

IN THE INCOME TAX APPELLATE TRIBUNALKOLKATA BENCH '(A)', KOLKATA

[BEFORE SHRI P.M. JAGTAP, HON'BLE VICE PRESIDENT (KZ) &
SHRI A. T. VARKEY, HON'BLE JUDICIAL MEMBER]

[Through Virtual Court]

I.T.A. No. 1220/Kol/2019
Assessment Year: 2014-15

M/s. Sunshine Tracon Pvt. Ltd.....Appellant
C/o. Vinod Kumar Bindal & Co., Chartered Accountants,
503, Dalamal Chambers, 29, New Marine Lines,
Mumbai - 400 020.
[PAN: AAGCS 8868 M]

Vs

Pr. Commissioner of Income Tax, Central - 5, Kolkata.....Respondent

Appearances by:

Shri Subash Agarwal, FCA appearing on behalf of the Assessee.

Shri Dinesh Aibor Jayal Sawkuie, CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : July 08, 2021

Date of pronouncing the order : July 14, 2021

ORDER

PER P.M. JAGTAP, VICE-PRESIDENT (KZ)

This appeal filed by the assessee is directed against the order of Ld. Pr. CIT, Central - 5, Kolkata dated 25.03.2019 passed u/s 263 of the Income Tax Act, 1961.

2. The assessee in the present case is a non-banking finance company. The return of income for the year under consideration was filed by it on 30.09.2014 declaring a total income of Rs. 1,23,83,710/-. In the assessment completed u/s 143(3) vide an order dated 06.12.2010, the income for the year under consideration as declared by the assessee-company in its return of income was accepted by the AO. The record of the said assessment came to be examined by the

concerned Ld. Pr. CIT and on such examination, he noted that there was an under assessment on the following issues:

- “i. Rs. 51,31,012/- on account of interest income*
- ii. Rs. 7,31,694/- u/s 14A read with Rule 8D*
- iii. Rs. 2,07,87,192/- and Rs. 18,13,075/- on account of interest and brokerage respectively”*

3. The Ld. Pr. CIT accordingly issued a notice u/s 263 requiring the assessee to show cause as to why the assessment order passed by the AO u/s 143(3) should not be revised by treating it as erroneous as well as prejudicial to the interest of the revenue. There was no compliance on the part of the assessee to the said notice issued u/s 263 as well as the further notices issued by the Ld. Pr. CIT fixing the hearing from time to time. He, therefore, issued a final show cause letter on 17.01.2019 giving a last opportunity to the assessee-company to offer its explanation in respect of the following errors in the order of the AO passed u/s 143(3):

“i. On perusal of the assessment records it is seen that the interest income declared by you under Revenue from operation is Rs. 9,19,61,447/- whereas as per our record you have received Rs. 9,70,92,459/- towards interest on which TDS of Rs. 97,09,246/- was deducted. Hence, there is an under assessment to the tune of Rs. 51,31,012/- (9,70,92,459 - 9,19,61,447).

ii. It is seen that no disallowance of expenses relatable to exempt income has been made u/s 14A read with Rule 8D by the Assessing Officer though the assessee had investments of Rs. 14,63,30,515/- and Rs. 14,63,47,435/- as on 31.03.2013 and 31.03.2014 respectively. This resulted in an under assessment of Rs. 7,31,694/- (0.5% of average value of investment).

iii. Your company has debited a sum of Rs. 7,20,34,34,353/- as interest expenses on borrowing and Rs. 13,06,473/- on account of brokerage. However, as per point no. 34(a) of Audit Report in form 3CD it is seen that there is interest payment of Rs. 9,28,21,545/- and brokerage payment of

Rs. 31,19,548/-. This resulted in an under assessment of Rs. 2,07,87,192/- on account of interest and Rs. 18,13,075/- on account of brokerage."

4. In reply, the following written submission was filed on behalf of the assessee-company before the Ld. Pr. CIT:

"With reference to your notice No. PCIT, Kol-5/263/M/s. Sunshine Tracon Pvt. Ltd./2017-18 dated 17.01.2019 we would like to state that Audit objection was raised & reply was filed accordingly through our authorized representative Mr. Sushil Kumar Purohit, we are once again submitting the details as follows:

i. On perusal of the assessment records it is seen that the interest income declared by you under Revenue from operation is Rs. 9,19,61,447/- whereas as per our record you have received Rs. 9,70,92,459/- towards interest on which TDS of Rs. 97,09,246/- was deducted. Hence, there is an under assessment to the tune of Rs. 51,31,012/- (9,70,92,459 - 9,19,61,447).

Reply: Break up of interest income is enclosed along with explanation.

ii. It is seen that no disallowance of expenses relatable to exempt income has been made u/s 14A read with Rule 8D by the Assessing Officer though the assessee had investments of Rs. 14,63,30,515/- and Rs. 14,63,47,435/- as on 31.03.2013 and 31.03.2014 respectively. This resulted in an under assessment of Rs. 7,31,694/- (0.5% of average value of investment).

Reply: Note on 14A is enclosed for your ready reference.

iii. Your company has debited a sum of Rs. 7,20,34,34,353/- as interest expenses on borrowing and Rs. 13,06,473/- on account of brokerage. However, as per point no. 34(a) of Audit Report in form 3CD it is seen that there is interest payment of Rs. 9,28,21,545/- and brokerage payment of Rs. 31,19,548/-. This resulted in an under assessment of Rs. 2,07,87,192/- on account of interest and Rs. 18,13,075/- on account of brokerage."

Reply: Break up of interest expenses & brokerage is enclosed along with explanation.

Also Form 3CA-3CD along with financial statements of M/s. Sunshine Tracon Pvt. Ltd. for A.Y. 2014-15 is enclosed.

In view of the facts, the order passed u/s 143(3) on 06.12.2016 for A.Y. 2014-15 is not erroneous & the same is not prejudicial to the interest of revenue.”

5. The above written submission filed by the assessee-company did not find favour with Ld. Pr. CIT for the following reasons given in his impugned order:

“The reply of the assessee was gone through. Non explanation was furnished in reply to the queries raised vide the show cause instead a bad and cryptic remark was made by the assessee in answer to every query that break up along with explanation were enclosed whereas no such submission or break up was furnished. In the circumstances as stated above, it is statutorily preserved that the assessee had nothing to say to contradict the issues raised vide the show cause dated 14.11.2018 on other words, the assessee admitted the lapses in the order of the Assessing Officer dated 06.12.2016.”

6. For the reasons given above, the Ld. Pr. CIT set aside the order passed by the AO dated 06.12.2016 u/s 143(3) vide his impugned order dated 25.03.2019 passed u/s 263 by treating the same as erroneous as well as prejudicial to the interest of the revenue with the direction to the AO to reframe the assessment afresh on all the three issues pointed out by him after giving reasonable opportunity of hearing to the assessee. Aggrieved by the order of the Ld. Pr. CIT passed u/s 263, the assessee has preferred this appeal before the Tribunal.

7. The learned counsel for the assessee, at the outset, submitted that out of the three issues raised by the Ld. Pr. CIT in his impugned order u/s 263, the case of the assessee on two issues that is interest income of Rs. 51,31,012/- and interest & brokerage expenses

amounting to Rs. 2,07,87,192/- and Rs. 18,13,075/- has been accepted by the AO in the fresh assessment completed u/s 143(3) read with Section 263 of the Act and there are no additions made to the total income of the assessee in the fresh assessment passed by the AO on these issues. As regards the remaining third issue raised by the Ld. Pr. CIT in his impugned order passed u/s 263 relating to the disallowance of Rs. 7,31,694/- u/s 14A read with Rule 8D, the learned counsel for the assessee submitted that there being no exempt income earned by the assessee during the year under consideration, there was no question of making any disallowance u/s 14A read with Rule 8D and there was thus no error in the order of the AO dated 06.12.2016 passed u/s 143(3) on this issue as allegedly pointed out by the Ld. Pr. CIT in his impugned order. He also submitted that in the written submission filed before the Ld. Pr. CIT during the course of proceedings u/s 263, this material aspect of the matter relevant to the issue was specifically pointed out on behalf of the assessee-company, but without taking into consideration the same and without giving any finding on the submission made on behalf of the assessee-company, the Ld. Pr. CIT set aside the order passed by the AO u/s 143(3) on this issue with the direction to decide the same afresh. He contended that there was thus no error in the order of the AO passed u/s 143(3) in not making any disallowance u/s 14A read with Rule 8D as alleged by the Ld. Pr. CIT in his impugned order passed u/s 263 calling for any revision.

8. The Ld. CIT DR, on the other hand, strongly supported the impugned order passed by the Ld. Pr. CIT u/s 263 of the Act. He contended that the issue relating to the disallowance u/s 14A read

with Rule 8D was not at all considered or examined by the AO during the course of assessment proceedings and even during the course of proceedings u/s 263, no satisfactory explanation on this issue was offered on behalf of the assessee-company. He contended that the issue relating to the disallowance u/s 14A read with Rule 8D has not been decided by the Ld. Pr. CIT vide his impugned order on merit and the ld. counsel for the assessee, therefore, is not justified in advancing argument on merits of this issue which he is free to do during the course of fresh assessment proceedings.

9. We have considered the rival submissions of both the sides and also perused the relevant material available on record. It is observed that a specific opportunity was given by the Ld. Pr. CIT to the assessee-company to offer its explanation on the issue of disallowance u/s 14A read with Rule 8D during the course of proceedings u/s 263. The assessee-company however did not avail this opportunity by offering any satisfactory explanation and as noted by the Ld. Pr. CIT in his impugned order, a very cryptic remark was made by the assessee in answer to every query raised in the notice issued u/s 263. At the time of hearing before the Tribunal, the ld. counsel for the assessee has submitted that a note on section 14A was separately enclosed by the assessee-company along with the written submission filed before the Ld. Pr. CIT. However, as clearly noted by the Ld. Pr. CIT in his impugned order, no such note or break-up was furnished by the assessee-company along with the written submission. As submitted by the Ld. CIT DR, this issue relating to the disallowance u/s 14A read with Rule 8D was not at all examined by the Assessing Officer during the course of assessment proceedings

and there is nothing brought on record on behalf of the assessee-company to show that any enquiry whatsoever was made by the AO on this issue during the course of assessment proceedings. As held by the Hon'ble Calcutta High Court in the case of CIT vs Maithan International (2015) 56 taxmann.com 283 (Calcutta), the role of the Assessing Officer is that of an investigator as well as adjudicator and where relevant enquiry was not undertaken before allowing the claim of the assessee, the order become erroneous as well as prejudicial to the interest of the revenue calling for revision u/s 263. Moreover, as specifically provided in clause (a) of Explanation 2 below Section 263, if in the opinion of Pr. CIT, an order passed by the AO is without making enquiries or verifications, which should have been made, the same shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue for the purpose of Section 263 calling for exercise of revisionary power.

10. Keeping in view the foregoing discussion, we uphold the impugned order passed by the Ld. Pr. CIT u/s 263 and dismiss this appeal of the assessee.

11. In the result, the appeal of the assessee is dismissed.

Order Pronounced in the Open Court on 14th July, 2021.

Sd/-
(A.T. VARKEY)
JUDICIAL MEMBER

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Dated: 14/07/2021
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Sunshine Tracon Pvt. Ltd., C/o. Vinod Kumar Bindal & Co., Chartered Accountants, 503, Dalamal Chambers, 29, New Marine Lines, Mumbai - 400 020.
2. Pr. CIT, Central - 5, Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. Private Secretary / DDO
ITAT, Kolkata Benches Kolkata