

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.319/Bang/2018
Assessment Year : 2014-15

M/s. RNS Infrastructure Ltd. 7 th Floor, Naveen Complex No.14, M.G. Road Trinity Circle Bengaluru 560 001 PAN NO : AACCR7165G	Vs.	Deputy Commissioner of Income-tax Central Circle-2(3) Bengaluru
APPELLANT		RESPONDENT

ITA No.291/Bang/2018
Assessment Year : 2014-15

ACIT Central Circle-2(3) Bengaluru	Vs.	M/s. RNS Infrastructure Ltd. 7 th Floor, Naveen Complex No.14, M.G. Road Trinity Circle Bengaluru 560 001
APPELLANT		RESPONDENT

Appellant by	:	Shri Shreeshkumar Eshwar Hegde, A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	06.09.2021
Date of Pronouncement	:	08.09.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

These cross appeals are directed against the order dated 16.11.2017 passed by Ld CIT(A)-11, Bangalore and they relate to the assessment year 2014-15.

2. The assessee is engaged in the business of undertaking civil contract works. The assessing officer completed the assessment making following disallowances/additions:-

(a) Interest paid to NBFC u/s 40(a)(ia)	-	41,47,301
(b) Disallowance of wages	-	5,23,79,379
(c) Disallowance made u/s 14A	-	2,29,39,153
(d) Disallowance of interest relating to Interest free advance given	-	2,14,35,676
(e) Addition made u/s 56(viia) of the Act		26,58,789

3. The Ld CIT(A) confirmed the disallowance of item (a) and (e) above. He deleted the disallowance of item (b) and (d) above. He gave partial relief in respect of disallowance made under (c) above. Aggrieved, both the parties have filed appeals challenging the decision taken by Ld CIT(A) against each of them.

4. We shall take up the appeal filed by the assessee. The Ld A.R assessee submitted that the assessee is not pressing grounds relating to addition made u/s 56(viia) of the Income-tax Act, 1961 ['the Act' for short]. Accordingly, the grounds 4 to 6 relating to this issue are dismissed as not pressed.

5. Ground no.2 and 3 urged by the assessee relates to the disallowance of Rs.41,47,301/- made by the AO u/s 40(a)(ia) of the

Page 3 of 9

Act. The AO noticed that the assessee has paid interest to various Non Banking Financial Companies without deducting tax at source. Before AO, the assessee also failed to demonstrate that the above said interest formed part of total income of the payee companies. Accordingly, the AO disallowed the interest expenditure u/s 40(a)(ia) of the Act. The Ld CIT(A) also confirmed the same.

6. The Ld A.R submitted that the assessee could obtain a certificate from Chartered Accountant with regard to the payment of Rs.13,76,627/- made to M/s Tata Capital Financial Services Ltd to the effect that the above said income was offered to tax by the above said company. He submitted that the assessee has furnished a copy of certificate at pages 61 to 62 of the paper book along with an affidavit requesting for admission of the same. Accordingly, he prayed that this additional evidence may be accepted and the matter may be sent to the file of AO for examining the disallowance in terms of second proviso to sec.40(a)(ia) of the Act.

7. We heard Ld D.R and perused the record. We notice that the total amount of disallowance made by the AO was Rs.41,47,301/-. In the assessment order, it is mentioned that the above said payments have been made to various NBFCs like L & T Finance Ltd, Bajaj Finance Ltd, Reliance Capital Ltd, India Bulls Ltd, Daimler Finance Ltd, Kotak Mahindra Bank Ltd, LIC India Ltd and Tata Capital Ltd. However, the assessee has obtained certificate only from one company named M/s Tata Capital Ltd, which has claimed to have received interest income of Rs.13,76,627/-. The assessee has not furnished any certificate from any of other payees for the remaining amount.

Page 4 of 9

8. In view of the above, we confirm the disallowance of interest expenditure paid to NBFCs other than M/s Tata Capital Ltd. With regard to the payment made to M/s Tata Capital Ltd, we restore the same to the file of the AO for examining the same afresh in the light of additional evidence furnished by the assessee. Accordingly, the order passed by Ld CIT(A) on this issue would stand modified.

9. We shall now take up the appeal filed by the revenue. The first issue urged by the revenue relates to the disallowance of wages expenditure. The AO examined the vouchers relating to wage payments and noticed that most of them are self made. Accordingly he made adhoc disallowance of 10% of wage expenditure. The disallowance worked out to Rs.5,23,79,379/-. The Ld CIT(A) deleted the same.

10. We heard the parties on this issue and perused the record. The Ld D.R supported the order passed by the AO and also pointed out that most of the vouchers are self made. The Ld A.R. on the contrary, placed his reliance on the order passed by the co-ordinate bench in the assessee's own case relating to AY 2013-14 in ITA No.290 & 318/Bang/2018 dated 20.12.2019, wherein the Tribunal had deleted identical disallowance made by the AO in that year.

11. We noticed from the order passed by the co-ordinate bench that the Tribunal had followed the decision rendered by another co-ordinate bench in the assessee's own case in AY 2004-05 passed in ITA No.929 & 930/B/2009 dated 11.09.2009 and also the decision rendered in the following cases:-

Page 5 of 9

(a) PCIT vs. M/s R.G Buildwell Engineers Ltd (2018)(99 taxmann.com 283)(Delhi)

(b) PCIT vs. M/s R.G Buildwell Engineers Ltd (2018)(99 taxmann.com 84)(SC)

The tribunal has also observed that an identical disallowance was deleted in the above said cases for two reasons, viz., (a) that the books of accounts were not rejected and (b) that expenses were allowed consistently in the past in scrutiny assessments. The tribunal has also noticed that the Ld CIT(A) has observed that the AO has not pointed any specific defects in any of the vouchers. In the instant year also, the Ld CIT(A) has observed that the AO has given vague reasons for making the disallowance. Further the AO has not rejected the books of accounts. Accordingly, following the decisions rendered by the co-ordinate benches, we confirm the orders passed by LD CIT(A) on this issue.

12. The next issue urged by the revenue relates to the disallowance made u/s 14A of the Act. The assessee has received exempt dividend income of Rs.11,600/- during the year under consideration. The AO worked out the disallowance applying the provisions of Rule 8D at Rs.2,29,39,153/-, which consisted of interest disallowance of Rs.2,17,84,744/- u/s 8D(2)(ii) and expenditure disallowance of Rs.11,54,409/- u/r 8D(2)(iii). The Ld CIT(A) restricted the disallowance to exempt income of Rs.11,600/- and deleted the remaining amount of disallowance.

13. We heard the parties on this issue and perused the record. We notice that identical disallowance was made by the AO u/s 14A of the Act in AY 2013-14 also and the Tribunal, in its order referred supra, has confirmed the order passed by LD CIT(A) in restricting the disallowance to the amount of exempt dividend income. We notice

Page 6 of 9

that the Hon'ble High Court of Delhi in the case of Joint Investment Private Limited Vs. CIT 372 ITR 694 has held that the disallowance u/s 14A should not exceed exempt income. The Mumbai bench of Tribunal in the case of Future Corporate Resources Limited Vs. DCIT (ITA No.4658/Mum/2015 dated 26.7.20 17) has expressed an identical view. The Hon'ble Delhi High Court has considered an identical issue in the case of PCIT vs. Caraf Builders & Construction (P) Ltd (2019)(101 taxmann.com167) and has held as under:-

“25. Total exempt this year was Rs. 19 lakhs. In these circumstances, we are not required to consider the case of the Revenue that the disallowance should be enhanced from Rs. 75.89 crores to Rs. 144.52 crores. Upper disallowance as held in Pr. CIT v. McDonalds India (P.) Ltd. ITA 725/2018 decided on 22nd October, 2018 cannot exceed the exempt income of that year.”

In view of the above said decisions, we do not find any infirmity in the decision of Ld CIT(A) in restricting the disallowance u/s 14A to the amount of exempt income.

14. The next issue urged by the revenue relates to the disallowance of interest expenditure relatable to advance given for acquisition of land. The AO noticed that the assessee has given advance of Rs.24.13 crores towards purchase of land to a concern named M/s Naveen Hotel. The AO also noticed that the assessee has paid interest on the Overdraft account to the tune of Rs.2,41,35,676/-. The AO took the view that the above said advance given towards purchase of land is a capital expenditure and the same has been met out of overdraft withdrawals, which resulted in incurring of interest expenditure. Accordingly the AO took the view that the corresponding interest expenditure should be capitalised in terms of proviso to sec.36(1)(iii) of the Act. Accordingly, he disallowed a sum of Rs.2,14,35,676/- in terms of the proviso to sec.36(1)(iii) of the Act. The Ld CIT(A) deleted the disallowance on the reasoning that the own funds available with the assessee is more than the advance amount. The revenue is aggrieved.

15. The Ld D.R submitted that the assessee has used its own funds to other purposes of business, which is evidenced by the fact that the assessee was constrained to use the overdraft facilities for the purpose of giving advance for land purchase. She submitted that it is for the assessee to prove the nexus between own funds and the advance given for purchase of land. She submitted that the Ld CIT(A) has not examined the nexus mentioned above. She submitted that the Ld CIT(A) has compared over all fund position and that principle could not be applied to the instant facts. Accordingly, the Ld CIT-DR submitted that the order passed by Ld CIT(A) should be reversed.

16. The Ld A.R supported the orders passed by Ld CIT(A) on this issue. He further relied upon the order passed by co-ordinate bench in the case of DCIT vs. IDEB Projects Ltd (ITA No.1531/Bang/2012 dated 28-04-2017).

17. We heard rival contentions and perused the record. We notice that the Ld CIT(A) has given decision by considering the own funds available with the assessee as the beginning and end of the year. The decision rendered in the case of IDEB Projects Ltd (supra) is also related to interest free advances given to sister concerns, wherein a presumption of utilisation of own funds was entertained.

18. However, the issue here is about the applicability of the "proviso to sec.36(1)(iii) of the Act", i.e., whether any portion of interest expenditure is attributable to capital expenditure incurred in purchase of land and in that case, whether a disallowance is called for as per proviso to sec.36(1)(iii) of the Act. The AO has invoked the above said proviso and we notice that the Ld CIT(A) has not examined the said aspect at all. According to Ld D.R, the assessee was

Page 8 of 9

constrained to utilise overdraft facilities and incurred interest expenditure consequently, only on account of the reason that the assessee has given huge advance for purchase of land. We notice that none of these factual aspects have been examined by LD CIT(A). In our view, it is the duty of the assessee to prove that the loan funds were not used for giving advance for purchase of land. Further it is necessary for the assessee to address on applicability or otherwise of proviso to sec.36(1)(iii) to the facts of the present case and it is for the Ld CIT(A) to take a decision on it. Accordingly, we are of the view that this issue requires fresh examination at the end of Ld CIT(A). We have noticed that the AO has estimated the interest expenditure to be disallowed for the whole year. In our view, if it is decided that the interest expenditure attributable to advance given for land purchase, then the disallowance should be restricted to the period of actual usage of loan funds. Accordingly, we set aside the order passed by LD CIT(A) on this issue and restore the same to his file with the direction to examine the applicability of proviso to sec.36(1)(iii) to the facts of the present case and its effect on the interest expenditure claimed by the assessee. The Ld CIT(A) may take decision in accordance with law, after affording adequate opportunity to the assessee.

19. In the result the appeals of assessee is partly allowed and the appeal of the revenue is treated as partly allowed.

Order pronounced in the open court on 8th Sept, 2021.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 8th Sept, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.