

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, 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 No.928/PUN/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Ganesh Bhaskarrao Manedeshmukh,
826/B, Jayjaywanti Apartment,
BMCC Road, Shivaji Nagar,
Pune - 411004

PAN : ALAMP3417A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward - 3(4), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pawan V. Auti
Revenue by : Shri Achal Sharma

सुनवाई की तारीख / Date of Hearing : 22-05-2018

घोषणा की तारीख / Date of Pronouncement : 23-05-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-1, Pune dated 25-02-2016 for the assessment year 2010-11.

2. The brief facts of the case as emanating from records are: The assessee is a Civil Contractor engaged mainly in construction of dams, canals, etc. The assessee filed his return of income for the impugned assessment year on 15-10-2010 declaring total income of Rs.62,58,035/-. There was mismatch of TDS credit, therefore, the case of the assessee was selected for scrutiny under CASS. Statutory notice u/s. 143(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was issued to the assessee on 26-08-2011. In scrutiny assessment proceedings, the Assessing Officer made disallowance u/s. 14A of the Act Rs.1,19,332/- and made proportionate disallowance of interest Rs.5,96,369/- on interest free Loans and Advances to various persons.

Aggrieved by the assessment order dated 04-03-2013, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) rejected the contentions of assessee and confirmed the addition/disallowance on both the above counts. Now, the assessee is in appeal assailing the findings of Commissioner of Income Tax (Appeals).

3. Shri Pawan V. Auti appearing on behalf of the assessee submitted at the outset that he is not pressing ground Nos. 3 to 7 in respect of disallowances made u/s. 14A of the Act. In respect of ground Nos. 1 and 2 relating to disallowance of interest Rs.5,96,369/- the ld. AR submitted that the disallowance has been made by the Assessing Officer on the pretext that the assessee has advanced interest bearing funds to various persons without charging interest. The ld. AR submitted that a perusal of the Balance sheet at page 10 of the paper book would show that own interest free funds of the assessee are much more than the loans and advances made. The ld. AR pointed that the assessee has capital to the tune of

Rs.2,10,70,705/- and interest free unsecured loans of Rs.38 lakhs, as against interest free loans and advances of Rs.80,59,781/-. The ld. AR contended that where own interest free funds are more than the loans and advances no disallowance of interest is to be made. In support of his submissions the ld. AR placed reliance on the following decisions :

- i. Munjal Sales Corporation Vs. Commissioner of Income Tax & Anr., 215 CTR 105 (SC);
- ii. Hero Cycles (P) Ltd. Vs. Commissioner of Income Tax, 379 ITR 347 (SC);
- iii. Commissioner of Income Tax Vs. Reliance Utility and Power Ltd., 178 Taxman 135 (Bombay).

4. On the other hand Shri Achal Sharma representing the Department vehemently defended the findings of Commissioner of Income Tax (Appeals) in confirming the addition. The ld. DR submitted that a perusal of assessment order clearly reveal that the disallowance of interest has been made by Assessing Officer on the basis of admission made by the assessee. The assessee had furnished the working of proportionate disallowance of interest before the Assessing Officer and on the basis of that working alone the Assessing Officer had made disallowance of Rs.5,96,369/-.

5. Controverting the submissions made by the DR, the ld. AR submitted that before the Assessing Officer the assessee had furnished written submissions giving the working of interest calculation on loans and advances and has also given the working of interest disallowance to be made with respect to loans and advances. Admittedly, as per the working furnished by the assessee before the Assessing Officer the assessee had admitted that disallowance to the extent of Rs.1,13,608/- is to be made. The interest in respect of total loans and advances @ 14% per annum was

computed at Rs.5,96,369/-. The Assessing Officer erred in disallowing the total interest instead of disallowance of interest in respect of advances made from borrowed funds. The ld. AR fairly admitted that disallowance to the extent of Rs.1,13,608/- could be made. The ld. AR furnished the copy of submissions made before Assessing Officer.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We have also considered the documents on which the ld. AR has placed reliance. The assessee in appeal has raised two issues. The ground Nos. 1 and 2 are in respect of disallowance of interest Rs.5,96,369/-. The ground Nos. 1 to 7 are qua disallowance u/s. 14A r.w. Rule 8D.

7. In so far as disallowance of interest is concerned the contention of the assessee is that the assessee has advanced loans to the tune of Rs.8,059,781/-. The assessee has sufficient own funds and interest free funds to cover the interest free loans and advances. We find that in assessment proceedings the assessee has admitted that the interest bearing funds were also used for advancing of interest free loans. The assessee computed interest on such interest bearing funds at Rs.1,13,608/-. The ld. AR of the assessee has again admitted this fact before us. Thus, in view of the assessee's own admission we are of considered view that disallowance of interest should be restricted to Rs.1,13,608/-.

8. A perusal of the Balance sheet at page 10 of the paper book clearly indicates that the assessee has sufficient own funds to cover the loans and advances. However, in view of assessee's own admission, we restrict disallowance to Rs.1,13,608/-. Accordingly, the ground Nos. 1 and 2

raised in the appeal by the assessee are partly allowed in the terms aforesaid.

9. The ground Nos. 3 to 7 raised in the appeal are in respect of disallowance made u/s. 14A r.w. Rule 8D. The ld. AR of the assessee stated at the Bar that he is not pressing this issue. Accordingly, ground Nos. 3 to 7 raised in appeal by the assessee are dismissed as not pressed.

10. In the result, the appeal of assessee is partly allowed in the terms aforesaid.

Order pronounced on Wednesday, the 23rd day of May, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 23rd May, 2018

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-1, Pune
4. The Pr. C.I.T.-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.
//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune