



ITA No.4323/Mum/2018
M/s. Devkrupa Build Tech Ltd.
Assessment Year:2012-13

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.4323/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT-3(1)(1) Room No.607, 6 th Floor Aaykar Bhavan Mumbai-400 020	बनाम/ Vs.	M/s. Devkrupa Build Tech Ltd. 3 rd Floor, Free Press Marg Nariman Point Mumbai-400 021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACCD-5467-B		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Viral Doshi-Ld. AR
Revenue by	:	Ms. Jyoti Lakshmi Nayak-Ld.DR

सुनवाई की तारीख/ Date of Hearing	:	18/02/2020
घोषणा की तारीख / Date of Pronouncement	:	12/03/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2012-13 contest the order of Ld. Commissioner of Income-Tax (Appeals)-8, Mumbai, [in short referred to as ‘CIT(A)’], Appeal No. CIT(A)-8/IT-05/15-16 dated 17/04/2018 on following grounds: -

- (i) Whether on the facts and in the circumstances of the case, the Ld. CIT (A) was correct in deleting the disallowance of Rs.4,32,80,710/- made by the AO u/s.40(a)(ia) without appreciating the fact that the assessee has not deducted &



deposited TDS on the interest paid violating the provisions of sec 40(a)(ia) of the IT. Act, 1961?

(ii) Whether on the facts and in the circumstances of the case, the Ld. CIT (A) was right in deleting the adjustment of Rs.5,25,00,000/- made by the AO in relation to such amount transferred to Debenture Redemption Reserve (DRR) while computing the Book Profit u/s 115JB of the IT. Act, even though the amount transferred to DRR represents appropriation of profit and is not a charge on profit & loss account qualifying for deduction, as held by Hon'ble Delhi High Court in the case of SREI Infrastructure Finance Ltd vs Asstt. Commissioner of Income Tax (ITAX 371 & 372/2012 dated 13/02/2015)?

(iii) Whether on the facts and in the circumstances of the case, the Ld. CIT (A) was right in deleting the adjustment of Rs.5,25,00,000/- made by the AO in relation to such amount transferred to Debenture Redemption Reserve (DRR) while computing the Book Profit u/s 115JB of the I.T. Act, even though such liability is on capital account not eligible for deduction, as noted by Hon'ble ITAT, Mumbai in the case of JSW Energy Ltd Vs ACIT Circle 11(5), Mumbai (2013) 34 Taxmann.com 152 (Mumbai Tribunal)

As evident, the subject matter of present appeal before us is-(i) Disallowance u/s. 40(a)(ia) for Rs.432.80 Lacs; (ii) Adjustment of Debenture Redemption Reserve of Rs.525 Lacs while computing book profits u/s. 115JB of the Act.

1.2 We have carefully heard the rival submissions and perused the relevant material on record. We have also deliberated on judicial pronouncement as cited before us. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

2.1 Facts on record would reveal that the assessee being resident corporate assessee stated to be engaged as a builder and developer was assessed for year under consideration u/s 143(3) on 30/03/2015, wherein the income under normal provisions was determined at Rs.475.85 Lacs after sole addition u/s 40(a)(ia) for Rs.432.80 Lacs. The said disallowance was made in the view of the fact that the assessee did not pay TDS before due date of filing of return on interest payment of Rs.432.80 Lacs. Although the assessee initially disallowed the same



while filing original return of income but claimed it in the revised return of income, *inter-alia*, by relying upon CBDT Instruction No.275/201/95-IT(B) dated 29/01/1997 and the decision of Hon'ble Supreme Court rendered in **Hindustan Coca Cola Beverages Pvt. Ltd. V/s CIT (293 ITR 226)**. Reliance was also placed on the benefit granted by second proviso to Section 40(a)(ia) as inserted by Finance Act, 2012 w.e.f. 01/04/2013 since the deductee had already included the relevant income in his total income and paid due taxes against the same. However, disregarding the same, the amount of Rs.432.80 Lacs was disallowed.

2.2 The Ld. CIT(A), relying upon Tribunal's order for AY 2012-13 in the case of assessee's group concern namely **M/s Urvi Build-tech Pvt. Ltd.** in ITA No.3252/Mum/2016 dated 28/12/2016, directed Ld. AO to delete the disallowance subject to verification of the fact that the deductee had shown the amounts in their respective tax returns and had paid the due taxes. Aggrieved, the revenue is under further appeal before us.

2.3 Upon due consideration of impugned order on this issue, we find that Ld. CIT(A) has merely followed the decision of this Tribunal for same Assessment Year rendered in the case of assessee's group concerns. Therefore, no infirmity could be found in the same. The Ld. DR could not point out any distinguishing feature. No contrary decision has been placed on record. Therefore, we do not find any infirmity in the impugned order, on this issue. Ground No.1 stand dismissed.

3.1 The second issue pertains to disallowance of Debenture Redemption Reserve (DRR) while computing Book Profits u/s 115JB. It transpired that the assessee claimed adjustment of Rs.525 Lacs, being amount transferred to *Debenture Redemption Reserve*. The Ld. AO



denied the same in view of the fact that the same was not credited to Profit & Loss Account.

3.2 Before Ld. CIT(A), the assessee submitted that DRR was not a reserve but provision for ascertained liabilities. Reliance was placed, *inter-alia*, on the decision of this Tribunal rendered in the case of assessee's holding company namely **Ackruti City Limited (ITA No.7696/Mum/2014)**. The attention was drawn to Sec. 117C of the Companies Act and the circular of Ministry of Law, Justice and Company affairs, Government of India Circular No.09/2002 dated 18/04/2002 which would mandate creation of DRR. Reliance was also placed in the decision of Hon'ble Supreme Court in **National Rayon Corporation Ltd. V/s CIT (227 ITR 764)** to draw the distinction between reserve and provision.

The Ld. CIT(A) relying upon the decision of this Tribunal in in the case of assessee's holding company namely **Ackruti City Limited (ITA No.7696/Mum/2014 dated 30/06/2017)** directed Ld. AO to allow the deduction of the same while computing Book Profits u/s 115JB. Aggrieved, the revenue is under further appeal before us.

3.3 The Ld. DR pointed out that the assessee issued unsecured, redeemable, optionally converted debentures for Rs.15 Crores. The debentures were redeemable after 5 years with *put and call* option. There was no basis to create a provision of Rs.5.25 Crores in the first year itself. It has also been submitted that the said appropriation has been created in the Balance Sheet and not routed through Profit & Loss Account. The Ld. AR, on the other hand, submitted that Sec.117C of Companies Act mandate assessee to create DRR for redemption of such



debentures from out of its profits every year until such debentures are redeemed. The amount so credited could not be utilized except for the purpose of redemption of debentures.

3.4 Upon careful consideration, we find substance in Ld. AR's submissions. The undisputed fact that emerges are that the assessee has issued certain unsecured, redeemable, optionally converted debentures for Rs.15 Crores and created DRR of Rs.5.25 Crores during the year under consideration. The debentures would be in the nature of loans, the redemption of which would entail company's resources. Section 117C of the Companies Act mandate the assessee to provide for DRR for the purpose of redemption of debentures. Therefore, it could not be said that DRR was mere appropriation or provision for unascertained liability since the assessee had definite liability to redeem the debentures. Since the debentures are with *put and call* option then naturally the creation of DRR would require some kind of estimation since it would not be known in advance that what quantum of debentures would be redeemed at different points of time. Therefore, creation of DRR, due to terms of debentures, would involve some kind of estimation. Nevertheless, the same would be towards discharge of ascertained liability only.

3.5 We find that similar favorable view has been taken by the Tribunal in case of assessee's holding company **DCIT V/s Ackruti City Ltd. (ITA No. 7696/Mum/2014 dated 30/06/2017)** wherein the coordinate bench has followed the decision of Hon'ble Bombay High Court in **Raymond Ltd. (2012 209 Taxman 65)** and the decision of this Tribunal rendered in **JSW Energy Ltd. V/s ACIT (2014 150 ITD 406)**. This decision has



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subsequently been followed in AY 2012-13 ITA No.962/Mum/2017 order dated 31/05/2019.

3.6 Therefore, considering the entirety of facts and circumstances, we find no reason to interfere in the impugned order. Ground Nos. 2 & 3 stand dismissed.

4. The appeal stands dismissed.

Order pronounced in the open court on 12th March, 2020.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 12/03/2020

Sr.PS, Jaisy Varghese

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.