आयकर अपील य अ धकरण, अहमदाबाद यायपीठ

IN THE INCOME TAX APPELLATE TRIBUNAL,
''A'' BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.1507/AHD/2018**
With
C.O. 79/Ahd/2019
नधारण वष/Asstt. Year: 2014-2015

D.C.I.T, Circle-1(1)(1), Ahmedabad.	Vs.	Arvind Smartspaces Ltd., 24, Government Sevantôs Society, Nr. Municpal Market, Off. C.G. Road, Navrangpura, Ahmedabad-380009. **PAN: AAHCA5001H**

(Applicant)		**(Respondent)**

Revenue by	:	Shri D.P Gupta, CIT. D.R
Assessee by	:	Shri Vartik Chokshi, A.R

सुनवाई क तारख/**Date of Hearing : 10/01/2020**
घोषणा क तारख **/Date of Pronouncement: 11/03/2020**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal is filed by the Revenue and the CO is filed by the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-1 Ahmedabad, [Ld. CIT (A) in short] dated 26/03/2018 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 16/12/2016. The assessee has filed Cross

Objection in the Revenue's appeals bearing ITA no. 1507/AHD/2018 for the Assessment Year 2014-2015.

First, we takeup the Revenueôs appeal bearing ITA No. 1507/AHD/2018. The Revenue has raised the following grounds of appeal:

1. *That the ld.CIT(A) erred in alw and on facts in deleting the addition of Rs.6,77,67,630/- made on account of disallowance of interest in respect of interest free advances.*
2. *That the ld.CIT(A) erred in law and on facts in deleting the addition of rs.7,05,498/- made on account of Capital Expenditure (Information Technology Expenses).*
3. *That the ld.CIT(A) erred in law and on facts in restricting the addition to Rs.2,610/- from Rs.13,514 made u/s.14A r.w Rule 8D.*
4. *That the ld.CIT(A) erred in law and on facts in deleting the addition of Rs.15,53,966 made on account of income corresponding to TDS and not applying the provisions of sec.199 read with Rule 37BA.*
5. *The appellant craves to leave, to amend and/or to alter any ground or add a new ground which may be necessary.*

2. The first issue raised by the Revenue is that the "Ld. CIT (A)" erred in deleting addition made by the AO for Rs. 6,77,67,630/- only on account of diversion of interest bearing funds.

3. The facts in brief are that the assessee in the present case is a limited company and engaged in the business of development & sale of plots of land and commercial complexes. The assessee in the year under consideration has shown advances to certain parties for the purchase of land/development rights amounting to Rs. 56,47,30,250/- only. The assessee has not charged any interest from the parties to whom advances were given. However, the assessee during the assessment proceeding justified to the AO by submitting that it has given advances in the course of its business activities.

3.1 The assessee without prejudice to the above also contended that its own interest free funds exceeds the amount of advances. Therefore there cannot be any disallowance of any interest on account of diversion of interest bearing funds.

3.2 However, the AO disregarded the contention of the assessee by holding that the assessee has diverted its interest bearing funds. Accordingly, the AO worked out the amount of proportionate interest expenses amounting to Rs.6,77,67,630/- being 12% of the amount of advances diverted for non-commercial activities and added the same to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the "Ld.CIT (A)" who deleted the addition made by the AO by observing, inter alia, as under:

> *"It is also observed that as stated herein above, appellant has sufficient interest free funds in form of share capital and reserves & surplus to cover interest free advances considered by AO hence disallowance of interest expenditure u/s 36(1)(iii) even on such ground is not justified. It is also observed that AO has made disallowance of interest expenditure which is in excess of interest debited in Profit & loss account and even claimed in return of income which is not permissible. Respectfully following the decisions of judicial authorities and decision of undersigned in preceding assessment year referred supra, I hereby delete the disallowance made by Assessing Officer for Rs.6,77,67,630/-. It is also observed that appellant-has claimed interest expenditure of Rs.4,22,21,011/- in Profit & loss account but A.O. has made disallowance of interest expenditure for Rs.6,77,67,630/- which means that disallowance has exceeded interest expenditure claimed by appellant and such working of A.O, is factually incorrect. In nutshell, entire disallowance made by Assessing Officer u/s36(1)(iii) of the Act for Rs. 6,77,67,630/- is deleted.* ***Thus, this ground of appeal is allowed."***

Being aggrieved by the order of the ''Ld. CIT (A)'' the Revenue is in appeal before us.

5. Both the Ld. DR and Ld. AR before us relied on the order of the authorities below as favorable to them.

6. We have heard the rival contentions of both the parties and perused the relevant materials available on records. Admittedly, the amount of interest free

advances stand at Rs. 56,47,30,250/- whereas the own funds of the assessee stands at Rs.1,15,36,49,790/- only. Undoubtedly, the own interest free funds of the assessee exceeds the amount of interest free advances as discussed above. Therefore, we are of the view that no disallowance of interest expenses on account of diversion of the fund is warranted. In this regard, we find support and guidance from the judgement of Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. reported in 313 ITR 340 wherein it was held as under:-

> *"The principle therefore would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this presumption is established considering the finding of fact both by the CIT(A) and Tribunal".*

6.1 Similarly, we also rely on the judgment of the Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd reported in 366 ITR 505 (Bom). The relevant extract of the order is reproduced below:

> *"Where assessee's capital, profit reserves, surplus and current account deposits were higher than the investment in tax-free securities, it would have to be presumed that investment made by the Assessee would be out of the interest-free funds available with Assessee and no disallowance was warranted u/s 14A."*

6.2 Similarly, we also find support from the judgment of Hon'ble Gujarat High Court in the case of UTI Bank Ltd. reported in 32 Taxmann.com 370 where the headnote reads as under :

> *"If there are sufficient interest free funds to meet tax free investments, they are presumed to be made from interest free funds and not loaned funds and no disallowance can be made under section 14A".*

In view of the above proposition, we hold that no disallowance of interest expense claimed by the assessee can be made on account of loans and advances as discussed above. Hence, we do not find any infirmity in the order of the ld. CITA. Hence the ground of appeal of the Revenue is dismissed.

7. The second issue raised by the Revenue is that the "Ld.CIT (A)" erred in deleting the addition made by the AO for Rs. 7,05,498/- by treating Information Technolgy Expenses as Capital Expenditure.

8. The assessee in the year under consideration has incurred expense of Rs. 8,37,793/- under the head "Information Technoclogy Charges" treating the same has revenue expenditure.

8.1 The assessee during the assessment proceedings contended that the above expenses are routine in nature and do not enhance the productivity or provide any benefit of enduring nature. As per the assessee these expenses were incurred towards manpower supply services, data card expenses, IT consumables like mouse, LAN cables, Keyboards which cannot be treated as capital in nature.

8.2 However, the AO found that such expenses were incurred for Web Solution, Software upgradation, customize web site development and designing expenses which are apparently of capital in nature and provide the benefit of enduring nature.

8.3 The AO also observed that assessee has not provided supporting bills of the impugned expenses to substantiate it claim as revenue expenditure.

8.4 In view of the above, the AO treated the Information Technology Expenditure as capital in nature which are eligible for depreciation. Accordingly, the AO allowed depreication on such expenditure amounting to Rs. 1,32,295/- and added the balance amount of Rs. 7,05,498.00 to the total income of the assessee.

Aggreived assessee preferred an appeal to the "Ld.CIT (A)".

9. The assessee before the "Ld.CIT (A)" claim to have furnished the copies of the ledger of Infromation technology showing the following expenses.

Sr.No.	***Particulars***	***Amount (in Rs.)***
1.	*Facility management cost*	*7,24,066*
2.	*Network costs*	*62,187*

3.	*IT consumables*	*51,540*
	Total	*8,37,793/-*

9.1 The assessee further furnished the details of the facility management expenses which was paid to three parties as detailed under.

Name of party	*Amount (in Rs.)*	*Nature of expense/service availed*
Aster Netweoks Pvt. Ltd.	*3,24,000*	*Manpower facility charges are paid for day to day IT hardware, software and network support services. It includes support services for desktop, laptop printer, "farvision" ERP software support, troubleshooting of lease-line and interest connectivity/hardware propblems etc.*
Gamut Infosystems Limited	*3,61,070/-*	*Annual maintenance contract charges are paid by the appellant for software up gradation and routine maintenance of the accounting software "Farvision" used for book keeping by it.*
Milagro Interactive Technologies	*38,986*	*The appellant avails the services for keeping its website updated for acknowledging its sharesholders about the new developments/achievement/growth taking place in the company and for this purpose the charges are paid to Milagro interactive Technolgies for updating the website of the company.*
IT netweok and consumable	*1,13,727*	*The appellant has incurred routine IT expenses such as purchasing date cards, hard disk, computer mouse, laptop batteries & adoptors, pen drive, payment of data charges etc.*

9.2 From the above assessee claim that the impugned expenditure are routine in nature. Moreover, there is no fixed asset coming into existence out of such expenditure. The assessee also contended that it is not enjoying any benefit out of such expenditure which is of enduring nature.

9.3 The "Ld.CIT (A)" after considering the submission of the assessee found that similar expenses were also allowed by his predecessor for the Assessment Year

2013-14 vide order dated 19/06/2017 in CIT(A)-1/ITO, Wd-1(1)(4)/147/2016-17 accordingly the "Ld.CIT (A)" treated the impugned expenses as Revenue in nature and directed the AO to delete the addition made by him.

Being aggrieved by the order of the "Ld.CIT (A)" the Revenue is in appeal before us.

10. The Ld. DR and Ld. AR before us vehemently supported the order of the authorites below as favourable to them.

11. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the AO in his assessment order has recorded the findings that the assessee has not furnished the supporting evidences to justify the disputed expenditure as revenue in nature. However, we find that the disallowance have been made by the AO treting the same as capital in nature. Thus, it is implied that the AO has not doubted on the genuineness of the expenses claimed by the assessee. Had the AO been doubted on the genuineness of the expenses claimed by the assessee, then he would have disallowed the entire expenditure. But he has not done so.

11.1 Now the controversy arises whether the expenditure caimed by the assessee representing the capital expenditure which are eligible for depreciation. It is the admitted fact that there was no allegation of the revenue to the effect that some asset came into existence out of such expenditure. Further more, we find that major expenses were incurred by the assessee in the name of three parties which were providing services to the assessee as discussed above. On perusal of the same expenses, we find that these expenditure are incurred in routine and therefore no benefit of enduring nature is arising.

11.2 Similarly, we also note that the expenses incurred on IT consumables are also routine expenses which doesn not bring any fixed asset into existence. We also note that the Hon'ble Gujarat High Court in the case of CIT Vs N.J. India Invest(P) Ltd., reported in 32 taxmann.com 367 has decided the issue in favour of the assessee. The relevant extract of the order is reproduced as under:

> ***"6.*** *These services, thus essentially were in the nature of maintenance and support services providing essentially backup to the assessee, who had procured software for its purpose. These services, thus essentially did not give any fresh or new benefit in the nature of a software to be used by the assessee in the course of the business but were more in the nature of technical support and maintenance of the existing software and hardware. For example service provider had to provide technical support to the employees of the company and to maintain the computers and the laptop, had to supply security service for controlling the data theft and providing checks on access by unauthorized persons to the data etc.*
>
> ***7.*** *In essence, these services, therefore, were in the nature of maintenance, back up and support service to the existing hardware and software already installed by the company for the purpose of its business. The Tribunal, in our opinion, therefore, rightly held that the expenditure was revenue in nature. The Tribunal observed that even the test of enduring benefit, may, in given set of circumstances, break down as held by Delhi High Court in the case of CIT v. Asahi India Safety Glass Ltd.[2011] 203 Taxman 277/15 taxmann.com 382 in which it was observed, inter alia, that the expenditure which is incurred enables the profit-making structure to work more efficiently leaving the source of the profit- making structure untouched would be an expenditure in the nature of revenue."*

In view of the above and after considering the fact in totality, we do not find any infirmity in the order of the "Ld.CIT (A)". Hence, the ground of the appeal of the Revenue is dismissed.

12. The 3rd issue raised by the Revenue is that the "Ld.CIT (A)" erred in restricting the addition made by the AO for Rs. 13,514/- to Rs.2,610/- under the provision of section 14A r.w.Rule 8D of the Act.

12.1 The assessee in the year under consideration has claimed to have received exempted income amounting to Rs. 4,83,31,975.00. However, the AO found that the assessee has not made any disallowance of the expenses against such income.

Therefore he invoked the provision of section 14A r.w. Rule 8D of Income Tax Rules and made the disallowance as under:

Sr.No.	***Particular***	***Amount***
1.	*Direct Expenses*	*Nil*
2.	*Interest Expenses*	*Rs.10,904/-*
3.	*Administrative Expenses*	*Rs.2,610/-*
Total		*Rs.13514/-*

In view of the above, the AO made disallowance of Rs.13,514/- and added to the total income of the assessee.

13. Aggreived assessee preferred an appeal to the "Ld.CIT (A)" who has deleted the disallowance of interest expenses by observing that the own fund of the assessee exceeds the amount of investments. Accordingly, he was of the view that there cannot be any disallowance of interest expenses on account of interest paid on the borrowed fund. However, the "Ld.CIT (A)" restricted the addition made by the AO for Rs.2,610/- on account of administrative expenses.

Being aggrieved by the order of the "Ld.CIT (A)" the Revenue is in appeal before us.

14. Both the ld. DR and the AR before us vehemently supported the order of the auhorites below to the extent favourable to them.

15. We have heard the rival contentions of both the parties and perused the relevant materials available on record. At the outset, we note that the own fund of the assessee as on 31/03/2014 stands at Rs.1,15,36,49,790/- whereas the investment stand at Rs.5,22,000/- only. Thus it is evident that the own fund of the assessee exceeds the amount of investment. This fact was also not disputed by the Ld. DR appearing for the Revenue. Accordingly we presume that the investment

was made by the assessee out of its own fund. In holding so, we find support and guidance from the judgment of Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. reported in 313 ITR 340 wherein it was held as under:-

> *"The principle therefore would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this presumption is established considering the finding of fact both by the CIT(A) and Tribunal".*

15.1 Similarly, we also rely on the judgment of the Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd reported in 366 ITR 505 (Bom). The relevant extract of the order is reproduced below:

> *"Where assessee's capital, profit reserves, surplus and current account deposits were higher than the investment in tax-free securities, it would have to be presumed that investment made by the Assessee would be out of the interest-free funds available with Assessee and no disallowance was warranted u/s 14A."*

15.2 Similarly, we also find support from the judgment of Hon'ble Gujarat High Court in the case of UTI Bank Ltd. reported in 32 Taxmann.com 370 where the headnote reads as under :

> *"If there are sufficient interest free funds to meet tax free investments, they are presumed to be made from interest free funds and not loaned funds and no disallowance can be made under section 14A".*

In view of the above proposition, we hold that no disallowance of interest expense claimed by the assessee can be made on account of investment as discussed above. Hence, we do not find any infirmity in the order of the ld. CITA. Hence the ground of appeal of the Revenue is dismissed.

16. The last issue raised by the Revenue is that the "Ld.CIT (A)" erred in deleting the addition made by the AO for Rs.15,53,966/- representing the income as shown in the TDS certificate.

17. The AO during the assessment proceeding found that there were certain entries in the form 26AS showing the TDS deducted by several parties amounting to Rs.1,16,238/- only which was not claim by the assessee in its income tax return.

Accordingly, the AO was of the view that the assessee has not offered the corresponding income representing such TDS amount for Rs.15,53,966/- only. Accordingly, the AO added the same to the total income of the assessee.

18. Aggreived assessee preferred an appeal to the "Ld.CIT (A)" who deleted the addition made by the AO by observing that the corresponding income against the amount of TDS has been offered to tax by the assessee in the subsequent year. The "Ld.CIT (A)" also observed that there was no change in the rate of tax and therefore there was no loss to the revenue.

Being aggrieved by the order of the "Ld.CIT (A)" the Revenue is in appeal before us.

19. Both ld. DR and Ld. AR before us relied on the order of the authorities below as favourbale to them.

20. We have heard the rival contention and perused the relevant material availale on record. Admittedly, there is no change in the rate of tax for the year under consideration vis-a-vis in the subsequent assessment year. Therefore even the income pertaining to the year under consideration has been offered to tax in the subsequent assessment year there is no loss to the revenue and therefore no addition can be made. In holding so we find support and guidance from judgment of Hon'ble S.C. in the case of CIT vs Excel Industries 219 taxman 379 wherein it was held as under:

> *"Therefore, it is not as if the Revenue has been deprived of any tax. The rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect."*

20.1 The Ld.D.R. at the time of hearing has not controverted the findings of the "Ld.CIT (A)". In view of the above, we do not find any reason to interfere in the

findings of the "Ld.CIT (A)". Hence, the ground of appeal of the Revenue is dismissed.

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

21. Now coming to the C.O. No.79/Ahd/2019 for A.Y. 2013-14 (In ITA No.1507/Ahd/2018). The assessee has raised the following grounds of appeal.

> *1. On the facts and in the circumstances of the case, the CIT(A) erred upholding the disallowance u/s.36(1)(va) of the Act for Rs.1,56,601/- on account of late payment of Employee's contribution of PF when no such disallowance is called for.*
>
> *2. The Respondent craves leave to add, alter, amend and/or withdraw any ground of appeal either before or during the course of eharing of the appeal.*

22. The only issue raised by the assessee is that "Ld.CIT (A)" erred in confirming the disallowance of Rs. 1,56,601/- on account of late payment of employees contribution to P.F.

23. At the outset, the Ld.AR for the assessee agreed that the assessee is not eligible for deduction on account of late payment of employees Contributiuon by the order of the Hon'ble Gujarat High Court in the case of CIT versus GSRTC reported in 366 ITR 170 wherein it was held as under:

> *"In view of the above and considering section 36(1)(va), read with sub-clause (x) of clause (24) of section 2, it is to be held that with respect to the sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section 2 applies, the assessee shall be entitled to deduction in computing the income referred to in section 28 with respect to such sum credited by the assessee to the employees account in the relevant fund or funds on or before the 'due date' mentioned in Explanation to section 36(1)(va). Consequently, it is held that the Tribunal has erred in deleting respective disallowances being employees' contribution to PF Account/ESI Account made by the Assessing Officer as, as such, such sums were not credited by the respective assessee to the employees 'accounts in the relevant fund or funds on or before the due date as per the Explanation to section 36(1)(va) of the Act i.e. date by which the concerned assessee was required as an employer to credit employees' contribution to the employees account in the Provident Fund under the Provident Fund Act and/or in the ESI Fund under the ESI Act.*

In view of the above, we do not find any reason to interfere in the order of the authorities below. Hence the ground of appeal of the assessee is dismissed.

24. In the result, the appeal filed by the Revenue and CO filed by the assessee is **dismissed**

Order pronounced in the Court on 11/03/2020 at Ahmedabad.

-Sd-	**-Sd-**
(RAJPAL YADAV)	**(WASEEM AHMED)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 11/03/2020

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