

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 1941/MUM/2022
Assessment Year: 2014-15**

Hari Kumar Ruliram Sharma,
110 Sterling Chambers, Poona
Street, Masjid Bunder (East),
Mumbai-400-009.

PAN No. AAUPS 1542 F
Appellant

Income Tax Officer, Ward-17(1)(5),
Aayakar Bhavan, M.K. Road,
Vs. Churchgate,
Mumbai-400020.

Respondent

Assessee by : Mr. M. Subramanian, AR
Revenue by : Mr. Tejinder Pal Singh Anand, DR

Date of Hearing : 21/11/2022
Date of pronouncement : 25/11/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 29.06.2022 passed by the National Faceless Appeal Centre (NFAC), Delhi (hereinafter shall be referred as 'Ld. First Appellate Authority'), for assessment year 2014-15 raising following grounds:

1. *On the facts and in the circumstance of the case and in law, the learned C.I.T. (A) erred in dismissing the appeal.*



2. *On the facts and in the circumstance of the case and in law, the learned C.I.T. (A) erred in dismissing the appeal and that too without even appreciating fully and properly the facts of the case.*
3. *On the facts and in the circumstance of the case and in law, the learned C.I.T.(A) erred in confirming the action of the learned A.O. in making addition of an amount of Rs.4,21,66,567/- as deemed dividend u/s 2(22)(e) of the act.*
4. *On the facts and in the circumstance of the case and in law, the learned C.I.T.(A) erred in confirming the action of the learned A.O. in making a disallowance of an amount of Rs.9,56,024/- u/s 14A of the act.*

2. Briefly stated, facts of the case are that the assessee was engaged in the transport business. The assessee is one of the promoters of a company namely M/s R.R. Roadways Pvt. Ltd. wherein he was holding 87.5% shares. For the year under consideration, the assessee filed return of income on 31.03.2015 declaring total income of ₹10,98,410/-. The return of income filed by the assessee was selected for scrutiny assessment, which was completed on 29.12.2016 after making addition of ₹4,21,66,567/- for deemed dividend u/s 2(22)(e) of the Income-tax Act, 1961 (in short 'the Act') and disallowance u/s 14A of ₹9,56,024/-. On



further appeal, the Ld. First Appellate Authority upheld the disallowances.

3. Aggrieved, the assessee is before the Tribunal by way of raising grounds as reproduced above.

4. Before us, the assessee has filed a Paperbook containing pages 1 to 268.

5. The ground No. 1 and 2 of the appeal are general in nature and therefore, same are dismissed as infructuous.

6. In ground No. 3, the assessee is aggrieved with the addition of ₹4,21,66,567/- made by the Assessing Officer as deemed dividend u/s 2(22)(e) of the Act. Before us, the Ld. Counsel of the assessee referred to the application of the assessee under Rule 29 of the ITAT Rules, 1963 for filing additional evidence. The facts in brief qua the issue-in-dispute are that the assessee during the year under consideration has received loans/advances from the company M/s R.R. Roadways Pvt. Ltd. in which he is holding 87.5% shares. The Assessing Officer observed amount of loan of ₹4,21,66,567/- from



the Tax Audit Report filed by the assessee in prescribed Form No. 3CB. The relevant part of the Tax Audit Report has been reproduced by the Assessing officer in para 4.6 of the impugned assessment order. The Ld. Assessing Officer also verified the shareholding of the assessee from the balance sheet of M/s R.R. Roadways Pvt. Ltd. Before the Assessing Officer, the assessee contended that correct figure of loan amount should have been taken at ₹2,96,95,799/- because part of the advances/loans were returned back during the year under consideration. Whereas, the Assessing Officer has added entire balance of ledger account of the assessee in the books of M/s R.R. Roadways Pvt. Ltd.

6.1 Before us, the assessee claimed that both the assessee and the company are engaged in the business of transportation and in order to get more business, particularly from the corporates, private limited company was established by the assessee along with his family members as shareholders. It was submitted that main object of the company was carry on of business of transport and cargo agents, take contract for arranging and operating of transport and



cargo movers. The Ld. Counsel of the assessee submitted that the alleged loan/advance transaction in dispute are actually not loan and advances but same are in the nature of business transactions/dealing and totally commercial in nature and therefore, the provision of section 2(22)(e) of the Act are not applicable in the case of such transaction. In support of his contention, the Ld. Counsel relied on following decisions :

- i. CIT v. Suraj Dev Dada 367 ITR 78 (P&H)**
- ii. CIT v. Gayatri Chakraborty 407 ITR 730 (Cal)**
- iii. Ravindra R. Fotedar v. ACIT 167 ITD 100**

6.2 Further, the Ld. Counsel also submitted that the company obtained a loan of ₹4.80 crores from Kotak Mahindra Bank Ltd. towards which the assessee stood guarantee by mortgaging his personal properties. Similarly, loans raised by the company from HDFC Bank wherein assessee was a personal guarantor. It was further submitted that amount of ₹2,96,95,799/- shown as loan from the company was a direct repayment of the old loan of the assessee to obtain new loan in the name of the company which is available on page 251 of the Paperbook. The Ld. Counsel of the



assessee referred to the application under Rule 29 of the ITAT Rules and requested that matter may be restored back to the file of the Assessing Officer for deciding issue-in-dispute in the light of the additional evidence filed by the assessee. The list of the additional evidences filed by the assessee are reproduced as under:

| Sr. No. | Description | Page No. |
|----------------|---|-----------------|
| 1. | Copy of Return of income along with audited financial statements, tax audit report etc. | 1-21 |
| 2. | Copy of the notice dated 15.12.2015 issued u/s 142(1) of the Act. | 22-23 |
| 3. | Copy of compliance to notice issued u/s 143(2) dated 11.09.2015 142(1) of the Act dated 29.12.2015, 18.10.2016 & 28.12.2016 | 24-28 |
| 4. | Copy of show cause notice dated 3.11.2016 issued by the AO | 29 |
| 5. | Copy of Articles of Association and Memorandum of Association of R.R. Roadways Pvt. Ltd. | 30-53 |
| 6. | Copy of all loan sanction letter issued by Kotak Mahindra Bank Ltd. dated 03.06.2016 | 54-69 |
| 7. | Copy of all loan sanction letter issued by HDFC Bank Ltd. dated 10.06.2013 | 70-73 |
| 8. | Copy of purchase agreement (two properties) owned by Hari Kumar Sharma and mortgaged to Kotak Mahindra Bank Ltd. | 74-207 |
| 9. | Copy of valuation report dated 14.10.2015 of the said property offered as security to the Bank. | 208-217 |

7. On the contrary, the Ld. Departmental Representative (DR) relied on the order of the lower authorities.

8. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. The issue



before us is firstly, whether the Assessing Officer has recorded the correct amount of loan or advances for the purpose of treating the same as deemed dividend. The second issue is whether the transactions in dispute are loan transaction or business transaction. Before us, for the first time, the assessee has filed additional evidence and contended that transaction in dispute are business transactions. We are of the opinion that this claim of the assessee need verification at the end of the Assessing Officer and therefore, we feel it appropriate to restore this issue to the file of the Assessing Officer for deciding afresh after considering the evidences filed by the assessee in this regard. The ground No. 3 of the appeal of the assessee is accordingly allowed for statistical purposes.

9. The ground No. 4 of the appeal relates to disallowance of ₹9,546,024/- u/s 14A of the Act.

10. Before us, the Ld. Counsel of the assessee submitted that during the year under consideration no exempted income was earned by the assessee and therefore, in view of the decision of the Hon'ble Bombay High Court in the case of **PCIT v. Wockhardt**



Hospitals Ltd. 192 DTR 289 (Bom), no disallowance is called for where there is no exempt income in the hands of the assessee. Further, the Ld. Counsel submitted that Hon'ble Delhi High Court in the case of **PCIT v. Era Infrastructure (India) Ltd. 216 DTR 191 (Delhi)** has held that amendment to section 14A for disallowance of expenditure even though there is no exempt income, has been held to be prospective in nature and therefore said amendment is not applicable in the year under consideration.

11. On the contrary, the Ld. DR relied on the order of the lower authorities.

12. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. We find that Hon'ble Bombay High Court in the case of **Wockhardt Hospitals Ltd. (supra)** has held that wherever the assessee has not earned any exempt income, no disallowance is called for. The relevant finding of the Hon'ble High Court is reproduced as under :

“8.6 Tribunal held that assessee had not earned any exempt income during the assessment year under consideration. nor it had claimed any expenditure against any tax free income. Thus, the



twin preconditions for invoking the provisions of s. 14A r/w r. 8D of the Rules i.e., earning of exempt income and claiming expenditure to earn the same were absent. Therefore, the order passed by the first appellate authority was affirmed.

8.7 We are in agreement with the view taken by the Tribunal. As rightly held by the Tribunal, assessee had neither earned any exempt income nor claimed any expenditure for earning such exempt income. That being the position, AO was not justified in making the disallowance by invoking the aforesaid two provisions. The same was rightly deleted by the first appellate authority which order has been affirmed by the Tribunal. Therefore, this question proposed by the revenue also fails.”

12.1 In the instant case from the para 5.1 of the impugned assessment order it is evident that no exempt income was earned by the assessee and therefore following the decision of the Hon’ble Bombay High Court (supra), no disallowance is called for. Further, in the case of Era Infrastructure (India) Ltd. (supra), it is held that amendment by way of Finance Act, 2022, which stipulate that provision of section 14A are applicable even in case of no exempt income in the year under consideration. However, said amendment has been held by the Hon’ble Delhi High Court (supra) to be prospective in nature. The relevant finding of the Hon’ble High Court is reproduced as under :



“8. Consequently, this Court is of the view that the amendment of section 14A which is “for removal of doubts” cannot be presumed to be retrospective even where such language is used. If it alters or changes the law as it earlier stood.”

12.2 Respectfully following the finding of the Hon’ble High Court (supra), we set aside the order of Ld. First Appellate Authority and direct the Assessing Officer to delete the disallowance in dispute. The ground No. 4 of the appeal of the assessee is accordingly allowed.

13. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

**Order pronounced under Rule 34(4) of the ITAT Rules,
1963 on 25/11/2022.**

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 25/11/2022
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