



IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA no. 3183/Mum./2018
(Assessment Year : 2013-14)

Chothani Fibers Pvt. Ltd.
S-54, Cotton Exchange Building
Cotton Green, Mumbai 400 033
PAN - AAACC1667Q

..... Appellant

v/s

Income Tax Officer
Ward-14(1)(3), Mumbai

..... Respondent

Assessee by : Shri Tanzil R. Padvekar
Revenue by : Shri Vivek Anand Ojha

Date of Hearing - 05.03.2019

Date of Order - 05.04.2019

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal has been filed by the assessee challenging the order dated 15th March 2018, passed by the learned Commissioner (Appeals)-21, Mumbai, pertaining to the assessment year 2013-14.

2. The dispute in the present appeal is in respect of disallowance of interest expenditure amounting to ₹ 17,25,448.

3. Brief facts are, the assessee, a company, is engaged in the business of interior decorator including consultancy services relating to interior decoration. For the assessment year under dispute, the assessee filed its return of income on 14th March 2014, declaring income of ₹ 1,01,040. In course of assessment proceedings the Assessing Officer noticed that the assessee has availed unsecured loan of ₹ 1,46,95,412, at the interest rate of 18%. On the said loan, the assessee has debited interest of ₹ 17,20,593, in the impugned assessment year. The Assessing Officer observed, as on 31st March 2012, the assessee has made investment with Vinari Construction of ₹ 56,26,400, whereas, in the year under consideration, the assessee has received back an amount of ₹ 81 lakh including income on investment from the said concern. Further, he observed, out of the amount of ₹ 81 lakh received, the assessee has advanced ₹ 75 lakh to Shakira Constructions Pvt. Ltd. and further amount of ₹ 50 lakh to Kalpesh Shah. Whereas, the assessee has not received any interest on these investments while it has paid interest @ 18% on the unsecured loan borrowed by it. Therefore, the Assessing Officer called upon the assessee to explain why the interest expenditure claimed should not be disallowed as it was utilised for advancing interest from loans to others. In response, it was submitted by the assessee that the amounts were invested in real estate projects which were not

completed during the year. Hence, the deposits remained with the concerned parties. It was submitted, since the investments were in real estate projects the income may not be generated in the impugned assessment year but income will be generated in future. Further, it was submitted, the investments are not in the nature of loan but were made in real estate projects which is for the purpose of business. The Assessing Officer, however, did not find merit in the submissions of the assessee and proceeded to compute interest @ 18% on the alleged interest free advance of ₹ 1.26 crore which worked out to ₹ 17,20,593. This amount was added back to the income of the assessee.

4. Though, the assessee challenged aforesaid addition before learned Commissioner (Appeals), however, it was unsuccessful.

5. The learned Authorised Representative submitted, loan to Kalpesh Shah amounting to ₹ 50 lakh was advanced in the year 2010. He submitted, in fact the deposits with Shakira Constructions Pvt. Ltd. and Kalpesh Shah are not in the nature of loan but are investments in real estate projects. Therefore, such investments being for the purpose of business no disallowance out of interest expenditure can be made. The learned Authorised Representative submitted, while considering identical disallowance in assessee's own case for the assessment year 2012-13, learned Commissioner (Appeals) has deleted the

disallowance made by the Assessing Officer. He submitted, assessee regularly invests in real estate projects and earns income there from. Therefore, such investments being part of its business activities, the interest expenditure being connected with such business activities has to be allowed under section 36(1)(iii) of the Act.

6. The learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

7. I have considered rival submissions and perused material on record. From the facts and materials on record it is observed that the assessee in the course of its activities as an interior decorator and consultant in interior decoration makes investments in real estate projects. It also emerges from the facts on record that the investments in Shakira Constructions Pvt. Ltd. and Kalpesh Shah are not in the nature of loan but investments in real estate projects. That being the case, it cannot be said that the investments of ₹ 75 lakh and ₹ 50 lakh are not in connection with assessee's business. The Assessing Officer has himself accepted that out of the investments made in the real estate project of Vinari Construction, the assessee has received an amount of ₹ 81 lakh against the investment of ₹ 56,26,400. Thus, it is a fact on record that the investments made by the assessee in real

estate projects generate income which is offered to tax by the assessee subsequently. This fact has been very clearly dealt with by the learned Commissioner (Appeals) while deciding assessee's appeal on identical issue in assessment year 2012-13. Nothing has been brought on record by the Departmental Authorities to disprove assessee's claim that the investments with Shakira Constructions Pvt. Ltd. and Kalpesh Shah were not in the nature of loans but investments in real estate projects. Only because no income on such investment has been offered in the impugned assessment year, such investments cannot be characterized as interest free loan to disallow a part of the interest expenditure claimed by the assessee. In view of the aforesaid, I delete the addition made by the Assessing Officer. Ground is allowed.

8. In the result, appeal is allowed.

Order pronounced in the open Court on 05.04.2019

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 05.04.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai