

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.-6242/Del/2016
(Assessment Year: 2011-12)

Ceder Infonet Pvt. Ltd
C/o: RS Ahuja & Co, CAs
c-353, Defenc Colony, New
Delhi.

PAN No. AABCC9486E

Appellant

Vs. ACIT
Circle-5(2),
New Delhi.

Respondent

ITA No.-606/Del/2017
(Assessment Year: 2011-12)

ACIT
Circle-5(2),
New Delhi.

Appellant

Vs. Ceder Infonet Pvt. Ltd
C/o: RS Ahuja & Co, CAs
c-353, Defenc Colony, New
Delhi.

PAN No. AABCC9486E

Respondent

Assessee by Sh RS Ahuja, CA

Revenue by Ms. Nidhi Srivastava, CIT DR

Date of hearing: 16-10-2020

Pronouncement on 23-10-2020

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 30.09.2016 passed by the Id
Commissioner of Income Tax (Appeals) – 24, New Delhi (Ld. CIT(A)) for the
AY 2011-12, both the assessee and the Revenue filed these appeals.

2. Brief facts of the case are that the assessee is a company. It filed its return of income for the assessment year 2011-12 on 30/9/2011 declaring nil income. Assessment was, however, complete under section 144 of the Income Tax Act, 1961 (for short "the Act") at an income of Rs. 14,56,43,816/- after adding Rs. 4,70,61,259/- under section 36 (1)(iii) of the Act by disallowing 15% of the interest expense, Rs. 19, 990/- by disallowing the preliminary expenses, Rs. 6,30,73,410/- under section 14A of the Act read with Rule 8D of the Income Tax Rules 1962 ("the Rules") and Rs. 3,54,89,157/- by disallowing 10% of the total purchases made by the assessee from the group companies on the ground that the purchases are inflated to reduce the profits.

3. Assessee challenged all these four additions before the Ld. CIT(A) in appeal, but not pressed the grounds relating to the addition of Rs. 19, 990/- added towards disallowance of preliminary expenses. After regulating the remaining 3 additions, Ld. CIT(A) granted relief to the assessee in respect of Rs. 6,30,73,410/- added under section 14A of the Act read with Rule 8D of the Rules and Rs. 3,54,89,157/- added by disallowing the 10% of the purchases made by the assessee from the group companies, but sustained the addition of Rs. 4,70,61,259/- disallowed under section 36 (1)(iii) of the Act on ad hoc basis at 10% of the interest expense.

4. Assessee, therefore, challenged the addition of Rs. 4,70,61,259/- by way of disallowance under section 36 (1)(iii) of the Act on ad hoc basis at 10% of the interest expense; whereas the Revenue challenging the deletion of the addition of Rs. 6,30,73,410/- under section 14A of the Act read with Rule 8D of the Rules and Rs. 3, 54,89,157/- added by disallowing

10% of the total purchases on ad hoc basis, in these 2 appeals. Since these two appeals emanate from the same set of facts and the same assessment order, we deem it just and convenient to dispose them of by way of this common order.

5. Coming to the assessee's appeal, it relates to the addition of Rs. 4,70,61,259/- by disallowing, on ad hoc basis, 15% of the interest expense. During the course of assessment proceedings assessing officer noted that the assessee had debited interest expenses amounting to Rs. 31,37,41,731/- in their Profit and Loss Account (P&L Account), and since no evidence to prove the fact that the loan on which the interest and finance expenses were paid exclusively utilised for the purpose of the business of the assessee, learned Assessing Officer had taken a view that an amount equivalent to 15% of such interest expense, amounting to Rs. 4,70,61,259/- has to be disallowed under section 36 (1)(iii) of the Act.

6. Assessee produced the details of the interest paid on the loan and also the details of the interest received by the assessee and submitted that the interest expense has to be net of to the difference between the interest paid and interest received, namely, interest paid Rs. 31,37,41,731/- and the interest received Rs. 27,54,10,427/- and therefore the claim of the assessee towards the interest expense was only Rs. 3,83,31,304/- which alone has to be considered for a allowing or disallowing the interest expense. Ld. CIT(A), however, did not accept the contention of the assessee and observed that though Rs. 31,37,41,731/- towards the interest paid and Rs. 27,54,10,427/- towards the interest received is appearing in the P&L Account, there is no one-to-one connection between the loans given and the loans taken.

7. Assessee produced before us the P&L Account and the Balance Sheet to demonstrate that the assessee had shown both the interest paid and the interest received and that the borrowed funds have been utilised to the interest. It could be seen from page No. 62 of the paperbook that the assessee had shown the names of the entities from whom the loan was taken and the names of the entities to whom loans and advances were given. Apart from this the assessee had produced the copies of the Balance Sheet and also the P&L Account to be found at page numbers 68 and 69-71 of the paperbook where these 2 amounts are shown. Further, these documents go to show that as on 31/3/2010 the loans secured by the assessee stood at Rs. 1, 39, 78, 00, 000/- and such loans by 31/3/2011 were Rs. 3 41.30 crores; whereas the loans and advances given as on 31/3/2010 were Rs. 87, 95, 80, 423/- whereas by 31/3/2011 such loans advanced were rupees 263 of the Act .98 crores. All this goes to show that the assessee has been spending the loan taken amount towards advancement of loans for earning the income. In the circumstances there is nothing improbable in the submission of the assessee that they are utilising the loans taken for advancing the loans to earn interest; and that both the interest paid and interest received are reflected in the financials of the assessee.

8. In the circumstances we are of the considered opinion that the submissions made on behalf of the assessee that the loans taken were utilised for advancing the loans in furtherance of their business and, therefore, the assessee is entitled to claim that the difference between the interest paid and interest received alone has to be considered towards the claim of interest expenditure and any disallowance of the interest expense has to be made only with reference to the difference amount and not with

reference to the entire interest amount paid. With this view of the matter, we direct the learned Assessing Officer to limit the disallowance of 15% on Rs. 3, 83, 31, 304/- and to delete the balance amount. Ground of assessee's appeal is accordingly allowed in part.

9. First ground of Revenue's appeal relates to the addition of Rs. 6, 30, 73, 410/- on account of disallowance under section 14A of the Act read with Rule 8D of the Rules. It could be seen from the assessment order, that on observing that the assessee had received a dividend amount of Rs. 5,71,95,882/- by making an investment of Rs. 42,50,13,767/-, the assessing officer jumped to the calculation of disallowance under Rule 8D of the Rules without referring to the claim of expenditure, if any, preferred by the assessee in their books. Assessee claims that no expenses have been claimed by the assessee in their P&L Account which is relatable to the earning of the exempt income, inasmuch as all the investments were made in earlier assessment years out of the assessee's own funds and the Department had accepted the same. Assessee further contended before the Ld. CIT(A) that the learned Assessing Officer had not recorded any satisfaction before proceeding to make the disallowance, and such disallowance is bad in law.

10. On this aspect Ld. CIT(A) observed that in view of the decisions of the Hon'ble jurisdictional High Court in the case of CIT vs. Taikisha engineering India Ltd 370 ITR 338 (Del) followed in CIT vs. IP support services India Pvt. Ltd in ITA No. 283/2015 dated 24/9/2015 (Delhi), the action of the learned Assessing Officer in invoking section 14A of the Act read with Rule 8D of the Rules without recording his satisfaction cannot be approved. As a matter of fact, Ld. CIT(A) found that no satisfaction of the

learned Assessing Officer was recorded nor at least such satisfaction could be discerned from the assessment order, as to why the voluntary disallowance made by the assessee was unreasonable and unsatisfactory (or lack of any suo moto disallowance), which is a mandatory requirement under law. Ld. CIT(A), therefore, deleted the addition on this score.

11. There is no dispute about the factual finding of the Ld. CIT(A) that the learned Assessing Officer did not record any satisfaction towards the expenditure incurred by the assessee for earning the exempt income, not any such satisfaction is it is discernible from the assessment order. Ld. CIT(A) rightly followed the binding precedent of the Hon'ble jurisdictional High Court, and therefore, we find it difficult to hold that the impugned findings of the Ld. CIT(A) suffer any legal infirmity. We, therefore, uphold the findings of the Ld. CIT(A) and dismiss ground No. 1 of the Revenue's appeal.

12. Ground No. 2 of Revenue's appeal is in respect of the addition of Rs. 3, 54, 89, 157/- on account of disallowance of 10% of the purchases made by the assessee from the sister concern. In his order learned Assessing Officer recorded that the assessee made substantial purchases and sales with the group companies for which no details were filed by the assessee and in the absence of any verifiable details, an addition of 10% of the total purchases made by the assessee from the group companies is justifiable. Learned Assessing Officer further observed that a substantial amount of Rs. 25 crores was declared under section 132 (4) of the Act at the time of search on the assessee group, on account of bogus purchases and, in such circumstances, the possibility to inflate the purchases cannot be ruled out.

13. On this aspect, while admitting the additional evidence under Rule 46A of the Rules, Ld. CIT(A) sought the report of the learned Assessing Officer and on verification of the record learned Assessing Officer reported that the letters dated 31/10/2013 and 27/11/2013 were to be found on record whereas the letter dated 9/12/2013 was not to be found. On verification of the letters to be found on the record more particularly the letter dated 27/11/2013, Ld. CIT(A) found that this letter contains the part where the details of purchases and sales and such details establish the fact that the assessee had purchased and sold goats in the same day the transactions being with a sister concerns, but the fact remains that both the purchases and sales with group concerns, the bogus purchases would naturally be offset with a bogus sale resulting in a zero-sum outcome. Ld. CIT(A) further observed the assessee had offered profit on the set of purchases and sales transactions. He further held that in view of the decision in the case of Royal Marwar tobacco private limited (2009) 29 SOT 53 (AHD) (URO) and HC Chandana (P) Ltd vs. DCIT (91 TTJ 243 (Delhi)), an admission of bogus purchases in some earlier year cannot be extrapolated to the current year without any specific evidence in respect of the later year.

14. We are in agreement with the Ld. CIT(A) that one cannot disallow the purchases on suspicion alone, while ignoring that the corresponding sales would have to be treated as bogus also, in which event it would result in zero-sum outcome. Without rejecting the sales, it would be unreasonable to suspect the purchases alone. Learned Assessing Officer did not make out any discrepancy in the statutorily mandated audited accounts of the assessee. Learned Assessing Officer merely proceeded on

suspicion in view of the declaration of Rs. 25 crores under section 132 (4) of the Act by one Sh. HS Bedi on behalf of the assessee group of companies for an earlier year, which is quite impermissible in view of the decisions referred to by the Ld. CIT(A). Ld. CIT(A) is right in observing that however grave the suspicion is, it is not equivalent to evidence or proof. No addition can be made basing on suspicion, when the books are available before the assessing officer to bring out material sufficient to support his suspicion. In the absence of any such evidence, no ad hoc disallowance could be sustained and, accordingly, we decline to interfere with the findings of the Ld. CIT(A). Ground No. 2 of Revenue's appeal is, accordingly, dismissed.

15. In the result, appeal of the assessee is allowed in part and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 23/10/2020

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER
Dated: 23.10.2020

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI