

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri Chandra Poojari, AM & Smt.Beena Pillai, JM

ITA No.1453/Bang/2017: Asst.Year 2013-2014

The Income Tax Officer Ward 4(1)(2) Bangalore.	Vs.	M/s. Kirloskar Electric Company Limited P.B.No.5555, Malleswaram West Bangalore – 560 055. PAN : AABCK2721Q.
(Appellant)		(Respondent)

Appellant by : Sri.Muzaffar Hussain, CIT-DR
Respondent by : Sri.Sachin Mehta, CA

Date of Hearing : 30.01.2020	Date of Pronouncement : 18.02.2020
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ORDER

Per Smt.Beena Pillai, JM :

Present appeal has been filed by Revenue against order dated 27/03/17 passed by Ld. CIT (A)-4, Bangalore on following grounds of appeal:

“1. The Order of the Ld. CIT (A), in so far as it is prejudicial to the interest of the Revenue, is opposed to law and the fact and circumstances of the case.

2. On facts of the case, the Ld.CIT (A) has erred in holding that in case the nexus between the investment and interest bearing funds is not established, section 14A r.w.r 8D has not applicability at all, when it is stated in Circular No 14 of 2001 and 5 of 2014 dated 11/02/2014 that the disallowance u/s 14A r.w.r 8D has to be made even when the tax payer on a particular year has not earned any exempted income.

3. On facts of the case, the Ld. CIT (A) is not justified in deleting the 14A addition made under Rule 8D when the AO has rightly made the disallowance after analyzing the investment portfolio and the balance sheet given by the assessee.

4. On facts of the case, the Ld. CIT(A) is not justified in deleting the addition made by the AO on account of disallowance u/s 36(1)(iii) of the Act amounting to Rs. 16,55,46,570/- despite the fact that the assessee has not proved the business expediency and also the assessee was not having sufficient funds to extend interest free funds for interest free advances to its sister concerns.

5. On facts of the case, the Ld. CIT(A) is not justified in restricting the disallowance to 12% of Rs.23,18,77,978/- (being 15% of the investment outstanding in the year) towards capitalization of interest on borrowed capital applied towards acquiring the shares of M/s Kirsons BV despite the fact that the assessee did not have sufficient cash reserves of its own.

6. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT (A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.

Brief facts of the case are as under:

2. Assessee is a company engaged in the business of manufacturing and trading and selling of voters, alternators, traction equipments, Transformers, DG set circuit breaks/starters/contractor's. It filed its return of income for year under consideration on 29/11/13 declaring nil income under normal provisions of act. Case was selected for scrutiny and statutory notice under section 143 (2) was issued to assessee, subsequently notice under section 142 (1) along with questionnaire was issued. Representative of assessee appeared before Ld.AO and filed requisite details as called for.

2.1. As tax payable under normal provisions of the act was higher than that was payable under section 115 JB, Ld.AO after perusal of details filed, completed the assessment by determining total income of assessee at Rs.31,11,79,724/- under normal provisions of the Act by making following additions:

- Disallowance under section 14 A read with rule 8D (2) (ii) (iii) Rs. 32,218/-
- Disallowance of notional interest on loans and advances at 12% to related parties - Rs.1,00,95,200/-
- Disallowance of notional interest interest on capital investment -Rs.16,55,46,570/-
- Disallowance of prior period expenses -Rs. 22,67,000/-

Aggrieved by additions made by Ld.AO assessee preferred appeal before Ld. CIT (A).

2.2. Ld.CIT (A) while considering the aforesaid disallowances, deleted addition in respect of notional interest on loans and advances amounting to Rs.1,00,95,200/- and in respect of notional interest on capital investment, Ld.CIT(A) determined percentage of borrowings to the net worth of company at 39.84%. After considering the various business expenditure is, Ld.CIT(A) and attributed 15% of investments to be diverted out of the total borrowed capital towards acquiring shares of M/s Kirsons BV.

As regards disallowed and 14 A disallowance Ld.CIT (A) deleted addition as he was of the opinion that no fresh loans were taken during the year under consideration that could be directly attributed to tax free income earned by assessee and therefore no interest could be attributable to taxable income. The only addition confirmed by Ld.AO was in respect of disallowance prior period expenses .

Aggrieved by order passed by Ld.CIT (A), revenue is in appeal before us now.

3. Ld.CIT DR submitted that **Ground No. 1** is general in nature and therefore do not require any adjudication.

3.1. Ground No. 2-3&5 is in respect of addition deleted on account of rule 8D (ii) (iii) of section 14 A.

Ld.AR at the outset submitted that exempt income earned during the year was Rs.19,329/- excluding taxable dividend of Rs.5,61,543/- against which assessee has made *suo moto* disallowance.

3.1.2. It has been submitted that identical issue also shows during year 2010-11 to 2012-13 both sides submitted that common issues relates to disallowance of interest expenses related to investment made in foreign subsidiary being M/s.Kirsons BV, Netherlands. It has been submitted that this ground has been alleged by revenue in Ground No.5. Therefore this necessary that we deal with Ground No.5 first.

3.2.Ground No.5 has been raised by revenue challenges relief granted by Ld.CIT (A) by restricting disallowance to 12% of Rs.23,80,77,978/- towards capitalisation of interest on borrowed capital applied for acquiring shares of M/s.Kirsons BV, Netherlands. Both sides submitted that the issue stands squarely covered by order of this tribunal in assessee's own case for assessment year 2010-11 to 2012-13 vide order dated 23/10/19, wherein this *Tribunal* set aside the issue back to Ld.CIT(A), by observing as under:

“10. We heard the parties on this issue and perused the record. A careful perusal of the order passed by the AO on this issue would reveal that the AO has taken the view that the interest pertaining to the investments made in subsidiary companies is required to be capitalized, meaning thereby, the questions on

(a) existence of commercial expediency or not and
(b) diversion of borrowed funds

are not the relevant issues here. Hence the actual question that arises on this issue is whether the AO was justified in holding that the interest pertaining to the investments made in subsidiary company is required to be capitalized or not? The AO, nowhere, states that the investments in subsidiary companies should be considered as for non-business purposes. We notice that the Ld.CIT(A) has not examined this question, but mis-directed himself by presuming that the disallowance out of interest expenses have been made on account of diversion of borrowed funds for non-business purposes. The Ld A.R also advanced his arguments on the discussions made by Ld.CIT(A). In effect, the real question stated above has not been addressed by Ld.CIT(A) and also by both the parties. Hence we are of the view that this issue requires fresh examination at the end of Ld.CIT(A). Accordingly, we set aside the order passed by Ld.CIT(A) on this issue and restore this issue to his file for examining the question as to whether the AO was justified in holding that the interest pertaining to investment made in M/s.Kirsons B V is required to be capitalized or not? After affording adequate opportunity of being heard, the Ld CIT(A) may take appropriate decision in accordance with law.”

3.2.1. As there is no change in the facts for the year under consideration, we also direct Ld.CIT (A) for examining the question as to whether assessing officer was justified in holding that interest pertaining to investment made in M/s.Kirsons BV Netherlands, is required to be capitalised or not. Needless to say that proper and adequate opportunity of being heard should be granted to assessee in accordance with law. Ld.CIT (A) shall then pass a detailed order on merits.

Accordingly ground No. 5 raised by revenue stands set aside to Ld.CIT (A) with aforestated directions.

3.3. Coming to **Grounds 2-3** it is observed that this tribunal while deciding the issue in assessee's own case for assessment year 2010-11 to 2012-13 vide order dated 23/10/19 has

restored this issue to the file of Ld.CIT(A) for examining it afresh, on the question of capitalisation of interest relatable to investments. Following the same, we set-aside this issue to Ld.CIT (A) with similar directions.

Accordingly these grounds raised by revenue stands allowed for statistical purposes.

3.4.Ground No. 4 raised by revenue is in respect of addition having deleted on account of disallowance under section 36 (1) (iii) amounting to Rs.16,55,46,570/-.

3.4.1. Ld.DR submitted that assessee had not established the business expediency and also was not having sufficient funds to advance such loans to its sister concerns.

3.4.2. Ld.AR on the contrary, placed reliance upon order passed by Ld.CIT (A).

3.4.3. We have perused submissions advanced by both sides in the light of records placed before us.

Even before us assessee has not produced any documents in support of its claim. It has now been submitted that it is a business advance which has not been analysed by authorities below. Under such circumstances we direct Ld.CIT (A) to revisit the issue again having regards to observations of Ld.AO. Needless to say that assessee shall be granted proper opportunity of being represented in accordance with law.

Accordingly this ground raised by revenue stands allowed for statistical purposes.

In the result appeal filed by revenue stands allowed for statistical purposes.

Order pronounced on this 18th day of February, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(Smt.Beena Pillai)
JUDICIAL MEMBER

Bangalore ;
Dated : 18th February, 2020.

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-4, Bengaluru.
4. The Pr.CIT-4, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore