आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

(Conducted Through Virtual Court)

BEFORE S/SHRI PRAMOD M. JAGTAP, VICE PRESIDENT
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.2580/Ahd/2014
Assessment Year : 2010-11
AND
ITA No.2008/Ahd/2016
Assessment Year : 2012-13

DCIT (OSD), Range-1 Ahmedabad.	Vs	M/s.D-Com Systems Ltd. Shop No.28, 1st Floor Vraj Vihar 6, B/h. Rahul Tower, Off. 100 Ft. Road, Satellite Ahmedabad 380 015. PAN : AACCD 4827 H

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri D.K. Parikh, AR
Revenue by :	Shri V.K. Singh, Sr.DR

सुनवाई की तारीख/**Date of Hearing : 02/03/2022**
घोषणा की तारीख /**Date of Pronouncement: 30/03/2022**

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:

These are two appeals are filed by the Revenue against orders dated 7.7.2014 and 26.05.2016 passed by the ld.Commissioner of Income Tax (Appeals), Ahmedabad for the Asstt.Years 2010-11 and 2012-13 respectively. Since assessee is same in both the cases, we proceed to dispose of both the appeals by this common order.

2. First we take ITA No.2580/Ahd/2014 relating to the Asst.Year 2010-11.

3. Solitary ground raised in the appeal is that the ld.CIT(A) has erred in restricting the disallowance of payment of labour charges made to various labour contractors to the extent of 19,66,655/- as against the claim of Rs.1,96,66,556/-.

4. Brief facts of the case are that the assessee company is engaged in civil contract works and trading in machinery. For the Asstt.year 2010-11 assessee has filed its return of income declaring total income at Rs.2,19,92,310/- on 26.9.2010. The same was processed under section 143(1), and after rectification, income was determined at Rs.1,55,34,520/-. The case of the assessee was selected for scrutiny assessment by issuance of notice under section 143(2) on 24.8.2011 which was duly served upon the assessee. During the assessment proceedings, it was noticed by the AO that the assessee-company executed contract works of Jaihind projects Ltd., and BRPL etc. and sold some machineries. For doing this contract work, the assessee had engaged labour contractors for labour work and certain works were sub-contracted to some other parties. For executing these works, the assessee has incurred expenses. The ld.AO called for the details viz. names and addresses of the contractors including labour contractors, their PANs. The assessee was also asked to produce before the AO some of the labour contractors. Information was also called under section 133(6) of the Act seeking various details of work undertaken by them. After verification of the details, the ld.AO observed that the assessee-company has not made payments to some of the labour contractors, because there was no verifiable evidence to support the claim of the assessee. A list of parties/labour contractors along with the amount of labour expenditure claimed, which were not verifiable as given in the assessment order at page no.2 and 3. This list contained names of 25 parties, and the total amount of labour

charges claimed by the assessee was Rs.1,96,66,555.78/-. According to the AO, since the assessee has failed to establish incurrence of the expenditure for the business purpose, claim of deduction of the expenditure was disallowed, and the same accordingly added to the total income of the assessee.

5. Aggrieved by the action of the AO, the assessee filed an appeal before the ld.CIT(A). Before the ld.CIT(A), the assessee has filed a detailed submissions, which is extracted by the ld.CIT(A) at page nos.2 to 11 of the impugned order. The crux of the submissions of the assessee is that the ld.AO has not given justification for denial of the claim of the assessee; that he has not analysised or appreciated the details furnished during the assessment proceedings; that he has not rejected books of accounts, much less, any defect in the books of accounts; the books of accounts are maintained regularly and the same are audited; the gross profit rate when compared against the preceding two financial years is much higher, that is to say, in the F.Y.2007-08 and 2008-09, GP rate is 24.17% and 17.40%, while for the F.Y.2009-10, the GP rate is 26.42%; thus the average GP of past two years is 20.79%. In the earlier year and subsequent years, the ld.AO has accepted the GP rate and no addition was made, and GP rate of 17.40% declared by the assessee in the A.Y.2009-10 has been accepted.

6. Assessee further submitted that there was no reason to doubt the genuineness of the claim of the assessee, because, books of accounts are audited; no defect has been pointed out by the Department, TDS has been made and paid to the Government, return thereof has been filed; more than 75% of the amount was paid through banking channels through account payee cheques; PAN of all the sub-contractors except four sub-contractors were

made available to the AO; GP rate for the year under consideration was father better than past years, which the AO has not disputed. Regarding non-appearance of some of the sub-contractors, the assessee submitted that looking to the nature of business, execution of work was carried out at various odd and remote sites across the country; that some of the sub-contractors are illiterate, and they did not have permanent address, as they moved from place to another depending upon the area of work. Even estimation of expenditure by the AO was not based on some justifiable and scientific manner; the AO has not disputed the nature of work carried out by the assessee, and comparatively higher GP margin for the year under consideration. The AO has also not proved whether the alleged payment to the sub-contractors have come back to the assessee or not. The ld.CIT(A) gave substantial relief to the assessee, after considering the submissions of the assessee and examining the claim of the assessee i.e. by restricting the disallowance at Rs.19,66,655/- being 10% of the disputed expenditure. Against this order, the Revenue is in appeal before the Tribunal.

7. Before us, the ld.DR supported the assessment order, while the ld.counsel for the assessee reiterated submissions as were made before the lower authorities. He further submitted that the assessee has made detailed submissions both before the AO and during the appellate proceedings. The ld.CIT(A) has discussed each and every aspect of the work of the assessee, and after appreciating the same, he restricted the disallowance to 10% of the disputed amount, which cannot be said to be unjustified. The ld.AR accordingly prayed for confirmation of order of the appellate authority.

8. We have heard both the parties and gone through the material available on record. The factual matrix of the case is that the

assessee company is engaged in executing contracts and sub-contracts. It has undertaken various labour contract works for different parties. The assessee has claimed labour expenditure to the tune of Rs.1,96,66,556/- , but the ld.AO did not allow the same on the ground that assessee has not produced labour contractors and even the said labour expenditure was not verifiable. The assessee has brought on record complete details and nature of work undertaken by it before the AO. The ld.AO without considering vital aspects has rejected claim of the assessee in a very brief and summary manner. Ld. CIT(A) while granting substantial relief to the assessee, has recorded a finding that assessee-company carried out contract works at various remote locations across the country; that gross profit during the year was higher at 26.42% as against the GP admitted in the preceding two assessment years 2008-09 and 2009-10 at 24.17% and 17.40% respectively; that all these details were also submitted to the AO during the assessment proceedings. Further, no such disallownaces were made in the earlier year or in the subsequent years on account of low GP rate. Further TDS was deducted on all payments made to contractors and their PAN were furnished except four parties; substantial payments have been made through account payee cheques. The AO has not pointed out any defects in the books of accounts nor doubted nature of the work carried out by the assessee. All these vital aspects about the genuineness of the payment were not considered by the AO while making outright rejection. Therefore, considering the nature of business of the assessee, higher GP rate declared during the year, and the fact that the AO has not pointed out any discrepancies in the books of accounts maintained by the AO, the ld.CIT(A) has justified in restricting the addition to 10% of the impugned addition. We do not find any infirmity in the order of the ld.CIT(A) in

restricting the disallowance, and we uphold the same. Thus, this ground of Revenue is dismissed.

9. Now we take appeal for the Asstt.Year 2012-13 in ITA No.2008/Ahd/2016.

10. Revenue has raised two grounds in the appeal. In the first ground, the grievance of the assessee is that the ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.1,47,12,505/- made on account of disallowance of interest expenditure.

11. During the assessment proceedings, the ld.AO noticed that the assessee net contract work in hand was to the tune of Rs.5,33,21,205/-, against which the assessee has shown large amount of expenditure including an amount of Rs.3,01,59,199/- being the interest payment. Considering the quantum of contract work on hand, the ld.AO disbelieved expenditure to the size of Rs.3,01,59,199/-. The ld.AO further noticed that the assessee has made huge investment in shares of Jayhind Projects Ltd., and Newton Solar P.Ld. amounting to Rs.58,56,44,892/-, against which, as per the balance sheet, the assessee has capital fund of Rs.9,73,87,327/- being subscribed capital and reserve & surplus and fixed assets of Rs.2,5,75,792/-. The assessee also made huge advance of Rs.12,52,31,613/- , and out of which it has earned interest income of Rs.1,36,74,313/-. Thus, the ld.AO assumed that the assessee has diverted interest bearing fund for non-business purpose in the form of investments in shares and loans & advances. Since the assessee has utilised borrowed funds for the business purpose, the benefit of deduction under section 36(1)(iii) of the Act was not available to the assessee. Accordingly, the ld.AO worked out disallowance of interest expenditure to Rs.1,64,84,886/- [Interest expenditure Rs.3,01,59,199/- minus Rs.1,36,74,313 being interest

income]. [Rs.2,64,84,886/- wrongly mentioned in the assessment order].

12. The assessee challenged this addition before the ld.CIT(A). It was submitted by the assessee that the ld.AO while making disallowance entire interest expenses has ignored own capital & reserve of Rs.9,73,87,327/-, and also interest free trade payables of Rs.131,07,50,198/- shown in the balance sheet of the assessee; that there was no evidence to demonstrate that the borrowed funds were diverted for non-business purpose. The Company JPL was sister concern of the assessee-company and it has business relation. The assessee company had invested Rs.5071,69,912/- as a part of strategic investment. The assessee-company has also given loans advance to the company as a part of agreement entered by JPL with its lenders and terms of Corporate Debt Restructuring. The said JPL has undertaken contract work on behalf of the assessee amounting to Rs.140,59,18,416/-, and investment and loans & advance to the sisters concerns are for the purpose of business. Assessee relied various judgments vis. SA Builders Ltd Vs. CIT, 288 ITR 1, DCIT, Jewel Consumer Care P.Ltd., ITA No.884/Ahd/2009 order dated 21.12.2011 for the proposition that on the ground of commercial expediency, the expenditure can be treated as business expenditure. Further, reliance was placed on the decision of Bombay high Court in the case of CIT Vs. Reliance utilities, ITA No.1398 of 2008, jurisdictional High Court decision in the case of CIT Vs. Torrent Leasing & Finance P.Ltd., for the ratio that when the assessee has own funds as well as borrowed funds, a presumption can be made that advances for non-business purpose have been made out of the own funds. The assessee has also relied upon some other cases to support its case, which were noticed by the ld.CIT(A) in the impugned order. The assessee ultimately submitted that if the

disallowance at all to be made, the same should be made on proportionate basis. A calculation sheet was submitted before the ld.CIT(A) working out notional interest at Rs.17,72,381/-. This sheet was reproduced by the ld.CIT(A) in his impugned order. After considering the submissions of the assessee and the facts on record, the ld.CIT(A) found that as per the balance sheet as on 31.03.2012 total advances made by the assessee was at Rs.12,52,32,613/- which included Rs.5,41,76,013/- lying with various government departments, staff advances and other security deposits and prepaid expenses. Further an amount of Rs.16,06,600/- has been given as loan to two parties, from whom the assessee was receiving interest income, and the remaining amount of Rs.6,94,50,000/- represented interest free loans and advances available with assessee. In this view of the matter coupled with various judicial pronouncements cited in the impugned order, the ld.CIT(A) restricted the disallowance of interest expenses to Rs.17,72,381/- worked out on priorata basis on the net interest free advance of Rs.6,94,50,000/- and the balance addition of Rs.1,47,12,505/- was deleted. Aggrieved by the action of the ld.CIT(A), the Revenue is in appeal before the Tribunal.

13. Before us, both the parties supported respective orders of the Revenue authorities. The ld.counsel for the assessee further relied upon judgment of Hon'ble Supreme Court in the case of CIT Vs. Reliance Industries Ltd., (2019) 102 taxmann.com 52 (SC) for the proposition that when interest free funds available to the assessee were sufficient to meet its investment, therefore it could be presumed that the investments were made from the interest free funds available with the assessee. Accordingly, the ld.counsel for the assessee prayed that since the ld.CIT(A) has considered the issue on both facts and in law, rightly given part relief to the assessee, hence, his order does not require any interference.

14. We have heard both the parties and perused orders of the Revenue authorities with material available on record. The case of the assessee is that during the year under consideration the assessee has shown contract receipt of Rs.161,66,59,578/- and substantial part of the work was sub-contracted to its sister concerns viz. Jaihind Projects Ltd. i.e. to the tune of Rs.156,33,38,373/-and remaining contract amount of Rs.5,33,21,205/- was on the hand of assessee-company. The assessee has incurred an interest expenditure of Rs.3,01,59,199/- while it has earned interest income of Rs.1,36,74,313/-. The ld.AO doubted the interest expenditure of Rs.3,01,59,199/- *qua* contract work of the assessee at Rs.5,33,21,205/-, more so, when the assessee has also made investment and advances to its sister concerns, which were disproportionate to the surplus interest free fund available with the assessee, and rather inadequate to make such investment and advances. Therefore, the ld.AO presumed that the assessee has diverted interest bearing funds to make investment in other companies, which activities were not for the business purpose. Accordingly, the ld.AO made disallowance of Rs.1,64,84,886/- (Rs.3,01,59,199/- minus Rs.1,36,73,313/-. The issue was agitated before the ld.CIT(A). Before the ld.CIT(A), the assessee has filed detailed written submissions with details of interest free fund available with the assessee-company to support its case that the assessee-company has more interest free funds at its disposal so as to make impugned investment and advances to the sister concerns. It is further submitted that investment made in the sister concerns are on account of business strategy and for business expediency, because major part of work contract have been undertaken by these sister concerns, which fact has not been disputed by the Department. It is further submitted that without

help and assistance of the sister companies, the assessee could not undertake contract of that much size, and therefore, the assessee has established nexus between the impugned expenditure and purpose of the business. In order to strengthen the claim, the assessee has relied upon various case laws, which are noted by the ld.CIT(A) in his impugned order. The ld.CIT(A) after examining the submissions of the assessee, partly allowed the claim of the assessee to the extent of Rs.17,72,381/- worked out on pro-rata basis. In holding so, the ld.CIT(A) made the following concluding observations:

> *"5.5 I have carefully considered the facts of the case, the assessment order and the written submission of the appellants. The A.O. has disallowed the entire expenditure on I interest ofRs.2,64,84,886/- [30159199-13674313] (being net difference between interest I expenditure and interest income) u/s 36(1)(iii) of the Act. The first argument of the A.R. of the appellants that the amount added by AO is having the arithmetic error and the same be corrected. The same seems correct as the AO has added the figure of Rs.2,64,84,886/- against the actual net figure interest which comes to Rs. 1,64,84,8867-. The same is accepted as pointed out by the appellant as there is arithmetical mistake by the A.O.*
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> *After considering various judicial pronouncements as argued by A.R of the appellant(supra), the utilization of funds, interest free loans and advances given and availability of interest free funds with the appellant it can be seen that the appellant has given total advances of Rs. 12,52,32,613/- as per the audited balance sheet as on 31.03.2012. The break-up of loans and advances was considered as submitted by appellant and it was seen that the out of the total loans and advances of Rs. 12,52,32,613/-, the amounts lying with the various government departments, staff advances and other security deposit and prepaid expenses were Rs.5,41,76,013/-. Further out of loans and advances given to two parties to whom advances of Rs. 16,06,600/- were given are already giving the interest to the appellant and the same is offered to tax by the appellant. Now the remaining amount of interest free loans and advances work out to Rs.6,94,50,000/-. Against the said, the appellant has argued that the same should not be disallowed as they have sufficient interest free funds to finance the same. Further the A.R. also argued that if the same is disallowed it should not be for the full year it should be on prorata basis as calculated and submitted at the time of the appellate proceedings.*

Further reliance is also placed on the following judicial pronouncements as argued and submitted by A.R. of the appellants. Further, Honorable Gujarat High Court in the Tax Appeal No. 620 to 625 of 2006 in Commissioner of Income Tax Vs Torrent Leasing & Finance Pvt Ltd has observed as under:

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After considering the above arguments, submission of appellant, utilization of the funds in the sister concern which is also in the same line of business i.e. Jaihind Projects Limited (contractors), and considering the judicial pronouncements in the above referred cases, the A.O. is directed to disallow the interest expense of Rs. 17,72,381/-which is worked out on prorata basis(working attached with the order) on the net interest free advances of Rs.6,94,50,000/-. Accordingly the disallowance of interest u/s. 36(i)(iii) is Restricted to Rs.17,72,381/- and the balance addition of Rs.14,712,505/- is deleted. The ground of the appellant is partly allowed."

15. In light of the above observation of the ld.CIT(A), we find that the ld.AO has made the impugned addition on some presumption and assumption that the assessee-company would have diverted interest bearing funds to non-business purpose. Such observation was not based on some material evidence. Though the assessee has furnished sufficient details to prove the case that it has sufficient interest free funds to make such investment and advances, and made for the business purpose, but the AO has not appreciated the same in right perspective. Therefore, we are in agreement with the reasoned finding of the ld.CIT(A), which is based on the appreciation of facts and figures provided by the assessee during the assessment proceedings as well as appellate proceedings. Thus, we are not inclined to disturb his order on this issue. We uphold the same. This ground is rejected.

16. Now we take second ground. In the second ground, the Revenue is aggrieved by the action of the ld.CIT(A) in deleting Rs.65,54,398/- made on account of disallowance under section 14A of the Act r.w Rule 8D of the IT Rule 1963.

17. The ld.AO noticed that the assessee has earned dividend income which is exempt under the Act. As per the section 14A of the Act, no deduction is allowable in respect of expenditure for earning exempt income. The ld.AO doubted that the assessee would have incurred expenditure for earning such exempt income, which required to be disallowed. He accordingly proposed to invoke provisions section 14A read with Rule 8D. The assessee submitted that it has already disallowed an amount of Rs.29,90,000/- being dividend received during the year. However, the ld.AO did not accept the explanation of the assessee. He accordingly computed disallowance as per the method provided in the above provisions at Rs.65,54,398/- after deducting *suo moto* disallowance of Rs.29,90,000/- by the assessee. Dissatisfied with the addition, the assessee went in appeal before the ld.CIT(A). The ld.CIT(A) after considering the submissions of the assessee and relying on various judgments on this issue, partly deleted the disallowance by holding that disallowance cannot be made in excess of exempt income. Aggrieved Revenue is now before the Tribunal.

18. Before the ld.DR supported the order of the AO, while the ld.counsel for the assessee defended to sustain the order of the ld.CIT(A). He further submitted that similar claim of the assessee for the Asstt.Year 2013-14 was allowed by the Tribunal in assessee's appeal in ITA No.43/Ahd/2017. In that case, the Tribunal by relying upon the decision of ITAT, Ahmedabad in the case of Chudgar Ranchodlal Jethalal Vs. DCIT, in ITA No.245/Ahd/2013 uphold the claim of the assessee by holding that disallowance under section 14A cannot be in excess of exempt income. Appreciating the facts, supported by the case laws, the ld.CIT(A) partly confirmed disallowance to the extent of dividend income received by the

assessee i.e. Rs.29,90,000/-. Now, the Revenue is assailing this action of the ld.CIT(A) by appeal before the Tribunal.

19. Heard both the parties; perused relevant orders of the Revenue authorities and other materials available on record. As pointed out by the ld.counsel for the assessee, when similar claim of the assessee for assessment year 2013-14 was agitated by the Revenue before the Tribunal, the Tribunal restricted the disallowance to the extent of exempt income. This decision is based on various judicial decisions, more particularly, the decision in the case of Chudgar Ranchodlal Jethalal (supra). The ld.DR has not disputed the same, nor pointed out any disparity of the facts or non-applicability of ratio of that decision in the instant case. Therefore, applying principle of consistency on the similar set of facts and circumstances, we are not inclined to deviate from the view taken by the ld.CIT(A) on this issue. Accordingly, we uphold order of the ld.CIT(A), and reject this ground of Revenue.

20. In the result, both appeals of the Revenue are dismissed.

Order pronounced in the Court on 30th March, 2022 at Ahmedabad.

Sd/-	**Sd/-**
(PRAMOD M. JAGTAP)	**(T.R. SENTHIL KUMAR)**
VICE-PRESIDENT	**JUDICIAL MEMBER**

Ahmedabad, dated 30/03/2022

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