

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT, MEMBER AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
ITA No. 7027/Mum/2017 (A.Y. 2012-13)

DCIT, Circle-4(3)(2),
Room No. 649, 6th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

..... Appellant

Vs.

M/s SKM Fabrics (Amana) Ltd.
99, Niranjana, Ground Floor,
Marine Lines, Mumbai-400002

PAN: AAFCS2660E

..... Respondent

Appellant by	:	Sh. Hoshang B Irani (DR)
Respondent by	:	Sh. Yogesh Joijode
Date of hearing	:	24/05/2022
Date of pronouncement	:	12/08/2022

ORDER

PER KAVITHA RAJAGOPAL, J.M.:

This appeal has been filed by the Revenue against the order of Ld. Commissioner of Income Tax (Appeals) -9, Mumbai [hereinafter referred to as ('Ld. CIT(A)') dated 28.09.2017 under section 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') pertaining to Assessment Year (AY) 2012-13. The grounds of appeal are that the Ld. CIT(A) has erred in directing the Assessing

Officer (AO) to restrict the disallowance of expenses of Rs. 2,14,90,271/- to Rs. 2,00,000/- and that the Ld. CIT(A) has erred in directing the AO to delete the disallowance of interest of Rs. 4,78,78,358/- under section 36(1)(iii) of the Act.

2. Brief facts of the case are that the assessee-company is engaged in the business of trading of locally manmade gray fabrics. The assessee filed its return of income on 29.09.2012 declaring total loss at Rs. (-) 5,92,91,643/- and the assessee's case was selected for scrutiny and assessment order was passed under section 144 of the Act dated 31.05.2015, it was alleged that the assessee had only submitted the details required for the assessment in piecemeal manner for only selective dates through post and that the assessee had failed to furnish the complete details related to the expenditure incurred by the assessee. The AO further stated that the documents submitted by the assessee were furnished only at the fag end of the time barring scrutiny proceedings. The AO proceeded to disallow the expenditures claimed by the assessee on the ground that the assessee has not furnished complete details related to such expenditure thereby disallowing the entire expenses debited to the Profit & Loss A/c of the assessee to the tune of Rs. 2.14 crores as given below:

Sr.No.	Head of Expenditure	Amt. (Rs.)
1	Cost of materials consumed & Operating expenses	1,70,68,476
2	Depreciation and Amortisation of Expenses	13,50,474
3	Other Expenses	30,71,321
	TOTAL	2,14,90,271

3. Further to this, the AO had made addition of interest @ 15% amounting to Rs. 4,78,78,358/- under section 36(1)(iii) of the Act on the pretext that the assessee has given interest free loans and advances from the interest bearing borrowed funds.

4. Aggrieved by this, the assessee was in appeal before the Ld. CIT(A) then restricted the disallowance of expenditures of Rs. 2,14,19,271/- to Rs. 2,00,000/- and deleted the disallowance of interest of Rs. 4,78,78,358/- made under section 36(1)(iii) of the Act.

5. The Revenue is in appeal against the order of Ld. CIT(A). During the appellate proceedings, the Id. Departmental Representative (DR) contended that the Id. CIT(A) had erred in restricting the disallowance and in deletion of the addition on interest. The Id. DR relied on the order of the AO. The Id. Authorized Representative (AR) on the other hand stated that the AO has failed to consider the documentary evidences produced by assessee before the AO and had passed the order on the ground that the assessee has not furnished the complete details. The Id. AR further stated that the Ld. CIT(A) has passed the order after due consideration of the materials of the documentary evidences furnished by the assessee.

6. Having heard both the Ld. Representatives and perused the materials on record, we are of the considered opinion that the assessee has not furnished complete details either before the AO or before the Ld. CIT(A). Upon perusal of the materials before us. It is evident that the assessee's accounts has been verified and audited as per the provisions of law and that it is seen that no addition was made to the fixed assets of the assessee and thus, the Ld. CIT(A) has

concluded that the AO has erred in disallowing the depreciation and amortization of expenses which was allowed in the past. The Ld. CIT(A) has further held that as there was no specific defects in the books of accounts of the assessee disallowance ought not to have been made. It is also evident that the AO has concluded that the expenditure claimed by the assessee were not bogus. Further to this, it is observed that most of the debit transaction on raw-material was on account of opening stock at 1.54 crore and purchases during the year was for Rs. 93.92 lacs as against Rs. 2.06 crores for the previous year. The Ld. CIT(A) has further determined that the operating expenses was Rs. 23.19 lacs as against Rs. 63.15 lacs in the immediately preceding year. The Ld. CIT(A) has further stated that the AO has failed to consider the fact that the operating expenses has reduced from Rs. 63 lacs in the previous year to Rs. 23 lacs in the impugned year. It has also been observed that the total sales during the year has been increased by 1.93% compared to earlier year. From the above observations, we concluded that there is no infirmity in the findings of Ld. CIT(A) in restricting the disallowance of expenses of Rs. 2,14,19,271/- to Rs. 2,00,000/- as the AO has failed to consider the evidences furnished by the assessee. We also concur with the findings of Ld. CIT(A) in relying on the decision of Hon'ble Apex Court in State of Kerala Vs. C. Velukutty [60 ITR 239 (SC)] wherein it was held that even in the case of best judgment assessment, there should be reasonable nexus available to the material and circumstances of each case. Following the same, we hereby dismiss ground no.1 of appeal filed by the Revenue.

7. With regard to ground no.2 of the Revenue's appeal in deleting the disallowance of interest of Rs. 4,78,78,358/- under section 36(1)(iii) of the Act. It is observed that the AO has disallowed the same on the ground that the total

funds utilized by the assessee during the impugned year amounting to Rs. 98.87 crores, the interest bearing funds was worked out to be 55.40%, the disallowance arrived at by the AO is tabulated below:

“Loans & Advances given interest free Op.	Rs. 98,87,66,137
Loans & Advances given interest free Op.	Rs. 16,35,40,923
Avg. Loans and Advances	Rs. 57,61,53,530
Amount considered for charging interest (being 55.40% of above loans & advances)	Rs. 31,91,89,056
Interest chargeable @ 15%	Rs. 4,78,78,358”

8. It is stated that the total loans and advances given by the assessee as on 31.03.2012 amounts to Rs. 16.35 crores and as on 31.03.2011 amounts to Rs. 97.49 crores. It was also observed that there was re-payment of loans and advances amounting to Rs. 81.14 crores and no fresh payment of loans and advances thereafter. The balance unsecured loan amounting to Rs. 52.66 crores as on 31.03.2012 and Rs. 51.76 crores as on 31.03.2011 thereby resulting in an addition of Rs. 0.90 crores, the assessee further stated that there was a reduction in the term loan availed from Bank of India as on 31.03.2012 vis a vis 31.03.2010 and that the assessee had no means of giving any amount out of the same for interest free advances. The assessee further stated that re-payment of Rs. 0.98 crores of bank overdrafts was made and that the assessee had sufficient interest free funds which were utilized for making interest free loans and advances. It is pertinent to point out that the said loans and advances were given to sister concerns of the assessee for the purpose of business and relied on the decision of Jurisdictional High Court in the case of CIT Vs. Reliance Utilities and Power Ltd.

[313 ITR 340]. The Ld. CIT(A) held that there was decrease in loans and advances and increase in unsecured loans during the same period, the cash credit facility availed was for export packing credit and also there was decrease in the term loan from Bank of India. The Ld. CIT(A) further stated that there was no similar disallowance in the earlier years in the assessment order passed under section 143(3) of the Act for AYs 2006-07, 2007-08 & 2009-10. The Ld. CIT(A) relied on the decision of Hon'ble Apex Court in the case of S.A. Builders Vs. CIT [288 ITR 1 (SC)] wherein it was held that interest on borrowed funds cannot be disallowed, if the assessee has advanced interest free loans to a sister concern as a measure of commercial expediency. It was also observed that on similar issue in assessee's own case for Ay 2011-12, the same has been decided in favour of assessee.

9. From the above observations and upon considering the decisions cited above, we are of the considered opinion that the ground raised by the Revenue has to be dismissed.

10. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 12th day of August, 2022.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 12/08/2022

SK, Sr.PS

Copy of the Order forwarded to:

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय. अपी. अधि. , मुंबई / DR, ITAT, Mumbai

Sd/-

(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy. /Asstt. Registrar)
ITAT, Mumbai