tune of Rs. 5,67,22,709/-, interest free borrowed funds of Rs. 3,21,66,928/- and

interest free credit balance of Rs. 20,67,14,023/-. It was further submitted that there is no direct nexus between the amount borrowed by the assessee from the bank and the loans/advances during the year. It was further submitted that the funds have been advanced for business purposes and it is a matter of business prudence and its entirely upto the assessee as to how he utilized the funds in the interest of his business.

7. The Id. CIT(A) has returned a finding that the assessee has substantial interest free borrowing as seen from the above explanation given during the course of appellate proceedings and his own funds as well. The Id. CIT(A) further observed that the assessee has huge credit balance which is interest free and exceed interest free advances by almost double the amount. It was further observed by Id. CIT(A) that the advances received and given are necessitated by business considerations and are not for personal or for non-business use as the AO has not been able to establish this fact during the assessment proceedings. It was further observed by the Id CIT(A) that the AO has not been able to establish any nexus between borrowed funds directed to the interest free advances for non business considerations. Further, the Id. CIT(A) referred to his decision in AY 2013-14 wherein it was held that whether the assessee is having mixed funds, the stand of the Courts is very clear that the AO has to establish nexus between the borrowed funds and advances given free interest. It was accordingly held by the Id. CIT(A) that not only did assessee used borrowed funds for the business purposes but also have sufficient other interest free funds available for investment carried out for long term business prospects. It was also held by the Id CIT(A) that the AO has not been

able to prove anything contrary by bifurcating interest bearing and free fund and their respective usage adverse to the business consideration.

8. During the course of hearing, the Id AR reiterated the factual and legal position as taken before the Id CIT(A) and relied on the findings of the Id CIT(A). Per contra, the Id DR relied on the AO's order.

9. Heard both the parties and also perused the material available on record. Undisputedly, the AO in the assessment order states that the assessee is having own funds as well as borrowed funds and nexus between loans/advances and own/borrowed funds is not ascertainable. In such a scenario, where own funds available with the assessee are more than borrowed funds, as are the facts in the instant case, the presumption that arises is that loans and advances have been made out from own funds. The said presumption is however rebuttable and the onus lies on the Revenue to rebut such presumption. The Id CIT(A) has returned a finding that the AO has not been able to establish any nexus between borrowed funds directed to the interest free advances for non business considerations. The said findings of the Id. CIT(A) remained uncontroverted before us. In light of the same, we donot see any infirmity in the findings of the Id. CIT(A) which are hereby confirmed. The ground taken by the Revenue is thus dismissed.

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

Order pronounced in the open Court on 24/04/2018.

Sd/-

(विजय पॉल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 24/04/2018

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- ACIT, Circle-1, Kota
2. प्रत्यर्थी / The Respondent- Shri Ankush Gupta, Kota
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 924/JP/2017 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar