

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ B ‘ Bench, Hyderabad
(Through Video Conferencing)
Before Shri S.S. Godara, Judicial Member
AND
Shri Laxmi Prasad Sahu, Accountant Member

ITA No.311/Hyd/2017		
Assessment Year: 2012-13		
GVK TRANSPORTATION PRIVATE LIMITED, Secunderabad. PAN : AADCG5295P	Vs.	The Asst. Commissioner of Income Tax, Circle – 2(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Ms. Khyati Chadda
Revenue by:		Shri YVST Sai.
Date of hearing:		06.01.2022
Date of pronouncement:		11.01.2022

ORDER

Per S. S. Godara, J.M.

This assessee's appeal for A.Y. 2012-13 arises from the Commissioner of Income Tax (Appeals) - 2, Hyderabad's order dated 28.07.2016 in ITA No.0049/2015-16, involving proceedings u/s. 143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. The assessee has raised the following substantive grounds in the instant appeal.

"1. The Order of the Commissioner of Income Tax (Appeals)-2. Hyderabad dated 28-07-2016 is erroneous, contrary to law and facts of the case.

2 The Commissioner of Income Tax (Appeals) erred in sustaining the disallowance of Rs.137,73,184/- (comprising of interest of Rs.56,42,302/- Proportionate part of Rs.167,01,148/- of interest expenses and 0.5% of average value of exempt investment at Rs.81,30,882/-) made by the Assessing Officer u/s.14A r.w.r.8D stating that appellant made investments "with an intention to earn exempt income, even though he has not earned any exempt income". In this connection, the appellant submits that (i) the expenditure debited to the profit and loss account was incurred in connection with making investments in subsidiary companies of the Appellant and the business of the Company was to invest in various Road projects and thus such expenditure was incurred for its business. (ii) and that it did not earn any income during the year on the equity share capital invested by it in its subsidiaries and therefore did not claim any income as exempt Hence the Commissioner of Income Tax (Appeals) should not have confirmed the disallowance of Rs.1,37,73,184/- u/s.14A r.w.r.8D of the Act.

3. The Commissioner of Income Tax (Appeals) erred in sustaining the disallowance of Rs.5,88,09,983/- (interest of Rs.4,40,14,093/- and upfront fee of Rs.1,47,95,890/-) out of financial expenses stating that this expenditure was incurred "in respect of the investments made in its subsidiaries, has to be brought to tax u/s.36(1)(iii) of the Act, as the said investments were not made for the purpose of assessee's business". In this regard, the appellant submits that main objects for which Appellant was incorporated is for making investments in its subsidiaries taking up Road projects as business and therefore the Commissioner of Income Tax (Appeals) is not justified in sustaining the disallowance of Rs.5,88,09,983/- out of financial expenses u/s.36(1)(iii). Commissioner of Income tax (Appeals) ought to have seen that money was borrowed from banks for pursuing objects as stated in Memorandum of Association of the Appellant and therefore disallowance u/s. Sec.36(1)(iii) is not justified."

3. It is noticed at the outset that regarding the assessee's former substantive ground that it has not derived any exempt income in the impugned assessment year so as to set section 14A r.w. Rule 8D in motion. Case law Chemninvest Ltd. Vs. CIT (2015) 378 ITR 33 (Del), CIT Vs. Corrttech Energy Pvt. Ltd. 223

Taxmann.com 130 (Guj) and CIT Vs. CIT Vs. Chettinad Logistics Pvt. Limited (2017) 80 taxmann.com 221 (Madras) holds that the impugned disallowance is attracted only in case an assessee derives exempt income and not otherwise. We thus accept the assessee's instant former substantive grounds for this precise reason alone and make it clear that it shall be very much open for the Assessing Officer to examine the issue afresh in the year of the assessee's deriving actual exempt income in light of all the corresponding financial as per law. This first and foremost substantive ground is accepted in foregoing terms.

4. Next comes the latter issue of correctness of section 36(1)(iii) of interest disallowance of Rs.5,88,09,983/- made in the course of assessment and upheld in CIT(A)'s order as follows :

"7.2 I have gone through the AO's observations and Ar's contentions. It is seen that the AO has disallowed an amount of interest expenditure to an extent of Rs.4,40,14,093/- (which pertains free loan given by assessee to its subsidiary and upfront fee of Rs.1,47,95,890/- totaling to Rs. 5,88,09,983/. On a perusal of the detailed observations made by the AO, I am in agreement With the AO's view that the amount of Rs.4,40,14,093 and Rs.1,47,95,890/- incurred towards interest expenditure and upfront fee in respect of the investments made in its subsidiaries, has to be brought to tax u/s, 36(1)(iii) of the Act, as the said investments were not made for the purpose of assessee's business. Therefore, the disallowance made by the AO on this score is hereby Sustained. As a result, the grounds raised in this regard are dismissed."

5. Learned CIT DR has filed a compilation of case law along with written submissions that the CIT(A) has rightly invoked the impugned disallowance as the assessee could not prove the impugned expenditure to have been incurred wholly and exclusively for the purpose of its own business. The assessee's case on the other hand, quoted hon'ble apex court's landmark decisions

in SA Builders Vs. CIT 288 ITR 1 (SC) and Hero Cycles Pvt. Ltd. Vs. CIT 379 ITR 347 that commercial expediency is not merely restricted to assessee's own business but also includes its subsidiaries' business activities as well. Be that as it may, we note that CIT(A)'s order has simply brushed aside the assessee's contentions without examining the clinching commercial expediency in the impugned interest expenditure. We therefore deem it appropriate to restore the instant matter back to the Assessing Officer for his afresh factual adjudication of assessee's business expediency element in the impugned advances to its sister concerns to be decided within three effective opportunities of hearing.

No other ground has been pressed before us.

6. This assessee's appeal is partly allowed in above terms.

Order pronounced in the Open Court on 11th January, 2022.

Sd/- (LAXMI PRASAD SAHU) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 11th January, 2022.

TYNM/sps

Copy to:

S.No	Addresses
1	GVK Transportation Private Limited, Paigah House, 156-159, S.P. Road, Secunderabad - 500 003.
2	The Asst. Commissioner of Income Tax, Circle 2(2), Hyderabad.
3	CIT (A)-2, Hyderabad
4	Pr. CIT-2, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order