

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, न्यायिक सदस्य

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 6963/Mum/2018

(निर्धारण वर्ष / Assessment Year 2001-02)

आयकर अपील सं./ ITA No. 6964/Mum/2018

(निर्धारण वर्ष / Assessment Year 2002-03)

Velvet Holdings Private Limited 32, Madhuli Apartment, Dr. A.B. Road, Worli, Mumbai-400 018	बनाम/ Vs.	The Dy. Commissioner of Income Tax, Central Circle 4(3), Mumbai
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAACV4445R		

अपीलार्थी की ओर से / Appellant by	:	Shri Vijay Mehta, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Dr. P Daniel, Special Counsel for Dept.

सुनवाई की तारीख / Date of hearing:	18.12.2019
घोषणा की तारीख / Date of pronouncement :	18.12.2019

आदेश / O R D E R

महावीर सिंह, न्यायिक सदस्य/

PER MAHAVIR SINGH, JM:

These appeals of the assessee are arising out of the orders of Commissioner of Income Tax (Appeals)-52, Mumbai [in short CIT(A)], in Appeal Nos. CIT(A)-52/DC, CC 4(3)/IT-667&668/17-18 even dated 17.09.2018. The Assessments were framed by



the Asst. Commissioner of Income Tax, Circle-31, Mumbai (in short ACIT/ AO) for the AYs. 2001-02 & 2002-03 vide orders dated 18.03.2004, 20.03.2006 respectively under section 144 read with section 147 of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only common issue raised in these two appeals by assessee is as regards to the order of CIT(A) confirming the action of the AO in making disallowance of interest expenditure and charging of interest under section 234A, 234B and 234C of the Act.

3. At the outset, the learned Counsel for the assessee first of all drew my attention to the additional ground raised. The relevant ground raised in both the years is common and the grounds raised read as under: -

"2001-02

1. The learned Commissioner of Income tax (Appeals) ought to have appreciated that the total income of the Appellant was incorrectly recorded by the Assessing Officer as ₹34,009/- instead of correct amount of ₹(-) 34,009/- as per order Giving effect to the order of the Ld. CIT(A) dated 09.05.2013.

2002-03

1. The learned Commissioner of income tax (Appeals) ought to have appreciated



that the total income of the Appellant was incorrectly recorded by the Assessing Officer as ₹62,816/- instead of correct amount of ₹(-) 62,816/- as per order Giving effect to the order of the Ld. CIT(A) dated 09.5.2013."

4. It was contended that assessee has earned income by way of interest and this was offered by assessee for assessment and assessment was completed on that very basis but the AO has incorrectly recorded total income as positive in both the years as against assessed loss as is evident from grounds raised above. Hence, assessee requested that for admission of the additional grounds and adjudication of the same. The facts and circumstances are exactly identical in both the years and hence, a common order in both the years is being passed.

5. In the present case, the assessment was originally completed on 18.03.2004 & 20.03.2006 for AY 2001-02 and 2002-03 respectively under section 144 r.w.s. 147 of the Act determining the total income of the assessee on estimated basis at ₹ 6,61,137 & ₹ 6,60,000/- for AY 2001-02 and 2002-03 respectively. In the first round of litigation, the issues were then assailed before the CIT(A) wherein various details and information were submitted. These details were later remanded by the CIT(A) for verification and determination of income on the basis of said details. The assessee submitted the computation of income disclosing the total income of ₹ (-) 11,54,021/- in AY 2002-03 & ₹ (-) 11,30,964 in AY 2001-02. However, in the above referred Remand Report, after



verification of details and information, the Assessing Officer stated that the interest expenses and audit fees aggregating to ₹ 10,96,955/- & ₹ 10,91,205/- for AY 2001-02 & 2002-03 respectively were not allowable as deduction, Accordingly, the total income of the assessee was determined in the said Remand Report at ₹ (-) 34,009 & ₹ (-) 62,816/- for AY 2001-02 & 2002-03 respectively.

6. The CIT(A) upheld the working of the Assessing Officer and disposed off the appeal vide his order dated 20.02.2013 in both the years. The orders giving effect to the said appellate order was passed on 09.05.2013 by the AO. However, in the said order, inadvertently and due to oversight, the Assessing Officer determined the income of the assessee at ₹34,009 instead of ₹(-) 34,009/- in AY 2001-02 & ₹ 62,816/- instead of ₹ (-) 62,816/- in AY 2002-03. Since the issue of disallowance of interest expenses was decided against the assessee, the said issue was challenged in appeal before the Tribunal; who vide its order dated 24.12.2014 in ITA No.2805/Mum/2013 had set aside the issue to the file of the Assessing Officer.

7. The AO passed the orders under section 143 r.w.s 254 of the Act dated 29.06.2016 in both the years disallowing the interest expenses and once again inadvertently determined the total income at ₹ 34,009/- (instead of correct working of ₹ (-) 34,009/-) as per order giving effect dated 09.05.2013 for AY 2001-02 & ₹ 62,816/- as per order giving effect dated 09.05.2013 (instead of correct working of Rs. (-) 62,816/-) for AY 2002-03.



8. I note that the above mistake has occurred in the orders and I direct the AO to adopt the correct figure as is evident from the orders. I direct the AO accordingly.

9. I note that the assessee has challenged the disallowance of interest expenses. Since, in spite of disallowance of interest expenses, the assessed income remains at loss, and that there is no tax effect, the said ground is not pressed by the learned counsel for the assessee. Hence, the same is dismissed as not pressed. Similarly, the ground no.2 and 3, with respect to levy of interest u/s. 234A, 234B and 234C of the Act is also not pressed due to NIL tax impact. Hence, this is also dismissed as not pressed.

10. In the result, both the appeals of the assessee are allowed partly as indicted above.

Order pronounced in the open court on 18.12.2019.

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 18.12.2019

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai