

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No. 3316/Mum/2019
(A.Y.2014-15)**

M/s Derby Developers Private Limited, 203, Capri Building, Opposite HDIL Towers, Anant Kanekar Marg, Bandra (East), Mumbai - 400051	Vs.	Pr.CIT-14 Aayakar Bhavan, M.K. Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCD2140F		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Mahita Nair

Date of Hearing	31.10.2022
Date of Pronouncement	31.10.2022

आदेश / O R D E R

PER AMARJIT SINGH, AM:

The present appeal filed by the assessee is directed against the order passed by the Pr.CIT- 14, Mumbai, which in turn arises from the order passed by the A.O. u/s 143(3) of the Income Tax Act, 1961 for A.Y. 2014-15. The assessee has raised the following grounds:

- “1. The Learned Pr. Commissioner of Income Tax - 14, Mumbai has erred in law and in facts by passing a order u/s 263 dated 29/03/2019 by setting aside the assessment order dated 30/11/2016 passed by the Assessing Office (AO) by holding that the same is erroneous and prejudicial to the

interests of the revenue, the same is passed without any evident application of mind and without making any evident enquiry or verification disregarding the fact that the said assessment order was made by the Ld. AO after completely verifying the details of Appellant Company for the AY 2014-15.

- 2(a) The Learned Pr.CIT has erred in law & on facts on holding that interest expenses of Rs.5,01,68,821/- claimed does not pertain to the business activity of the Appellant Company.*
- (b) The learned Pr CIT has further erred in law & on facts that the Ld AO had not conducted any evident enquiry or called for any further documents or evidence which justify the allowability of the interest expenses*
- (c) The learned Pr CIT has further erred in law & on facts on holding that the purpose for which overdraft is taken from PMC bank is not available on record & the actual movement of fund is not examined to see the utilization of loan taken*
- 3(a) The Learned Pr CTT has erred in law & on facts on holding that AO has not examined the applicability of provisions of section 14A, the working of section 14A was been given by the Appellant Company without giving any justification on applicability of section 14A of the IT Act, 1961.*
- (b) The Learned Pr.CII has further erred in law & on facts on holding that no decision making process is evident with respect to disallowances u/s 14A of the IT Act, 1961.*
- (c) The Learned Pr.CII has further erred in law fe on facts on holding interest expenses to the tune of Rs.5.01,68,821/- should be included in calculation of disallowance u/s 14A Tw1 8D given by Appellant Company that*
- (d) The Learned Pr.CIT has further failed in law & on facts to appreciate that the calculation of 14A r.w.r 8D of the IT Act, 1961 was allowed after Appellant Company had filed all details pertaining to the claim and same were duly verified by the Ld AO while passing original assessment proceedings hence order of Ld AO is neither erroneous nor prejudicial to the interest of the revenue and hence the order passed u/s 263 is wholly unreasonable and bad in law, which may kindly be quashed.*
- 4. The learned Pr.CIT has erred in passing revision order u/s 263 of the IT Act of the concluded assessment merely on the basis of change of opinion on facts already present at the time of original assessment proceedings u/s 143(3) of the IT Act;*
- 5. The learned Pr.CIT has erred in not considering the detailed submissions made by the Appellant Company during the course of revision proceedings and completely disregarding the case laws relied upon by the Appellant Company to meet the ends of revenue.*

6. *The Appellant craves leave to add to and/ or amend and/ or delete and/ or modify and/or alter any grounds of appeal.”*

2. This case was listed for hearing 10 times, however, neither anyone from the side of the assessee has attended the hearing nor furnished any written submission, therefore, the appeal of the assessee is adjudicated after hearing the ld. D.R and after considering the material available on record.

3. Fact in brief is that return of income declaring loss of Rs.4,95,83,133/- was filed on 29.09.2014. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 18.09.2015. The A.O has accepted the total loss as per return of income vide order u/s 143(3) of the Act, dated 30.11.2016. Subsequently, during the course of proceedings u/s 263 of the Act on perusal of the assessment record the ld. Pr.CIT-14 noticed that assessee had debited an interest on overdraft of Rs.5,01,68,821/- but A.O had not made any inquiry with regard to the allowability of interest of overdraft and there was no evidence on record.

4. The Pr.CIT also noticed that during the year under consideration, there was no business activity taken place in the case of the assessee. The assessee was in the business of real estate developer but no work in progress was shown in the financial statement. The ld. Pr.CIT also noticed that the A.O has not made any verification regarding the applicability of provision of Sec. 14A in the case of the assessee. Therefore, the ld. Pr.CIT vide order u/s 263 of the Act dated 29.03.2019 held that order u/s 143(3) dated 30.11.2016 is erroneous in so far as it is prejudicial to the interest of revenue within the meaning of Sec. 263 of the Act, therefore, the assessment was set aside to the file of the A.O for

fresh adjudication on the issue of interest expenses and applicability of Sec. 14 of the Act.

5. Heard the ld. D.R and perused the material on record. On perusal of the order u/s 143(3) dated 30.11.2016 it is observed that the A.O has not made any discussion on the nature of interest expenditure claimed by the assessee on the overdraft and also not given any findings on non-applicability of provisions of Sec. 14A to the case of the assessee. During the course of appellate proceedings before us in spite of giving a number of opportunities neither assessee has attended nor submitted any written submission to controvert the finding of ld. Pr.CIT. Therefore, in view of the above facts and circumstances we don't find any reason to interfere in the decision of ld. CIT(A), therefore, ground of appeal of the assessee stand dismissed.

6. In the result, the appeal of the assessee stand dismissed.

Order pronounced in the open court on 31.10.2022

Sd/-
(Vikas Awasthy)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 31.10.2022

Rohit: PS

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

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

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.