

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. KUL BHARAT, JUDICIAL MEMBER**

ITA No.986 to 989/Del/2021

Assessment Year: 2011-12, 2012-13, 2014-15 & 2015-16

Dev Priya Products Pvt. Ltd. 4, Shankar Vihar, 1st Floor, Vikas Marg, New Delhi PAN No.AAACD4276C	Vs	DCIT CC Meerut
(APPELLANT)		(RESPONDENT)

Appellant	Sh. Gautam Jain, Advocate Ms. Monika Aggarwal, Advocate
Respondent	Sh. K. M. Mahesh, CIT (DR)

Date of hearing:	22/11/2022
Date of Pronouncement:	24/11/2022

ORDER

PER N.K. BILLAIYA, AM:

ITA No. 986/Del/2021, 987/Del/2021, 988/Del/2021 and 989/Del/2021 are four separate appeals by the assessee preferred against four separate orders of the CIT(A)-4, Kanpur dated 16.06.2021 pertaining to A.Y. 2011-12, 2012-13, 2014-15 and 2015-16 respectively.

2. Since common grievance is involved in the captioned appeals and the underlying facts in issues are identical in all the appeals, therefore, all the appeals are decided by this common order for the sake of convenience and brevity.

3. With the concurrence of both the representative facts of ITA No.986/Del/2021 A.Y.2011-12 are considered for disposal of the appeals.

4. Briefly stated the facts of the case are that the original return of income was filed on 22.09.2011 declaring loss of Rs.5,11,01,061/-. Vide order dated 06.02.2014 assessment u/s. 143(3) of the Act was framed and the returned loss was accepted as such. On 01.03.2016 a search and seizure operation was conducted at the premises of Dev Priya Group and accordingly notice u/s. 153A of the Act was issued and served upon the assessee. In response to the notice the assessee filed its return of income declaring loss of Rs.5,11,01,061/-. The assessment was completed vide order dated 30.12.2017 at an assessed income of Rs.4,45,12,510/-.

5. Rs. 50 lacs was added as unsecured loan u/s. 68 of the Act in respect of credits from V.R. Portfolio Ltd. Simultaneously disallowance of interest on account of unsecured loans was made in respect of following parties :-

1.	Agrawal Alloys Steel Pvt. Ltd.	7,69,066/-
2.	Yogya Shipping Pvt. Ltd.	5,00,811/-
3.	V. R. Portfolio Ltd.	<u>3,18,671/-</u>
	Total	<u>15,88,548/-</u>

6. The order was challenged before the CIT(A) and the CIT(A) gave part relief to the assessee sustaining the disallowance of interest on account of unsecured loans to Agrawal Alloy Steel Pvt. Ltd. and Yogya Shipping Pvt. Ltd. totaling to Rs.886252/-.

7. The CIT(A) sustained the disallowance by holding as under :-

“8.7 I have carefully considered the submissions of the assessee but interest claimed against the loans taken from M/s Agarwal Alloys Steels Pvt. Ltd. and M/s Yogya Shipping Pvt. Ltd. cannot be allowed since the genuineness of these loans received in A.Y. 2010-11 could not be examined at the appellate stage by the undersigned since the appeal stands withdrawn by the assessee to avail the scheme of Direct Tax Vivad Se Vishwas Act 2020 hence the claim of interest relating to the same cannot be allowed.

After the withdrawal of appeal, the finding of the AO has become final that the loans taken from M/s Agarwal Alloys Steels Pvt. Ltd. and M/s Yogya Shipping Pvt. Ltd. are deemed income in the hands of the assessee. Thus, virtually there are no loans against which interest may be claimed.

Since the undersigned has not adjudicated the appeal of A.Y. 2010-11, this position in the matter of loans stand final. However there is force in submission of the assessee that the loans which was taken from M/s Agarwal Alloys Steel Pvt. Ltd. in A.Y. 2009-10 has been considered as genuine and explained in the assessment order of A.Y. 2009-10 therefore interest component relating to that loan should be allowed to the assessee.

8.9 In the light of these facts, the issue of allowability of interest on unsecured loans is decided as under:

ii) The claim of interest of Rs. 2,31,233/- arising against the unsecured loans from M/s Yogya Shipping Pvt. Ltd. is hereby disallowed since the unsecured loan was taken in AY 2010-11 and the AO considered the same as unexplained cash credit and due to VSV Act 2020, the undersigned could not adjudicate the same.

iii) Out of total claim of interest of Rs. 5,45,174/-, arising against the

unsecured loans from M/s Agarwal Alloys Steel Pvt. Ltd., only that component is disallowed which relates to unsecured loans, as was taken in A.Y. 2010-11 and the AO considered the same as unexplained cash credit and due to VSV Act 2020, the undersigned could not adjudicate the same. However the claim of component of interest, which relates to unsecured loan, as was taken in A.Y. 2009-10 is hereby allowed.”

8. A perusal of the above finding clearly show that the CIT(A) has been carried away with the stand taken by the assessee to avail the scheme of direct taxes VSV Act 2020 and, therefore, the claim of interest was not allowed.

9. It would be pertinent to mention here that at para 8.7 of his order the CIT(A) has categorically observed “However there is force in the submission of the assessee that the loan which was taken from M/s. Agarwal Alloys Steel Pvt. Ltd. in A.Y. 2009-10 has been considered as genuine and explained in assessment order of A.Y. 2009-10 therefore interest component relating to that loan should be allowed to the assessee.”

10. Thus, it is clear that the impugned unsecured loans were taken in A.Y. 2010-11 i.e. A.Y. 2009-10 and not during the year under consideration. It is worthwhile to note that in A.Y. 2009-10 these loans were accepted as genuine but since under the VSV Act 2020. The assessee had to settle the dispute in respect of the entire amount, therefore, the dispute relating the unsecured loans taken by the assessee has been settled under the VSV Act, 2020 which also included the impugned loans whose genuineness

had already been accepted in earlier assessment years. The following explanation to section 5 of VSV 2020 would throw light on the impugned quarrel :-

“5. Time and manner of payment

....

Explanation – For the removal of doubts, it is hereby clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income tax- authority or the declarant being a part in appeal or writ or in SLP to contend that the declarant or the income-tax authority, as the case may be has acquiesced in the decision on the disputed issues by settling the dispute.”

11. This can be further understood by the following clarification given by the CBDT in its Circular No.7 dated 04.03.2020 :-

“Question No. 52: Will the result of this Vivad se Vishwas be applied to same issues pending before Assessing Officer?

Answer: No, only the issues covered in the declaration are settled in the dispute without any prejudice to same issues pending in other cases. It has been clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a part in appeal or writ or in SLP to contend that the declarant or the income-tax authority, as the case may be has acquiesced in the decision on the disputed issues by settling the dispute. ”

12. In the light of the above, in our considered opinion the CIT(A) could not have imputed the surrender under the VSV Act,

2020 and sustained the impugned disallowance of interest which was not part of the settlement of dispute under the VSV Act, 2020.

13. Considering the facts of the case in totality in the light of the discussion herein above we direct the AO to delete the impugned disallowances of interest from the captioned assessment years.

14. In the result, the captioned appeals are accordingly allowed.

Order pronounced in the open court on 24.11.2022.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Date:- .11.2022

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI