

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

**BEFORE SHRI D. KARUNAKARA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA No.86/PUN/2018
निर्धारण वर्ष / Assessment Year : 2012-13

Amit Vinod Bansal,
Priyamid, Plot 142, Sector 27/A,
Pradhikaran, Nigdi,
Pune-411044.

PAN : AHJPB9077E

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward- 9(1),
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sharad Vaze
Revenue by : Shri Rajesh Gawali

सुनवाई की तारीख / Date of Hearing : 05.02.2019
घोषणा की तारीख / Date of Pronouncement : 21.02.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of CIT(A)-6, Pune dated 29.09.2017 for the Assessment Year 2012-13.

2. The grounds raised by the assessee are as under :-

“1. In the facts and circumstances of the case, the Commissioner of Income Tax (A) VI, has erred in law as well as in fact in making the entire disallowance of Rs.9,70,000/- u/s 40A(2)(b) of the Income Tax Act, 1961.

2. Without prejudice to Ground No.1 above, the Commissioner of Income tax (A) VI, has erred in law as well as in fact in enhancing the disallowance made by AO u/s 40A(2)(b) of the Income Tax Act, 1961. The enhancement made by the Commissioner of Income Tax (A) VI be deleted.

3. *Without prejudice to Ground No.1 and 2 above, in the facts and circumstances of the case, the disallowance be restricted to a reasonable amount.*

4. *In the facts and circumstances of the case, the Commissioner of Income Tax (A) VI, has erred in law as well as in fact, in confirming the addition u/s 14A for Rs.55,386/- even when no expenses are actually incurred to earn the said exempted income.*

5. *In the facts and circumstances of the case, the Commissioner of Income Tax (A) VI, has erred in law as well as in fact, in confirming the disallowance of Rs.2,11,989/- being interest paid on unsecured loans treating the same as unrelated to business.*

6. *Your petitioner prays further, if required, to add, amend, modify or withdraw any other document, evidence or grounds of appeal.”*

3. Briefly stated the relevant facts include that the assessee is engaged in the business of sale of various types of tiles such as marble, granite, kadappa and sanitaryware etc through two proprietary concerns, namely Kohinoor Ceramics and Kohinoo Distribution Company. For his business, the assessee maintained the regular books of account which are subjected to audit u/s 44AB of the Act. The assessee filed the return of income for the assessment year 2012-13 on 30th September, 2012 declaring an income of Rs.15,83,815/-. The income was assessed u/s 143(3) for Rs.19,48,250/-. In the assessment u/s 143(3), following disallowances made by the Assessing Officer :-

(a)	15% of commission paid Rs.9,90,000/-	Rs.1,48,500/-
(b)	Disallowance u/s 14A	Rs. 55,386/-
(c)	Disallowance of interest	Rs.2,11,989/-

4. The assessee carried the litigation relating to the aforesaid additions to the CIT(A). The CIT(A) allowed partial relief on the disallowance u/s 14A of the Income Tax Act, 1961. However, deviating from the decision of Assessing Officer, the CIT(A) disallowed the entire claim of commission of Rs.9,90,000/- instead of ad-hoc disallowance.

5. Aggrieved with the said decision of the CIT(A), the assessee is in further appeal before the Tribunal with above extracted grounds of appeal.

6. Referring to grounds no.1, 2 and 3, ld. Counsel submitted that this is a case where the Assessing Officer disallowed a sum of Rs.1,48,500/- at the rate of 15% of commission paid of Rs.9.90 lakhs, debited to the Profit and Loss Account, invoking the provisions of section 40A(2)(b) of the Act. The CIT(A) disallowed the entire claim under the said provisions. However, neither of the officials have gathered any comparable cases of such transaction of payment of commission in order, to demonstrate that the payments made by the assessee to the firm, where the assessee's father is a partner, is **excessive or unreasonable**. These expressions are used in the provisions of section 40A(2)(b) of the Act.

7. Before us, ld. Counsel demonstrated that earlier, the firm rendered the commission linked services before the said business was diverted to the assessee. The payment of commission is essential feature in this line of business of trading of Tiles (Not the Tools).

8. On the other hand, ld. DR for the Revenue relied heavily on the orders of the Assessing Officer and the CIT(A).

9. On hearing both the sides, we find it is a case of addition both on account of ad-hocism and on account of lack of comparable cases. Neither the

Assessing Officer nor the CIT(A) gathered any comparable cases from the open market with similar line of business activity before holding the payments are **excessive or unreasonable**. In our considered opinion, such ad-hocism is unacceptable and unsustainable. Therefore, in our opinion, the grounds no.1, 2 and 3 by the assessee should be allowed in full for want of Assessing Officer failures to discharge the onus. It is a settled legal proposition in matters of principles of provisions to section 40A(2)(b) of the Act, the Assessing Officer is under obligation to prove that the claims made by the assessee are unacceptable. This is a case where the assessee demonstrated the primary onus by furnishing the basic facts. Accordingly, the grounds no.1, 2 and 3 are stand allowed.

10. Ground no.4 relates to the disallowance of Rs.55,386/- u/s 14A of the Act read with Rule 8D(2)(ii) of the I.T. Rules, 1962. While Rs.50,225/- disallowing under clause (ii) of Rule 8D(2) of the Rules, Rs.5161/- was disallowed under clause (iii) of Rule 8D(2) of the Rules. As per the discussion given in para 6.1 to 6.3 of the assessment order, the Assessing Officer made addition of Rs.55,386/-. During the assessment proceedings, the Assessing Officer noted that the assessee earned exempt income by way of dividend and PPF interest amounting to Rs.55,293/-. The CIT(A) directed the Assessing Officer to delete the disallowances and rework the same. The contents of para 6.1 to 6.2 of the order of the CIT(A) are relevant in this regard. For the sake of completeness, the contents of para 6.2 are relevant to extract and the same is as under :-

“6.2 On verification, it is seen that the investment in the PF has also been considered by the AO while calculating the disallowance u/s 14A. The PF

investments are made from the taxable income to claim deduction u/s. 80C. As these investments are made out of the income, the same cannot be held to be out of the borrowed funds. Therefore, the AO is directed to delete these investment and rework the disallowance.”

11. Before us, the assessee filed written submissions stating that the investments in PPF account is for claiming benefit of section 80C of the Act and the same is out of the assessee's own profit and no borrowed funds were utilized in this regard.

12. On hearing both the sides, we find the CIT(A) merely directed to the Assessing Officer to delete the addition and rework the disallowance. In our view, the said direction is fair and reasonable and it does not call for any interference. It is not brought to our notice on the outcome of such direction before the Assessing Officer. Therefore, the Assessing Officer is directed to take a view in this matter at the earliest after considering the existing law on this issue. We do not find any reason why the Assessing Officer should make any disallowance under clause (ii) of Rule 8D(2) of the Rules when the assessee is having adequate interest-free own funds like profits of the year and capital account balances etc. Accordingly, the ground no.4 raised by the assessee is allowed for statistical purposes.

13. Ground no.5 did not press by the ld. Counsel for the assessee at the time of hearing and the same is dismissed as not pressed.

14. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 21st February, 2019.

Sd/-
(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 21st February, 2019

Sujeet

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-6, Pune;
4. The Pr. CIT-5, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक-सदस्य मामला"
/ DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.