

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 851/MUM/2018
Assessment Year: 2013-14**

Shri Sarang R. Wadhawan,
M/s Thar & Co. 203, Capri,
Opposite HDIL Towers, Anant
Kanekar Marg, Bandra East,
Mumbai-400051.

PAN No. AAAPW 2530 R

Appellant

Asst. CIT, Central Circle-5(4),
Room No. 1927, 19th floor, Air
India Building, Nariman Point,
Mumbai-400021.

Vs.

Respondent

Assessee by : None
Revenue by : Mr. Sanyam Suresh Joshi, DR

Date of Hearing : 11/10/2022
Date of pronouncement : 18/10/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against the order dated 18.10.2017 passed by the Ld. Commissioner of Income-tax (Appeals)-53, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2013-14, raising following grounds :



- 1) *The Learned CIT (A) has erred in law & on facts in directing the learned A.O to disallow the business loss & not allowing it to be carried forward as claimed by the appellant as business loss to the tune of Rs.4,44,77,362/-, which is bad in law.*
- 2) *The Learned CIT (A) erred has erred in law & on facts in not upholding the learned A.O's action of taking interest expenditure as Nil/-, as in the order of Income Tax passed by the Assessing Officer u/s 143 (3) of the Income Tax Act, 1961 & directed the learned AO to recompute disallowance u/s 14A r.w.r 8D by considering the interest expenditure of Rs.3,56,18,156/-*

2. Briefly stated, facts of the case are that the assessee filed return of income for the year under consideration on 28.09.2013 declaring Nil income. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') and were issued and complied with. In the assessment completed u/s 143(3) of the Act dated 28.03.2016, the Assessing Officer invoked section 14A r.w.s. 8D of the Income-tax Rules, 1961 (in short 'the Rules') and made disallowance of ₹1,98,87,499/-. The Assessing Officer also made addition of interest



income of ₹21,646/- which was reflected in Income-tax Department data.

3. Aggrieved, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) after considering the submission of the assessee, disallowed the claim of bogus loss of ₹4,44,77,362/- and directed the AO for not to carry forward the loss. The Ld. CIT(A) also directed the Assessing Officer to consider disallowance of interest expenses under Rule 8D(2)(ii) of the Rules. Aggrieved with the finding of the Ld. CIT(A), the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

4. At the outset, we may like to mention that notice for hearing sent at the address provided in Form No. 36 has returned back with the comment of the postal authority that party left. On earlier occasion i.e. hearing dated 11.08.2022 also notice returned back with the identical comment of postal authority.



5. Before us, neither anyone appeared on behalf of the assessee nor any adjournment was sought. In the circumstances, we were of the opinion that the assessee was not interested in prosecuting the appeal and therefore, same was heard *ex-parte* qua the assessee after hearing the arguments of the Ld. DR.

6. The Ld. CIT(A) has adjudicated the issue-in-dispute in para 5.3.9 of the impugned order which is reproduced as under:

"5.3.9. There is merit in the contention that since demat charges has not be claimed as expenditure against any taxable income, the same cannot be disallowed u/s 144. Further. it is noted that bank charges of Rs 108,581/-is claimed against income from other sources. There are no admin expenses claimed at all except interest expenses and depreciation and hence such expenses cannot be disallowed by applying Rule 8D mechanically. It is however also noted that the appellant has claimed loss from business at Rs 4,44,77.362/- From the details seen in the copy of accounts filed, the business loss as per books of Rs 4,44,77,362/- is computed as remuneration from Bassein Industrial Dev Corporation against which interest of Rs 3,56,18,156 is claimed as loan from future and option, interest on vehicle loan Rs 135860/- and depreciation Rs 88,89,950/- There is no trading in Future and Option nor is there any link or basis to claim such interest and depreciation expenses against any such income. In fact the



remuneration of Rs 166605 is considered under the head Income from firms. The only major income in the year is capital gains which as per books is Rs 23,15,50,961 / on sale of shares. Thus it is the loss claimed as business loss of Rs 4,44,77,362/- which is not correct and to that extent loss should not be allowed to be carried forward. Further, the balance sheet on the liability side shows a total of Rs 455 crores of which own capital is only Rs 91.86 crores and almost the entire balance amount Rs 363 crores is in form of loans. On the asset side the investment in shares is Rs 380 crores and Rs 54 crores in properties Rs 4 crores in capital of firms in which appellant is partner. Thus some interest expenses are clearly allocable against the various investments from sale of which exempt income is claimed. The assessing officer has not considered and interest expenditure for disallowance under Rule 8D nor under the business income. In light of the above, the Assessing Officer is directed to re-compute the disallowances. Ground of Appeal No.2 is partly allowed as above."

6.1 The Ld. CIT(A) has noted that despite no trading in Future & Option huge amount of interest expenses of ₹3,56,18,156/- has been claimed by the assessee. As regard to the disallowance of interest expenses under Rule 8D(2)(ii), the Ld. CIT(A) has noted that investment in shares has been made out of borrowed funds. Before us, no explanation or evidence in support of claim of the assessee challenging the additions by way of the grounds, has been filed and



therefore in absence of any material contrary to the finding of the Ld. CIT(A), we are constraint to uphold the finding the Ld. CIT(A) on the issue-in-dispute. Accordingly, the grounds raised by the assessee are dismissed.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court in 18/10/2022.

Sd/-

**(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 18/10/2022

Dragon Legal/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai