

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.2882/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

Sumti Challani No. 2, Rithedon Avenue, Vepery, Chennai – 600 007.	बनाम/ Vs.	DCIT Central Circle 3(4), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. ADYPC-5416-D		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri T. Banusekar (CA)– Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri T. Vasanthan (CIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	29-03-2022
घोषणा की तारीख / Date of Pronouncement	:	08-06-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] dated 19.09.2017 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 27.03.2015. The grounds of appeal read as under:

1. For that the order of the learned Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case and in any case is opposed to the principles of equity, natural Justice and fair play.
2. For that the learned Commissioner of Income Tax (Appeals) has erred in not considering the fact that Learned Assessing Officer had erred in not initiating proceedings U/s.153C r.w.s.153A under the facts and circumstances of the case.
3. For that the Learned Commissioner of Income tax (Appeals) erred in not considering that the Assessing Officer has erred in not providing "Satisfaction Note" as per provisions of section 153C r.w.s 153A under the facts and circumstances of the case.
4. For that the Learned Commissioner of Income tax (Appeals) has erred in confirming that Assessing Officer was right in not invoking section 153C but initiating the proceedings u/s. 143(2) r.w.s.143(3).
5. For that the Learned Commissioner of Income tax (Appeals) has erred in completing the assessment without disposing off the Jurisdictional issues raised by the appellant under the facts and circumstances of the case.
6. For that the Learned Commissioner of Income tax (Appeals) has erred in including interest free loans to calculate the amount of interest disallowed.
7. For that the Learned Assessing Officer has erred in charging Interest U/s.234B under the facts and circumstances of the case.
8. For that the learned Commissioner of Income Tax (Appeals) has erred in partly allowing the claim u/s. 36(i)(iii) under the facts and circumstances of the case.
9. For that the Learned Commissioner of Income tax (Appeals) has erred in upholding addition to the tune of Rs.89824/- by invoking section 14A read with rule 8D(1) under the facts and circumstances of the case.
10. For that the Learned Commissioner of Income tax (Appeals) has erred in not providing an opportunity of being heard before confirming additions on the specific points under the facts and circumstances of the case.
11. For these grounds and such other grounds that may be urged before or during the hearing of the appeal it is most humbly prayed that this respected authority may be pleased to
 - a. Hold the notification issued and proceedings U/s. 143(3) was without Jurisdiction.
 - b. Delete the addition of Rs.12942756/-in respect of expense not related to business income.
 - c. Delete the addition of Rs.89824/- in respect of Proportionate disallowance of expense u/s 14A.
 - d. Pass such other orders as this respectful authority may deem fit.

2. The Ld. AR assailed the jurisdiction of Ld. AO to submit that the assessment was based on incriminating material and therefore, the assessment should have been framed u/s 153C. The Ld. AR also assailed the additions on merits. The Ld. CIT-DR, on the other hand, justified the assessment proceedings and submitted that there was no reference to any documents found during the course of search action to make the assessment in the hands of the assessee. Having heard rival submissions, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee belongs to Challani group which was subjected to search action on 19.04.2012. The case was centralized with Central Circle 3(4). The assessee offered return of income of Rs.47.95 Lacs which was selected for scrutiny u/s 143(3) since the case was being assessed u/s 153C for six previous assessment years (AYs 2007-08 to 2012-13). Accordingly, notice u/s 143(2) was issued which was followed by notices u/s 142(1) wherein the assessee was directed to file the requisite details.

3.2 The assessee being partner in various firms, received sum of Rs.346.03 Lacs from the firms. The sum of Rs.95.01 Lacs was claimed as exempt being share in the firms and from the balance income, the assessee deducted expense of Rs.238.14 Lacs comprising of interest on loans and other expenses and arrived at business income of Rs.12.87 Lacs. The total loan funds were 32.83 Crores whereas the investment in the firms was Rs.13.99 Crores. The Ld. AO estimated that only 20% of loans funds were utilized for earning of business income whereas rest of the loans were utilized to acquire assets from which there was no income or income wherefrom was exempt. Therefore, 80% of interest expenditure was disallowed and added back to the income of the assessee. Since the amount of Rs.95.01 Lacs was claimed as exempt, other business expenditure was also disallowed on proportionate basis u/s 14A which came to Rs.0.89 Lacs. Finally, the income was determined at Rs.236.75 Lacs.

Appellate proceedings

4.1 During appellate proceedings, the assessee assailed the validity of assessment proceedings on the ground that no satisfaction note was

drawn and no incriminating material was found and used in the assessment order. However, Ld. CIT(A) held that Ld. AO did not initiate proceedings u/s 153C for this assessment year rather the case was assessed as regular scrutiny case well within the time provided under the act. Just because a search has been conducted in the case of assessee's father, the department was not precluded from initiating regular assessment proceedings. The Ld. AO did not make use of any search documents and the assessee could not take objection to the same. Accordingly, the legal ground was rejected.

4.2 On merits, the assessee submitted that the outstanding unsecured loans at year end were Rs.21.82 Crores which were utilized for making various investments aggregating to Rs.40.82 Crores as detailed on page-4 of the impugned order. The investment in firms was shown as Rs.13.99 Crores. Accordingly, the interest-bearing unsecured loans of Rs.20.93 Crores vis-a-vis investment in firm for Rs.13.99 Crores were approx. 45% as against the findings of Ld. AO that only 20% of the loans were utilized to earn business income. However, Ld. CIT(A) rejected the same on the ground that the expenses were not vouched. The statement of affairs as on 31.03.2013 was re-casted which is extracted in para-8 of the appellate order. The interest-bearing loans taken by the assessee were summed up as Rs.31.93 Crores on which the assessee paid interest of Rs.2.34 Crores. Excluding the investment in firms for Rs.12.97 Crores from which the interest was received, the borrowed capital as diverted to non-business purposes was worked out to Rs.18.95 Crores and accordingly, proportionate disallowance was re-computed as Rs.1.29 Crores as against Rs.1.87 Crores disallowed by Ld. AO. The

disallowance of Rs.0.89 Lacs as made u/s 14A r.w.r. 8D was upheld. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. So far as the legal grounds are concerned, we find that Ld. AO has not referred to any incriminating material while making the assessment rather the return has been assessed in regular scrutiny assessment proceedings. The assessee group was searched on 19.04.2012 which falls in AY 2013-14. The provisions of Sec.153C, as stood at that point, mandate Ld. AO to determine the total income of such other person for six assessment years immediately preceding the assessment year (2013-14 in the present case) relevant to the previous year in which search is conducted or requisition is made. In other words, the assessment was to be framed u/s 153C only for AYs 2007-08 to 2012-13 and not for AY 2013-14. Therefore, we do not find any substance in the legal grounds raised by the assessee. The same stand dismissed.

6. On merits, we find that neither assessee nor revenue has made an attempt to draw the nexus of borrowed funds vis-à-vis its usage by the assessee. Naturally, if the borrowed funds were used to make the investments in the firms from which interest was earned, the assessee was entitled to claim the interest on borrowed capital otherwise not. Further, in case of mixed funds, a presumption could be drawn in assessee's favor that the borrowed funds were utilized to make investments. Therefore, on the given facts and circumstances of the case, we set-aside the impugned order and remit the matter back to the file of Ld. AO to ascertain the extent to which borrowed funds were utilized by the assessee to make investment in firms and adjudicate accordingly. The assessee is directed to substantiate its case. Regarding

disallowance u/s 14A, the assessee is directed to substantiate that the expenditure was allowable from the income earned from partnership firm and no disallowance u/s 14A would be attracted. Needless to add that adequate opportunity of hearing shall be granted to the assessee.

7. The appeal stand partly allowed for statistical purposes.

Order pronounced on 08th June, 2022

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 08-06-2022
JPV

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF