

**IN THE INCOME TAX APPELLATE TRIBUNAL
“ D ” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.2335/Ahd/2014
(Assessment Year : 2011-12)

Kalika Buildcon Pvt.Ltd.
53, Nirant Park
Opp. Sun-N-step Club
Thaltej, Ahmedabad-380 054
[PAN No.AACCK 3275 G]

(Appellant)

Vs. Dy.CIT (OSD)-I
Circle-4
Ahmedabad

(Respondent)

Appellant by : Shri B.K. Patel, AR
Respondent by : Shri Lalit P.Jain, Sr.DR

Date of Hearing : 05/10/2018
Date of Pronouncement : 23/ 10 /2018

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal has been filed by the Assessee before us against the order dated 23.06.2014 passed by the Commissioner of Income Tax(Appeals)-VIII, Ahmedabad [Ld.CIT(A) in short] for Assessment Year (AY) 2011-12 arising out of the order dated 14.03.2014 passed by the DCIT (OSD)-I, Circle-4, Ahmedabad with the following ground:

Upholding the addition of Rs.12,91,039/- u/s.36(1)(iii) by way of interest payment to M/s.Kalika Construction:

The Hon'ble CIT (Appeals)-VIII, Ahmedabad erred in law and on facts confirming addition of Rs.12,91,039/- on account of disallowance of interest u/s.36(1)(iii) out of disallowance of total interest of Rs.19,40,109/- made by Deputy Commissioner of Income Tax (OSD)-I, Circle-4, Ahmedabad, stating that such part of interest cannot be allowable as appellant has given interest free loan of Rs.1,98,90,599/- to M/s.Kalika Construction (Prof. Amrish R Patel) stating that the evidence as to said loan was pursuance to the agreement and for business purpose and the said

evidence was not given by the appellant during the assessment proceedings and is a fresh evidence for which the appellant has not given reasonable cause for non-submission. In fact, the appellant has submitted the evidence relating to agreement for giving the money to M/s. Kalika Construction together with the copy of letter duly acknowledged by the office of the LAO and therefore cannot be said to be new evidence.

2. The assessee-company is engaged in the business of Builders and Contractors and filed its return of income for the year under consideration on 30.09.2011 declaring total income of Rs.92,25,410/-. The same was duly processed u/s.143(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Upon scrutiny, a notice u/s.143(2) of the Act was issued on 17.09.2012 followed by notices u/s.142(1) of the Act dated 28.05.2013 and 10.02.2014 directing the assessee for various details whereupon books of accounts and other details were furnished which were verified and placed on record.

3. The facts leading to this issue is that the assessee has given advance of Rs.1,98,90,599/- to one M/s.Kalika Construction, no interest income is shown thereon. The claim of the assessee is that the amount was given under an agreement for development of land to the said M/s.Kalika Construction and thus the said loan and/or advances were made for the purpose of business and thus it could not be considered as interest free loan. The submission of the assessee was not found satisfactory by the Ld. Assessing Officer and this addition of the said amount was made by him to the total income of the assessee.

4. In appeal, the Ld.CIT(A) confirmed the same and hence the instant appeal before us.

5. At the time of hearing of the instant application, the Ld. Representative of the assessee submitted before us that the Ld. Assessing Officer observed while making addition that the assessee has failed to substantiate that the amount of loan was given for business purpose without any supporting evidence. In appeal, the Ld. CIT(A) came across with the documentary evidences in support of his claim that there was an agreement with the proprietary concern of Shri Patel for the development of land but the said documentary evidences were not accepted in the absence of any reasonable cause for non-submission of the same at the time of assessment proceedings. But fact remains that the assessee has placed those documents duly before the Ld. Assessing Officer on 3rd March-2014 being the proof of ownership of the said land by Shri Amresh R.Patel proprietor of the said land. The receipt copy of those documents along with letter dated 03.03.2014 is available at page 20 of the paper-book as pointed out by the assessee's Ld. Representative. Therefore, the said document factually were placed before the Ld. Assessing Officer on 03.03.2014 i.e. much prior to the assessment order dated 14.03.2014 which the Ld.CIT(A) failed to take into consideration, as it appears from the following observation made by the Ld. CIT(A):

“3.3. Regarding the amount of Rs.1.98 crores given to Kalika Construction it has claimed by the appellant that this amount was given under on agreement for development of land. The appellant has also given documentary evidence in support of its claim indicating that there was n agreement with the proprietary concern of Shri Patel for the development of the land. The submission given by the appellant cannot be accepted as the evidence was not given by the appellant before the AO and accordingly it is a new evidence for which the appellant has not given any reasonable cause for non-submission of the same at the time of assessment proceedings. The evidences are therefore, not admitted for consideration. Accordingly, the disallowance of proportionate interest expenditure corresponding to this amount given by the appellant is upheld.”

5.1. The Ld. AR for the assessee thus prays for setting aside the order to the file of the Ld.CIT(A) for adjudication afresh on the additional evidence so submitted by the assessee.

6. The Ld.DR, on the other hand, does not object to the prayer made by the Ld.AR for the assessee.

7. We have heard the Ld. Representatives appearing for the respective parties. We have perused the relevant materials available on record. We find it proper to prevent the miscarriage of the justice to set aside the order and remit the same to the file of the Ld. CIT(A) for re-adjudication of the matter on the basis of the additional evidence as mentioned hereinabove filed by the assessee admittedly before the Ld. Assessing Officer. We order accordingly. While doing so, we make it clear that the assessee must be given a reasonable opportunity of hearing by the Ld. CIT(A) to represent its case for proper adjudication of the matter afresh.

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

This Order pronounced in Open Court on	23/ 10 /2018
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 23/ 10 /2018

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-VIII, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad