

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES : BENCH "B" HYDERABAD**

(Through Video Conference)

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**I.T.A. Nos. 375 & 376/Hyd./2017
A.Y : 2002-03 & 2003-04**

Dy.CIT, Circle 3(2)
Hyderabad

vs. Sri Vasavi Industries Limited
Hyderabad

[PAN: AADCS 1262L]

(Appellant)

(Respondent)

For Revenue: Sri Rohit Mujumdar, D.R.
For Assessee: None

Date of Hearing : 17/06/2021
Date of Pronouncement : 12 /07/2021

ORDER

PER S.S. GODARA, J.M.

These Revenue's appeals for A.Y. 2002-03 and 2003-04 arise against the CIT(A)-3 Hyderabad's order dated 08.12.2016 passed in case nos. 1371 & 1372/2014-15 involving proceedings u/s 143(3) r.w.s. 254 of the Income Tax Act, 1961 [in short 'the Act'].

Case called twice. None appears at assessee's behest. It is accordingly proceeded ex parte.

The Revenue has raised the following identical substantive grounds in the instant appeal.

1. *The Ld.CIT(A) erred both in law and on facts of the cases.*
2. *The Ld..CIT(A) erred in directing the AO to verify the bank account of the assessee to examine the allowability of interest disallowed by the AO u/s 14A of the Act.*
- 3, *The Ld. CIT(A) erred in not considering the fact that the principle of swap investment does not apply to the case of the assessee as there is no merger/acquisition of the companies took place during the year under consideration.*
4. *The Ld. CIT(A) erred in not considering the fact the Assessing Officer rightly disallowed the interest u/s 14A , in view of the fact that the assessee company could not prove the genuineness of its claim before the AO during the re-assessment proceedings, made consequent to the directions of Hon'ble ITAT.*
5. *The Ld.CIT(A) ought to have upheld the disallowance made by the AO in the circumstances that the assessee could not substantiate its claim even during the appellate proceedings, and erred in directing the AO to verify once again thereby providing multiple opportunities to the assessee.*
6. *Any other ground that may be urged at the time of hearing.*

2. It emerges during the course of hearing that the Revenue's identical substantive grievance seeks to revive the Assessing officer's action invoking sec14A disallowance of Rs.1,80,12,000/- and Rs.1,80,00,000/- AY wise respectively by pleading that the CIT(A)'s remand directions to the Assessing officer to verify the assessee's availability of non-interest bearing funds go contrary to the legislative amendment vide Finance (II) Act, 2001 w.e.f. 1.6.2001 omitting the clinching statutory expression "or he may set aside" in sec.251(1)(a) of the Act. We find prima facie merit in Revenue's instant argument going by the statutory amendment. The fact also remains that the Assessing officer himself had not taken into consideration the clinching aspect of availability of assessee's non-interest bearing funds whilst computing the impugned disallowance in both these AYs. We, therefore, reverse the CIT(A)'s directions in principle and ourselves restore the very issue back to the Assessing officer for his necessary factual verification of assessee's non-interest bearing funds availability in the relevant previous year(s) as well as at the time of making investments as per law.

2.1. No other argument has been raised before us.

These Revenue's appeals are allowed for statistical purposes in above terms.

Pronounced in Open Court on 12th July, 2021.

Sd/-

Sd/-

**(L.P. SAHU)
ACCOUNTANT MEMBER**

**(S.S. GODARA)
JUDICIAL MEMBER**

Dated: the 12th July, 2021.

* gmV

Copy of the Order forwarded to:

1. Dy.CIT, Circle 3(2), Hyderabad.
2. M/s Sri Vasavi Industries Limited, 51, Sagar Society, Banjara Hills, Hyderabad , Telangana.
3. ACIT, Range 3, Hyderabad
4. CIT(A)-3, Hyderabad
5. Pr.CIT-3, Hyderabad
6. DR, ITAT, Hyderabad.
7. Guard File.