

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI MANISH BORAD (ACCOUNTANT MEMBER)**

**ITA No. 4018/MUM/2019
Assessment Year: 2014-15**

Shashwati Realty Private Limited,
3rd floor, Bengal Chemical Building,
502, Veer Savarkar Marg,
Prabhadevi,
Mumbai-400025.

PAN No. AAKCS 7305 K

Appellant

Vs. Income Tax Officer, Ward-
8(2)(1),
Room No.618, 6th floor, Aayakar
Bhavan, M.K. Road,
Mumbai-400020.

Respondent

Assessee by : None
Revenue by : Ms. Smita Verma, DR

Date of Hearing : 11/08/2021
Date of pronouncement : 13/08/2021

ORDER

PER MANISH BORAD, A.M.

The present appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-14, Mumbai [in short 'CIT(A)'] for the assessment year 2014-15 dated 26.03.2019 and arises out of assessment completed u/s 143(3) of the Income Tax Act, 1961 (in short the Act).

Though the case was fixed for hearing on 03.12.2020, 12.04.2021, 21.06.2021 & 11.08.2021, neither the assessee nor his authorized representative appeared before the Bench on the above dates. As there is non-

compliance on the part of the assessee, we are proceeding to dispose off this appeal on merits, after examining the documents available on record.

2. The grounds of appeal filed by the assessee read as under :

1. Disallowance of interest expenditure by reducing Rs.30,64,193/- from work in progress u/s 36(1)(iii) of the Income Tax Act, 1961, without issuing show cause notice to appellant.
2. Disallowance of interest expenditure u/s 36(1)(iii) of the Act is bad in law as per the facts and circumstances of the case of appellant.

3. Briefly stated, the facts of the case are that the assessee is a private limited company engaged in the business of builder and developer. The assessee-company has e-filed its return of income at Rs.4,08,170/- on 29.11.2014. The case was selected for scrutiny assessment followed by serving of notices u/s 143(2) and 142(1) of the Act. Necessary information called by the Ld. AO was duly supplied by the assessee. During the assessment proceedings, the Ld. AO observed that there is an investment in the partnership firm in the name of M/s Pashmina Altius at Rs.5,67,46,272/- but the share capital of the assessee-company is Rs.1,00,000/- and reserve and surplus is in negative at Rs.3,37,841/-. No disallowance u/s 14A of the Act was *suo motu* offered by the assessee in the income tax return. The assessee has claimed interest expenditure in the profit and loss account. The Ld. AO was of the view that disallowance u/s 14A of the Act needs to be made and he accordingly worked out the disallowance at Rs.33,47,924/- in accordance with Rule 8D of the IT Rule and assessed the income at Rs.37,56,090/-.

4. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) but partly succeeded. As regards the issue of disallowance u/s 14A of the Ld. CIT(A)

was of the view that since there is no exempt income earned by the assessee disallowance u/s 14A of the Act is not called for. However, the Ld. CIT(A) confirmed the disallowance applying the provisions of section 36(1)(iii) of the Act.

5. Aggrieved assessee now in appeal, the ground of appeal as under :

1. Disallowance of interest expenditure by reducing Rs.30,64,193/- from work in progress u/s 36(1)(iii) of the Income Tax Act, 1961, without issuing show cause notice to appellant.
2. Disallowance of interest expenditure u/s 36(1)(iii) of the Act is bad in law as per the facts and circumstances of the case of appellant.

6. None appeared on behalf of the assessee.

7. On the other hand, the Ld. Departmental Representative (DR) vehemently supporting the order of both the parties.

8. We have heard the rival contentions and perused the material on record. Before us, through Ground No. 1 raised assessee has stated that the Ld. CIT(A) erred in confirming the addition u/s 36(1)(iii) of the Act as against the addition made by the Ld. AO u/s 14A of the Act without issuing show cause notice to the appellant.

9. We observe that while framing the assessment, the Ld. AO calculated disallowance u/s 14A of the Act at Rs.33,47,924/-. When the matter travelled before Ld. CIT(A), firstly he held that since assessee has not earned any exempt income during the year disallowance u/s 14A of the Act is not called for. Further, since Ld. CIT(A) has power to enhance/reduce the additions made by the Assessing Officer came to the conclusion that disallowance of interest u/s

36(1)(iii) of the Act is called for, since the borrowed funds have not been utilized for business purposes. Before holding so Ld. CIT(A) did not give any show cause notice to the assessee to make its contentions. Section 14A of the Act deals with disallowance of expense incurred for earning exempt income whereas section 36(1)(iii) deals with interest on borrowed capital used for business purpose. Assessee never got an opportunity to defend his case *qua* applicability of provisions of section 36(1)(iii) of the Act.

10. In our considered view this act of Ld. CIT(A) violates the principles of natural justice as he was bound to give opportunity of being heard to the assessee by issuing a show cause notice before changing the head of addition/disallowance in the hands of the assessee. We therefore, under the given facts and circumstances of the case, set aside the issue raised on merit to Ld. CIT(A) for deciding afresh under the relevant provisions of law after affording sufficient opportunity of being heard to the assessee. Thus the ground No. 1 raised by the assessee is allowed for statistical purposes.

11. As regards ground No. 2 raised on merit, since we have allowed ground No. 1, dealing with this ground will be merely academic in nature and thus, it become infructuous.

12. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 13/08/2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Mumbai;

Dated: 13/08/2021.

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai