

IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI

BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 6928/Mum/2018 (A.Y: 2013-14)
&

ITA No. 6929/Mum/2018 (A.Y: 2012-13)

M/s. Vijay Steel Corporation Pvt Ltd 2 Sabhapati Bhavan, 19 Meena Baugh, Santacruz (West) Mumbai-400054	Vs.	DCIT 13(3)2 Mumbai.-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACV3517E		
Appellant	..	Respondent

Appellant by :	Mr.Vivek Jain. AR
Respondent by :	Mr.Hoshang B Irani. DR

Date of Hearing	17.12.2021
Date of Pronouncement	27.01.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

These are the appeals filed by the assessee against the separate orders of the Commissioner of Income Tax (Appeals)- 21, Mumbai passed u/s 143(3) and 250 of the Income Tax Act, 1961.

2. Since the issues involved in these appeals are inter connected, hence are clubbed, heard and consolidated order is passed.

For the sake of convenience, we shall take ITA No. 6928/Mum/2018 for the A.Y 2013-14 as a lead case and facts narrated therein. The assessee has raised the following grounds of appeal:

Grounds Of Appeal

Your Appellant being dissatisfied with the order dated 21.08.2018 passed by the COMMISSIONER OF INCOME TAX (APPEALS)-21,Mumbai(hereinafter referred to as CIT(A)) presents this appeal against the same on the following amongst other grounds.

1.The Order dt. 17/03/2016 passed u/s .143(3) of the I.T. Act,1961 by DCII is bad in law and illegal. The DCII has erred both on facts and in law.It is submitted that the addition and disallowances be deleted now.

2. The Dy. Commissioner has erred in adding the unsecured loan taken from various parties covered u/s 68,since these parties have failed to file their return of income, amounting to Rs 48,95,746/-(para 5 of the Asst. Order)It is submitted that the Dy. Commissioner has erred both on facts and in law.It is submitted that the addition be deleted now.

3.The Dy. Commissioner has erred in adding the interest paid to parties covered u/s 40A(2)(b) of Rs 8,81,234/-(para 6 of the asstt. Order).It is submitted that the Asstt. Commissioner has erred both on facts ans in law.It is submitted that the addition be deleted now.

4.The Dy.Commissioner has erred n adding the commission paid to parties covered u/s 40A(2)(b) of Rs. 7,19,000/-(para 7 of the asstt. Order).It is submitted that the Asstt Commissioner has erred both on facts and in Iaw.It is submitted that the addition be deleted now

5.The Dy. Commissioner has erred in adding 10%(on adhoc

basis) of purchases made from parties covered u/s 40A(2)(b) of Rs 88,56,179/- (para 8 of the asstt Order). It is submitted that the Asstt. Commissioner has erred both on facts and in law. It is submitted that the addition be deleted now.

6. Further it is requested not to start penalty proceeding u/s. 271(1)(c) to the IT Act, 1961 till the conclusion of this appeal proceedings.

3. The Brief facts of the case that, the assessee company is engaged in the business of trading in mild steel items utilized in various sectors like wind, power infrastructure, sugar and construction etc. The assessee has filed the return of income electronically for the Assessment Year 2013-14 on 29.09.2013 disclosing a total income of Rs. Nil with the carry forward loss of Rs. 3,58,70,809/-. The assessee has filed the Tax audit report u/s 44AB in form No. 3CA and 3CD along with the return of income. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with the questionnaire are issued. In compliance the ld. AR of the assessee appeared from time to time and furnished the details. The Assessing Officer (A.O) on perusal of the facts and Balance sheet found that the assessee has unsecured loans of Rs. 5,33,89,311/- from the shareholders and other lenders. Hence to verify the nature and source of funds and credit worthiness of the lenders, the A.O. has issued notice u/s 133(6) of the Act to 86 parties/lenders. The notice is issued to 11 parties

who have provided unsecured loans in the F.Y 2012-13 aggregating to Rs.43,95,746/-referred at page 8 of the order. Whereas, the A.O to test check the proof of identity of creditors, capacity of creditor to lend money and genuineness of transaction has applied the provisions of Sec. 68 of the Act and was not satisfied with the information submitted and in respect of one loan creditor of RS.5,00,000/- as no reply was received has made an aggregate addition of Rs.48,95,746/-(ii) the A.O has disallowed the interest charged @18% claimed in the Profit &Loss account on the unsecured loans of Rs.48,95,746/- to the extent of Rs. 8,81,234/-(iii)the A.O has disallowed the commission expenses of Rs.2,41,000/- in respect of sale and Rs.4,78,000/- paid to related party as no proper documentary evidences was submitted by the assessee. (iv) The assessee has claimed purchases from the related parties M/s Vijay Transmission pvt Ltd and M/s Vijay Parivartan Pvt Ltd. The A.O found that the purchases are made from the sister concerns and no comparative details of purchase price from non related party are available. Therefore the A.O. has observed that the purchases have been made from the company which has substantial interest in the business of the assessee company. Hence the A.O has disallowed U/sec40A(2)(b) of the Act @ 10% on the adhoc basis (being 10% of

Rs.8,85,61,790) of total purchases worked out to Rs.88,56,179/-.(v) the A.O has made disallowance u/s 14A r.w.r 8D(2) (ii) & (iii) of IT Rules Rs.32,04,273/- as the assessee has not disallowed any expenditure for earning the exempted income. Finally the A.O has assessed the total income of Rs.(-)1,73,14,377/- and passed the order u/s 143(3) of the Act dated 17.03.2016.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The Ld. CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the A.O and has confirmed the addition of (i)unsecured loan creditors (ii) interest paid on unsecured loans disputed covered u/s 40A(2)(b) of the Act (iii)the commission paid to parties and(iv) 10% of the purchases from the related parties u/s 40A(2)(b) of the Act. The CIT(A) has granted relief in other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed the appeal with the Honble Tribunal.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the addition u/s 68 of the Act irrespective of the fact that the assessee has filed the details in respect of the loans and submitted the confirmation of the loan creditors along with other details. Further, the Ld. AR submitted that the assessee

is a company and maintain the regular books of accounts and has obtained unsecured loans from genuine creditors and the A.O also made enquires by issuing notice u/s 133(6) of the Act on loan creditors but the A.O wrongly presumed the facts of the loan creditors and the genuineness was not accepted. Whereas, the contentions raised by the assessee before the appellate authority that the confirmations have been filed and the creditors are well-known persons and their identity is established and the transactions are genuine. The Ld.AR supported the submissions on the disputed issues with the voluminous paper book and judicial decisions and prayed for allowing the appeal. Contra, the Ld. DR supported the orders of the lower authority.

6. We have heard the rival submissions and perused the material on record. On the first disputed issue, we find before the A.O, the assessee has submitted the information in respect of the unsecured loan creditors and the A.O has issued notice u/s 133(6) on all 86 parties out this 8 notices were return back, and whereas out of the 84 parties 11 parties have provided loan to the assessee in the relevant A.Y 2013-14 aggregating to Rs. Rs.48,95,746/- and the unsecured loan range from Rs. 15,000 to Rs.25,00,000. On perusal of the assessment order, the assessee has submitted the documentary

evidences but the A.O has over looked the vital documents in respect of the sources filed by the assessee. The Ld.AR has submitted the written submissions and also the annexure A & B in respect of loan creditors, PAN, Bank account details and the Income Tax returns. We find the Ld. CIT(A) has dealt on the submissions of the assessee supporting the loan creditors with confirmation ledger, PAN, Bank Statement of loan creditors. The A.O. is aware of the facts that the loan creditors including Non Residents have not filed income tax returns as their income is below the taxable limit. We find that the assessee has to satisfy the 3 ingredients with respect to identity, creditworthiness and genuineness of the transaction. The CIT(A) has discussed on the provisions of the Act and Prima-facie the CIT(A) has accepted the identity, credit worthiness but has not accepted the genuineness of the transactions. The Ld. AR demonstrated the evidences in paper book at page 12 to 72 with confirmations, pan copy, bank statements, Affidavit of Non Resident loan creditor. We are of the opinion that the assessee has discharged the burden of proof in filling the documents before the A.O and the CIT(A). But the A.O has taken the different view and over looked the explanations of the assessee, The Ld.AR has

substantiated the submissions relying on the judicial decisions as under:

1. *CIT Vs. Lovely Exports P Ltd, 216 ITR 196 (SC)*
2. *CIT Vs. Divine Leasing and Finance Ltd, 158 Taxman 440 (Del)*
3. *Hindustan Inks & Resin Ltd Vs. DCIT, 60 DTR/8 (Guj)*
4. *DCIT Vs. GP International Ltd 325 ITR 25 (P&H)*
5. *PCIT Vs. Adamine Construction Pvt ltd (2018) 99 taxmann.com 44 (Del)*
6. *PCIT Vs. Hitech Residency P Ltd, (2018), 96 Taxmann.com 402/257 Taxmann 390 (Del).*

7. Accordingly, we direct the Assessing officer to delete the addition of unsecured loans and allow this ground of appeal in favour of the assessee.

8. With regard to the second disputed issue, the A.O has disallowed the interest paid to parties u/s 40(A)(2)(b) of the Act. Since we have directed the A.O to delete the addition of unsecured loans in the Para 7 above, therefore the interest on the unsecured loans has to be allowed. Accordingly we direct the A.O to delete the addition and allow the interest claim of the assessee on the unsecured loan creditors.

9. On the third disputed issue, the Ld. AR submitted that the commission expenses are paid to the parties on sale transactions. The CIT(A) has observed that the assessee

has submitted the documents to establish the purchase of items but there is no proper evidence submitted in respect of payment of commissions to the parties. We find that at page 75 to 105 of paper book the details of confirmations, purchase orders, income tax return copy of the recipients are filed. Further these persons are working for the company for last several years and the revenue/ Income tax department has accepted the commission payments claim in the earlier years. We do not find the action of the A.O. is justified and direct the deletion of commission payments.

10. The last disputed that the A.O has disallowed the 10% of the purchase value of goods/services from the related parties under 40A(2)(b) of Rs. 88,66,179/-. The A.O has not adopted any basis/ comparable fair market value in respect of the addition. On perusal of the assessment order, we find the A.O. has not identified any particular invoice but made adhoc basis disallowance. The assessee has produced the bills and complied with directions of the CIT(A). We find that even the A.O. does not have the requisite information at the time of assessment proceedings. We are of the substantial opinion that the matter needs to be verified and examined. Accordingly, we restore the disputed issue to the file of the A.O for limited purpose for examination of

facts and the A.O. should provide adequate opportunity of hearing to the assessee and decide on merits. And the ground of appeal is treated as allowed for the statistical purposes.

11. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

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12. The assessee has raised the following grounds of appeal:

1. *The order dated 21/08/2018 passed u/s 143(3) by ITO is bad in law and illegal. The ITO has erred both on facts and in law. It is submitted that the addition and disallowance be deleted.*

2. *The DCIT has erred in addition the interest paid to parties covered u/s 40A(2)(b) of Rs. 2,04,252/-. It is submitted that the Asst. Commissioner has erred both on facts and in law. It is submitted that the addition be deleted now.*

3. *Further, it is requested not start penalty proceedings u/s 271(1)(c) to the IT Act till the conclusion of this appeal proceedings.*

13. We find that the A.O has made disallowance in respect of excess interest paid to parties covered u/s 40A(2)(b) of the Act. Whereas the assessee has been paying interest @ 18% and the A.O has restricted @16% and made addition of differential interest of Rs. 2,04,252/- and was confirmed by the CIT(A). We

considering the assessee turnover and the scope of business operations observe that the interest rate @16% is paid to some of the parties. But in some cases interest rate @ 18% is paid depending upon the immediate source and timeliness of providing funds for the business. We considering the overall facts, circumstances, the nature of the business activities of the assessee and the type of relation with the related parties and unrelated parties of the assessee's business concern, we do not find the action of the A.O is justified. Accordingly, we direct the A.O to delete the disallowance of interest and allow the grounds of appeal of the assessee.

14. In the result, the assessee appeal ITA No. 6929/Mum/2018 for the A.Y 2012-13 is allowed and ITA No.6928/Mum/2018 For the A.Y 2013-14 is partly allowed for statistical purposes.

Order pronounced in the open court on 27.01.2022.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 27.01.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai