

IN THE INCOME TAX APPELLATE TRIBUNAL "E", BENCH MUMBAI
BEFORE SHRI PAWAN SINGH, JM
&
SHRI G. MANJUNATHA, AM
ITA No.5564/Mum/2014
(Assessment Year :2010-11)

S.P. Corporation 65, Sterling Theatre Basement Murzaban Road, Fort Mumbai-400 001	Vs.	ACIT, Range-11(1) Aayakar Bhavan Mumbai-400 020
PAN/GIR No.AAFS1086L		
Appellant)	..	Respondent)

Assessee by	Sonali Godbole
Revenue by	Shri Manoj Kumar Singh
Date of Hearing	11/07/2019
Date of Pronouncement	31/07/2019

आदेश / ORDER

PER G.MANJUNATHA (A.M):

This is an appeal filed by the assessee is directed against order of the Commissioner of Income Tax Appeals-3, Mumbai dated 16/06/2014 and it pertains to the Assessment Year 2010-11. The assessee has raised the following grounds of appeal:-

- 1) *The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in rejecting the Appellant Firm's claim of considering the municipal rateable value as the annual letting value of the house property and instead, considering 10% of the original cost of acquisition as the annual letting value.*
- 2) *The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of 20% of the business promotion expenses claimed by the Appellant by concluding that the expenditure was personal in nature. Having regard to the facts and circumstances of the case, the Appellant submits that the disallowance is unwarranted and requires to be deleted.*
- 3) *Without prejudice to the above ground and in any event, the Appellant submits that the above disallowance is grossly excessive and arbitrary, and the same requires to be reduced substantially.*

4) *The learned Commissioner of Income Tax (Appeal,;) erred in holding that interest expenditure on borrowings utilized for the purposes of the business activities of the Appellant was not allowable under Section 36(I)(iii) of the Act, and in Confirming disallowance of interest expenditure under Section 14A of the Act aggregating to Rs 41,107/- as attributable to borrowings purportedly utilized for acquiring investments, yielding exempt dividend income. Having regard to the facts and circumstances of the case, the Appellant submits that the unwarranted and arbitrary disallowance be deleted.*

5) *Without prejudice to the Appellant's contention that no interest is allocable to the earning of exempt dividend income and in any view of the matter, the Appellant submits that the disallowance computed at Rs41,107/- is arbitrary and grossly excessive and the same requires to be reduced substantially.*

6) *The learned Commissioner of Income Tax (Appeals) erred in upholding disallowance of expenditure under Section 14A of the Act aggregating to Rs. 2,24,037/- towards the earning of dividend income by placing reliance on clause 2(iii) of Rule 8D of the I.T. Rules, 1962 without out appreciating that the*

Appellant had suo-moto disallowed an amount of Rs.64,505/- in the Return of Income furnished. Having regard to the facts and circumstances of the case, the Appellant submits that the unwarranted and arbitrary disallowance be deleted,

7) *Without prejudice to the Appellant's contention that no expenditure is allocable to the earning of exempt dividend income and in any event, the Appellant submits that the disallowance computed at Rs 2,24,037/- is arbitrary and grossly excessive and the same requires to be reduced substantially*

2. The brief facts of the case are that the assessee is a partnership firm engaged in the business of running Cinema House, Hotel and Restaurant and also owners and management of properties, filed its return of income for AY 2010-11 on 08/10/2010 declaring total income of Rs.91,70,318/-. The case has been selected for scrutiny and the assessment has been completed u/s 143(3) of the I.T.Act, 1961 on 29/01/2013, determining the total income at Rs. 1,06,49,860/- by making various additions including disallowance of expenditure incurred in relation to exempt income for Rs. 3,40,029/- determination of ALV of

house property @10% of value of property, for Rs. 8,61,353/-, adhoc disallowance of business promotion expenses of Rs. 2,78,160/-.

3. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee has challenged additions made by the AO towards determination of ALV of house property at 10%, of the original cost of acquisition of asset, Adhoc disallowance of business promotion expenses amounting to Rs. 2,78,160/- and disallowance of expenditure incurred in relation to exempt income u/s 14A r.w.r.8D(ii) of the I.T. Rules 1962. The Ld. CIT(A), for a detailed reasons recorded in its appellate order dated 16/06/2014 partly allowed appeal filed by the assessee, where sustained additions made by the AO towards determination of ALV of house property @10% of original value of property however, scaled down additions made by the AO towards Adhoc disallowance of business promotion expenses and allowed partial relief in respect of disallowance of expenditure incurred in relation exempt income, where he has sustained 15% of total expenditure incurred on the salary of Shri. Sunil Nair amounting to Rs. 64,505/-, by following his predecessor CIT(A) order for AY 2009-10. Aggrieved by the Ld. CIT(A), order, the assessee is in an appeal before us.

4. The first issue that came up for our consideration from ground No.1 of assessee appeal is determination of ALV of house property @10% of original cost of property. The assessee firm had rented out its flat situated

at Bakhtavar Building, Opp. Colaba Post Office Mumbai to Ms. Simone Tata at Rs. 600/- per month from AY 2005-6 to 2008-09 and ALV of the property was taken at Rs. 12,32,505/- by the AO. Similarly, for the year under consideration by following his finding in earlier year determined ALV of the property at Rs. 12,30,505/- and after allowing standard deduction at 30% made additions of Rs. 8,62,243/- under the head income from house property..

5. The Ld. AR for the assessee, at the time of hearing submitted that this issue is squarely covered in favour of the assessee by the decision of ITAT, Mumbai 'E' Bench in assessee's own case for AY 2009-10 where, under identical set of facts, the Tribunal has set aside the issue to the file of the AO to determine ALV of the house property in light of decision of Hon'ble Jurisdictional High Court in the case of CIT vs. TIP Top Typography (368 ITR 330). Facts being identical for the year under consideration, the issue may be set aside to the AO to decide the ALV of the house property on the basis of findings of the Tribunal for AY 2009-10. The Ld. DR, on the other hand fairly accepted that this issue is covered in favour of the assessee by the decision of ITAT for AY 2009-10.

6. We have heard rival contentions and perused the material available on record. We find that the Tribunal has considered identical issue for AY 2009-10 and after considering relevant facts and also by following the decision of Hon'ble Bombay High Court in the case of CIT vs. TIP TOP Typography(supra), has restored the issue to the file of the AO for

Denovo adjudication in light of findings of the Hon'ble Bombay High Court that the AO is not bound by Municipal rateable Value, but he can proceed to determine ALV of the house property on the basis of market rate prevailing as on the date. The relevant findings of the Tribunal are as under:-

24. In the case on hand before us, the Assessing Officer miserably failed to make any enquires in respect of the property i.e how much is the standard rent, how much is the fair rent, how much is the municipal rateable value at that point of time. The Assessing officer also did not bring on record any comparable instances of market rent of the property and therefore in view of the decision of the Jurisdictional High Court in the case of CIT v. Tip Top Typography (supra), the Assessing Officer without under taking the exercise contemplated by the Rent control legislation for fixing of standard rent is not justified in applying any other formula or method to determine the ALV at 10% of the cost of acquisition. Hence the method adopted by the Assessing Officer i.e. 10% of the cost of the acquisition as ALV is against the principle laid down by the Jurisdictional high court. Hence, the same is set-aside. As the Assessing Officer failed to determine the standard rent and no proper enquires were made to determine the ALV as per the Rent Control Act, we feel it appropriate to restore this matter to the file of the Assessing Officer who shall determine the standard rent as per the Rent Control Act and fair rent by conducting enquiries to assess the ALV of the property denovo keeping in view the guidelines set out by the Hon'ble Jurisdictional High Court in the case of CIT v. Tip Top Typography (supra). Thus, we restore this matter to the file of the Assessing officer for denovo adjudication. All contentions are left open. The Assessing officer shall provide opportunity of being heard to the assessee and to furnish fresh evidences and submissions in support of its contentions. This ground is allowed for Statistical purpose.

7. In this view of the matter and consistent with view taken by the Co-ordinate Bench in assessee's own case for earlier year, we restore this issue to the file of the AO for denovo adjudication in light of findings of the Tribunal on the basis of decision of Hon'ble High Court in the case of CIT vs TIP TOP Typography (Supra).

8. The next issue that came up for our consideration from ground No. 2 and 3 of assessee's appeal is Adhoc disallowance of business promotion expenses. The AO has disallowed business promotion expenses amounting to Rs. 2,78,160/- on the ground that a similar disallowance has been made for AY 2006-07 by considering the fact that the assessee has debited various business promotion expenses which are in personal nature like hotel expenses, entertainment expenses, gifts and restaurant bills and by no stretch of imagination it can be construed to be incurred for business purpose.

9. The Ld. AR for the assessee submitted that an identical issue has been considered by the Tribunal for AY 2009-10 where under identical set of facts deleted additions made by the AO and sustained by the Ld. CIT(A) towards business promotion expenses, on the ground that there is no personal element in expenditure incurred by Mr. Neol Tata and whatever expenditure incurred through its credit card is on account of business purpose.

10. Having heard both sides and considered material on record, we find that the Tribunal has considered identical issue and after considering relevant facts came to the conclusion that considering nature of business of the assessee expenditure incurred towards business promotion is in significant and also it is a customary that the assessee which is in the entertainment business has to incur certain expenditure for the

customers/clients to keep them in good relations. The relevant findings of the Tribunal are as under:

36. We have heard the rival submissions and perused the orders of the authorities below. The only reason given by the Assessing Officer for treating the business promotion expenses as personal expenses of Mr. Noel Tata is that the payments were made through his Personal Credit card. Assessing officer treated the expenditure as personal expenditure of Mr. Noel Tata and the Ld.CIT(A) considering the submissions of the assessee restricted the disallowance to 20% as according to him there may be some personal element in the expenditure incurred. Before us, Ld. Counsel for the assessee submitted that wherever the expenditure incurred by Mr. Noel Tata for the assessee firm it has been debited only to assessee firm and wherever Mr. Noel Tata incurred on his personal credit cards it has been debited to his account and reflected in his Income Tax Returns. It is also submitted that the expenditure towards business promotions when compared to the income rendered by the assessee from business is insignificant and it is a customary practice that the assessee which is in the entertainment business has to incur certain expenditure for the customers/clients to keep good relations. We find considerable merit in the submissions of the assessee. In the circumstances, accepting the submissions of the assessee we delete the disallowance made towards business promotion. Ground No.4 is allowed.

11. In this view of the matter and consistent with view taken by the Co-ordinate bench, we direct the AO to delete the additions towards business promotions expenses.

12. The next issue that came up for our consideration from ground No.4 to 7 of the assessee's appeal is disallowance of expenditure incurred in relation to exempt income. The AO has disallowed expenditure incurred in relation to exempt income towards interest expenditure and other expenses under Rule 8D(2)(ii) and (iii) for Rs. 3,40,027/- on the ground that although assessee claims have not incurred any expenditure, but in view of the decision of Hon'ble Bombay High Court in the case of Godrej & Boyce manufacturing company Pvt.Ltd. vs. DCIT (supra), it is

mandatory to determine expenses incurred in relation to exempt income under the prescribed method provided u/s Rule 8D(2)(ii) of I.T.Rules, 1962. Accordingly, he has determined disallowance of Rs. 3,40,029/- in respect of interest expenditure and 0.5% of the average value of the investments.

13. The Ld. AR for the assessee submitted that this issue is also covered in favour of the assessee by the decision of ITAT for AY 2009-10, where under identical set of facts, the Tribunal has partly allowed the ground in favour of the assessee in respect of interest expenses disallowed under Rule 8D(2)(ii) however, in respect of other expenses, under Rule 8D(2)(iii), The Tribunal has confirmed additions made by the AO.

14. Having heard both sides and considered material on record, we find that in so far as disallowance of interest expenditure under Rule 8D(2)(ii), the Tribunal has recorded categorical finding in light of the decision of Honb'le Bombay High Court in the case of CIT vs. Reliance utility and power limited 313 ITR 340 and CIT vs HDFC Bank 363 ITR 505 that the assessee is having sufficient own funds in form of share capital and reserves in excess of investments in shares and securities which yield exempt income and hence, question of disallowance of interest expenditure does not arise. This year, the assessee has made out a case with necessary details that its own funds is in excess of investments in shares, therefore, no part of interest bearing funds has been used to

make investments in shares consequently, no disallowance could be made in respect of interest expenditure. Accordingly, we direct the AO to delete additions made towards proportionate interest expenditure under Rule 8D(2)(ii) I.T. Rules 1962. In so far as disallowance of expenditure under Rule 8D(2)(iii) @ 0.5% of average value of investments, we find that the Tribunal has sustained additions made by the AO towards other expenses on the ground that no convincing arguments have been made either before lower authorities or before us. Facts remain unchanged. The Ld. AR for the assessee failed to controvert the findings of facts recorded by the Tribunal is incorrect with any evidences. Accordingly, we are of the considered view that there is no error in the findings of fact recorded by the CIT(A) in respect of disallowance of other expenses being 0.5% of average value of investments and hence, the same is confirmed.

15. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on this 31/07/2019

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-

(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 31/07/2019
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai