

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA No.565/PUN/2017
निर्धारण वर्ष / Assessment year : 2012-13

The Dy. Commissioner of Income Tax,
Circle – 2, Jalgaon.

..... अपीलार्थी /
Appellant.

बनाम v/s

Tapi Prestressed Products Limited,
Anjale Shivar, Tal: Yawal,
Jalgaon – 425 201.

..... प्रत्यर्थी /
Respondent

PAN : AAAC6669D.

Assessee by : Shri Sanket Joshi.

Revenue by : Shri Vodan Raj Singh.

सुनवाई की तारीख / Date of Hearing : 02.08.2019	घोषणा की तारीख / Date of Pronouncement: 12.09.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (A) – 2, Nashik dated 29.12.2016 for the assessment year 2012-13.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a company engaged as Civil Contractor. Assessee filed its original return of income for A.Y. 2012-13 on 30.09.2012 declaring total income of Rs.5,97,32,548/-. Subsequently, assessee revised the return of income on 31.03.2014 wherein the total income was revised to

Rs1,33,62,455/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.27.03.2015 and the total income was determined at Rs.10,12,60,322/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.29.12.2016 (in appeal No.Nsk/CIT(A)-2/186/15-16) granted partial relief to the assessee. Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us and has raised the following grounds :

“1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of Rs.69,37,663 u/s14 r.w.Rue 8D by relying on the decision of CIT Vs HDFC Bank (2014) 16 DTR 140, which has not become final. Further, the assessee has investment in the companies, whose income will/shall form part of the exempt income.

2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of Rs.10,62,382/- u/s 36(1)(iii) without appreciating the fact that the assessee has failed to prove the business nexus of the loans given to the sister concern.

3. The order of the Ld.CIT(A)-2, Nashik be cancelled on the above issues and that of the A.O be restored.”

3. First ground is with respect to disallowance u/s 14A of the Act.

3.1. During the course of assessment proceedings, AO noticed that assessee had investments to the tune of 10.88 crores (rounded off). Assessee was asked to file the working of the disallowance u/s 14A of the Act which was worked out at Rs.40,307/-. The working of the assessee was not found acceptable to the AO. AO thereafter worked out the disallowance u/s 14A r.w. 8D of I.T. Rules at Rs.69,37,663/- and made its addition. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who deleted the disallowance made by the AO by noting the fact that assessee was having sufficient interest free funds and therefore no interest expenditure can be said to have incurred in respect of investment in the shares of the companies and for which

reliance was also placed on the decision of Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Limited (2014) 160 DTR 140. Ld.CIT(A) also noted that assessee had not earned any exempt income in respect of the investment in shares and that in the absence of exempt income, no disallowance u/s 14A of the Act is called for. He thus deleted the addition made by the AO.

Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us.

4. Before us, Ld. D.R. supported the order of AO. Ld.A.R. on the other hand, reiterated the submissions made before AO and Ld.CIT(A) and further submitted that since assessee has not earned any exempt income, no disallowance u/s 14A of the Act is called for. He thus supported the order of Ld.CIT(A).

5. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to disallowance u/s 14A of the Act. It is assessee's contention that no exempt income has been earned by the assessee and that the assessee has sufficient interest free funds and therefore no disallowance on account of interest expenses can be made. The aforesaid contentions of the assessee have been accepted by the Ld.CIT(A) and it is not in dispute. The Hon'ble Bombay High Court in the case of HDFC Bank Limited (supra) has held that when the own funds are more than investments then no disallowance of interest u/s 14A of the Act is called for. Before us, Revenue has not placed any contrary binding decision in its support. As far as the disallowance u/s 14A of the Act when no exempt income is earned by assessee is concerned, we find that Hon'ble Apex Court in the

case of PCIT Vs. Oil Industry Development Board reported in (2019) 103 Taxmann.com 326 (SC) had dismissed the SLP filed by the Department against the Hon'ble High Court's decision which had upheld Tribunal's order that in the absence of any exempt income, disallowance u/s 14A of any amount was not permissible. Considering the aforesaid facts and in the light of the decisions cited hereinabove, we find no reason to interfere with the order of Ld.CIT(A). Thus, the ground No.1 of Revenue is dismissed.

6. 2nd ground is with respect to disallowance u/s 36(1)(iii) of the Act.

6.1. During the course of assessment proceedings, AO has noted that assessee has given interest free advance of Rs.54,28,625/- to its related parties namely, M/s. M.K. Kotecha Engg and Contractor and M/s. M.K. Kotecha Prestressed Products Pvt. Ltd. AO also noticed that assessee had debited interest payment on loans of Rs.12 crores (rounded off). AO thereafter worked out the average rate of interest on the borrowings at Rs.19.5%. Applying the aforesaid rate on the amount advanced interest free by the assessee to its related parties, he worked out the disallowance at Rs.10,62,382/- and made its addition. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who after noting the fact that Share Capital of the assessee was Rs.4.42 crores and Reserves and Surplus was Rs.85.94 crores and had during the year earned net profits of Rs.5.85 crores concluded that the interest free funds available with the assessee were much more than amount advanced of Rs.54.28 lakhs. He therefore relying on the decision of Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities & Power Limited reported in (2009) 313 ITR 340 (Bom), deleted the addition.

Aggrieved by the order of Ld.CIT(A), Revenue is now in appeal before us.

7. Before us, Ld. D.R. supported the order of AO. Ld.A.R. on the other hand, reiterated the submissions made before lower authorities and submitted that assessee has sufficient interest free funds in the form of Share Capital and Reserves and Surplus, which are much more than the amounts advanced by the assessee to its related parties and in such a case, presumption is that the amounts advanced are from interest free funds and not from borrowed funds and therefore no disallowance is called for in the present case. He thus supported the order of Ld.CIT(A).

8. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to the disallowance u/s 36(1)(iii) of the Act. Before us, it is assessee's contention that the availability of interest free funds in the form of Share Capital, Reserves and Surplus are much more than the amount advanced by the assessee to its related parties. The aforesaid contention is not disputed by Revenue. We find that Ld.CIT(A) relying on the decision of Hon'ble Bombay High Court in the case of Reliance Utilities (supra) held that when interest free funds are more than the amount advanced, then the presumption is that the amount advanced are out of interest free funds. Before us, Revenue has neither pointed out any contrary binding decision in its support nor placed any material to controvert the findings of Ld.CIT(A). Considering the totality of the aforesaid facts, we find no reason to interfere with the order of Ld.CIT(A), and thus, the ground No.2 of the Revenue is dismissed.

9. **In the result, the appeal of Revenue is dismissed.**

Order pronounced on 12th day of September, 2019.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 12th September, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-2, Nashik.
4. Pr. CIT-2, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.