



ITA No.1162/Mum/2017
Viren R. Shah
Assessment Year-2011-12

आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.1162/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2011-12)

Viren R. Shah C/o Roopam 218/219 Carnac Road, Crawford Market Mumbai-400 002	बनाम/ Vs.	Assistant Commissioner of Income Tax Central Circle-3(2) Room No. 1923, 19 th Floor Air India Building, Nariman Point Mumbai-400 021
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No.		AAIPS-7452-E
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Mayur R. Makadia, Ld.AR
Revenue by	:	Rajeev K. Gubgotra, Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	09/08/2018
घोषणा की तारीख / Date of Pronouncement	:	12/09/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2011-12 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-51 [CIT(A)], Mumbai, *Appeal No.CIT(A)-51/DC CC-3(2)/IT-29/15-16* dated 30/11/2016 *qua* confirmation of disallowance u/s 14A and certain interest



disallowance u/s 36(1)(iii). The assessment for impugned AY was framed by *Ld. Assistant Commissioner of Income Tax Central Circle-3(2), Mumbai [AO] u/s 143(3) read with section 147 of the Income Tax Act, 1961* on 27/03/2015 wherein the income of the assessee has been assessed at Rs.85.27 Lacs after certain additions as against returned income of Rs.49.75 Lacs *filed* by the assessee on 30/09/2009 which was processed u/s 143(1). The assessee being *resident individual* was engaged in the business of retail trade of garments and advertising under proprietorship concerns namely *Roopam & Roopam Advertising* respectively.

2.1 Facts *qua* the dispute are that during reassessment proceedings, it was noted that the assessee advanced interest free loans and advances aggregating to Rs.92.87 Lacs to three parties and claimed interest expenditure of Rs.68.55 Lacs in one of the proprietorship concern namely *Roopam*, which called for proportionate disallowance u/s 36(1)(iii). The proportionate disallowance so worked out amounted to Rs.13.93 Lacs which was added to the income of the assessee.

2.2 The second disallowance was u/s 14A *read with Rule 8D*, since the assessee earned exempt income of Rs.5.08 Lacs during the impugned AY. The disallowance so worked out amounted to Rs.17.79 Lacs which comprise-off of interest disallowance u/r 8D(2)(ii) for Rs.17.48 Lacs and expense disallowance u/r 8D(2)(iii) for Rs.0.30 Lacs.

3. Aggrieved, the assessee contested the same with partial success before *Ld. CIT(A)* vide impugned order dated 30/11/2016 wherein *Ld. CIT(A)*, after due consideration, confirmed disallowance u/s 36(1)(iii) with respect to loan of Rs.4 Lacs granted by the assessee to his sister



concern namely *Roopam Property Private Limited*. The disallowance u/s 14A was confirmed since the provisions of Section 14A, in the opinion of Ld. CIT(A), were attracted to the case of the assessee. Aggrieved, the assessee is in further appeal before us.

4. The Ld. Authorized Representative for Assessee [AR], *Shri Mayur R. Makadia*, drawing our attention to the financial statements of the proprietorship concern as well as personal *Balance Sheet* of the assessee, contested the additions as sustained by Ld. CIT(A). The same has been controverted by Ld. Departmental Representative [DR], *Shri Rajeev K. Gubgotra*.

5. We have carefully heard the rival submissions and perused relevant material on record including the financial statements of the assessee. So far as the disallowance u/s 36(1)(iii) is concerned, we find that the assessee has claimed interest expenditure of Rs.68.55 Lacs in his proprietorship concern namely *Roopam*. The perusal of *Balance Sheet* of this concern reveal that as against total funds of Rs.868.86 Lacs, the assessee's working capital stood at Rs.775.96 Lacs i.e. more than 89% of total funds. Secondly, the assessee does not hold the stated investments in this concern rather the investment forms part of *personal Balance Sheet* of the assessee. In other words, no part of loan funds obtained in *Roopam* has been used for making the stated investments. This being the case, the disallowance u/s 36(1)(iii) could not be sustained. On the same analogy, disallowance u/s 14A also could not be sustained since it has already been noted that the stated investments did not form part of financial statements of the concern namely *Roopam*,



ITA No.1162/Mum/2017
Viren R. Shah
Assessment Year-2011-12

rather the same were part of personal Balance Sheet of the assessee and funded out of assessee's own capital.

6. In view of the stated position, both the disallowances as confirmed by Ld. first appellate authority could not be sustained. Therefore, the same stand deleted.

7. Resultantly, the assessee's appeal stands allowed.

Order pronounced in the open court on 12th September, 2018.

Sd/- (Saktijit Dey) न्यायिक सदस्य / Judicial Member	Sd/- (Manoj Kumar Aggarwal) लेखा सदस्य / Accountant Member
---	--

मुंबई Mumbai; दिनांक Dated : 12.09.2018
Sr.PS:-Thirumalesh

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai