

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM.

आयकर अपील सं./ **ITA No.1392/Chny/2016**
(निर्धारण वर्ष / **Assessment Year: 2007-08**)

&

आयकर अपील सं./ **ITA No.1393/Chny/2016**
(निर्धारण वर्ष / **Assessment Year: 2008-09**)

&

आयकर अपील सं./ **ITA No.1973/Chny/2016**
(निर्धारण वर्ष / **Assessment Year: 2010-11**)

M/s. Siva Industries and Holdings Ltd. (merged entity of M/s SVL Technologies & Network Ltd.- earlier known as VS Net Ltd.) New No.19, Old No.32, Cathedral Garden Road, Nugambakkam, Chennai – 600 034	बनाम/ Vs.	DCIT Corporate Circle-6(2), Chennai.
स्थायी लेखा सं./जी आइ आर सं./ PAN/GIR No. AABCS-2230-C		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Assessee by	:	Shri B. Ramakrishnan (CA) – Ld. AR
प्रत्यर्थीकी ओरसे/ Department by	:	Ms. Ann L Kapthuama (CIT) –Ld. DR
सुनवाईकी तारीख/ Date of Hearing	:	29-09-2022
घोषणाकी तारीख / Date of Pronouncement	:	21-12-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 The captioned appeals by assessee arise out of separate appellate orders. However, the facts as well as issues are identical in

all the years. The appeal for Assessment Year (AY) 2007-08 arises out of the order of learned Commissioner of Income Tax (Appeals)-15, Chennai [CIT(A)] dated 16.02.2016 in the matter of an assessment framed by learned Assessing Officer u/s 143(3) r.w.s. 147 on 22.12.2011. The erstwhile assessee M/s V.S.Net Limited was later known as M/s SVL Technologies & Network Limited which has finally merged with M/s Siva Industries and Holdings Limited w.e.f. 01.04.2011 vide order dated 22.08.2013 of Hon'ble High Court of Madras. The assessee is stated to be engaged in making strategic investments in real estate space and having objective to invest in large projects both in commercial and residential space. The assessee's case was reopened for this year and an assessment was framed after making certain additions. The same was confirmed by Ld. CIT(A). Aggrieved, the assessee is in further appeal before us.

1.2 The grounds raised by the assessee read as under:

The order passed by the Commissioner of Income-tax Appeals ["CIT(A)"] under section 250(6) of the Income-tax Act, 1961 ("the Act") confirming the order of the Assessing Officer ("AO") passed is not in accordance with law, contrary to the facts and circumstances of the present case and is in violation of principles of equity and natural justice.

Treatment of compensation as interest income

2.1 The learned CIT(A) and AO failed to appreciate that the real intent of the agreement entered by the appellant with Sahara India Commercial Corporation Limited ("SICCL") was to derive value by execution of larger project, which on completion would have reflected on the appellant's ability to complete mega projects.

2.2 The learned CIT(A) and AO failed to appreciate the fact that the 400 crores advanced to SICCL has been disclosed as 'Advance for purchase of land' in the audited financial statements and not as loan.

2.3 The learned CIT(A) and AO failed to appreciate the relevant clauses, clause 13.4.2 and clause 3.2 of the Facility agreement demonstrate the fact that the intent of the appellant was to enter into a development agreement.

2.4 The claim of the learned CIT(A) and AO that the appellant had intentionally entered into such agreements to treat the receipt of compensation as capital is factually incorrect and baseless.

2.5 The learned CIT(A) and AO have failed to appreciate that the appellant is not in the business of strategic investments in realty market and therefore the

intention of advancing money to SICCL was with a view to acquire the land for development for business purpose and not to earn interest

2.6 The learned CIT(A) and AO have erred in not considering the fact that the nature of the compensation received was towards relinquishment of profit earning apparatus. Therefore, any amount received on extinction of source of income and profit earning apparatus, would partake the character of capital receipt.

2.7 The learned CLT(A) and AO have erred in concluding the nature of the receipt as revenue based on the fact that Tax Deducted under Source ("TDS") under section 194 of the Act, was deducted by SICCL. The learned CIT(A) and AO have failed to appreciate the fact that deduction of tax from payment under the Chapter-XVII of the Act, would not change the character of the receipt in the hands of the appellant.

Treatment of Interest earned as income from other sources

3.1 The learned CIT(A) and the AO have erred in treating the interest earned including proportionate compensation under the head income from other sources instead of treating the same as business income as claimed by the appellant.

3.2 The learned CIT(A) and AO have failed to appreciate the fact that the interest of Rs.1.69 crores was earned from inter- corporate deposits made to Indus Cityscapes Constructions Pvt. Ltd, ignoring the decisions of appellate authorities which held that interest should be treated as business income.

3.3 The learned CIT(A) and AO have erred in not considering the matching concept where in order to earn an income, certain amount of expenses need to be spent, thereby, erred in not allowing any expense against the income determined.

As is evident, the grievance of the assessee is two-fold i.e., (i) Treatment of compensation as interest income; (ii) Head of income under which interest earned by the assessee would be assessable.

1.3 The Ld. AR advanced arguments assailing the findings rendered in impugned order which has been controverted by Ld. CIT-DR. Having heard rival submissions and after perusal of case records, the appeal is disposed-off as under.

2. Assessment Proceedings

2.1 The original return of income filed by the assessee at Rs.218.71 Lacs was processed u/s 143(1). However, the case was reopened pursuant to survey action u/s 133A on 22.07.2010 and accordingly, an assessment was framed u/s 143(3) r.w.s. 147 on 22.12.2011 determining the income of Rs.3228.71 Lacs.

2.2 The survey findings revealed that the assessee entered into a transaction with M/s Sahara India Commercial Corporation Ltd. (SICCL) and received compensation of Rs.35 Crores in AY 2008-09 which has been treated by the assessee as capital receipt and not offered to tax. The same is the subject matter of this appeal before us.

2.3 It was noted by Ld. AO that the assessee entered into a facility agreement with SICCL on 26.12.2006 to acquire rights in land held by SICCL and its associated concerns. A financial participation to the extent of Rs.400 Crores was made by the assessee to acquire rights in 196.97 acres of land held by the group. Since SICCL could not get necessary approval for conversion of the above land from agricultural use to commercial use, the assessee settled sum of Rs.35 Crores as a compensation for breach of specific performance of the agreement. SICCL agreed to compensate the assessee for the loss of opportunity to execute the project in the proposed land acquisition. The assessee pleaded that such amount of Rs.35 Crores was on account of loss of business opportunity and thus a capital receipt for the assessee during financial year 2007-08 which was recognized in the books on 09.04.2007.

2.4 The Ld. AO, after scrutinizing the terms of agreement dated 26.12.2006, made following observations: -

1. As per the Facility agreement dated 26.12,2006 entered between M/s. V.S, Net Limited (the Lender - Party of First Part) and M/s, Sahara India Commercial Corporation Limited or the Borrower & sixteen other parties as guarantors,
 - a. It is a loan facility agreement for extending the loan to the borrower by the assessee company (Lender). The expressions given to the parties were clear i.e., M/s, V.S.Net Limited as 'Lender' and M/s. Sahara India Commercial Corporation Lmlted as 'Borrower.
 - b. it was mentioned in the preamble of the agreement that the borrower urgently needed a sum of Rs.400 crores as loan for its business purposes and approached the lender for an Inter-Corporate Deposit (ICD) facility of a

principal amount of Rs.400 crores from the lender, The guarantors have jointly and severally agreed to provide unconditional and irrecoverable Guarantee for the due payment of all the amounts due by the borrower to the lender.

c. Definitions of Lender, Borrower, Guarantors, Facility, Disbursement, Drawdown etc were lucid (Clause 1.1).

d. It was reiterated as the borrower is in urgent need of funds for its business purpose-the amount borrowed shall be utilized by the borrower for its business purpose (Clause 2).

e. It is apparent that the 'conditions precedent and subsequent* (clause J) relate in general about the securities such as lands, shares, demand promissory note, post dated cheques etc in favour of the loan facility arrangements.

f. It was clearly spelt about the return on the loan facility (Clause 5) and agreed for an annual Return of Rs.135 crores for Rs.400 crores loan or in proportion to the Disbursed loans, pro-rated Return shall be payable by the Borrower to the Lender, Further it was stated that the return shall be calculated on the basis of number of days elapsed from Drawdown Date.

g. The non-payment of the facility and the appropriate return accrued will result in unrestricted right to the lender to transfer or sell the securities offered that too without the intervention of court, (Clause 6.1,2).

h. The details of all securities to be offered in favour of loan facility is inclusive of the Deposit of the Title Deeds of the Immovable Properties (Clause 7).

i. Further, the Borrower covenants with the Lender that, it shall utilize the amounts borrowed under the Facility only for the business purpose of the Borrower (Clause 10).

j. The conditions under Clause 13.4 on further assurances & undertakings do not vitiate the loan facility and in fact it is in the nature of an additional protective clause to protect the loan facility.

2.5 The Ld. AO, accordingly, held an opinion that it was a loan facility agreement for extending the loan to borrower by the assessee. The sum was advanced as inter-corporate deposit at the urgent need of the borrower. The assessee was to receive annual return of Rs.135 Crores for Rs.400 Crores of loan based on number of days from drawdown dates. The non-payment would result into unrestricted right to the lender to transfer or sell the securities offered. The funds so borrowed were to be used for the business purposes of the borrowers. As against this, the assessee did not recognize any revenue during this year since the inception of agreement on 29.12.2006. It was clear that

the assessee did not lose any source of income or any profit / income deriving source but it was clearly a loan facility.

2.6 It was further noted that the assessee had entered into re-stated agreement on 15.02.2007 for the purpose of immoveable properties which was entered into stamp paper purchased on 02.04.2007 and therefore, the assessee intentionally disguised the transaction and resorted to treat the income as compensation. Such an arrangement was made solely with an intention to disguise the income as capital receipt / compensation. Further, M/s SICCL deducted tax at source u/s 194A on such compensation and therefore, entire receipts were to be treated as interest income only.

2.7 In the above background, Ld. AO computed proportionate interest of Rs.3010 Lacs which was to be assessed as 'income from other sources' since the assessee earned major portion of income consisting of rental income and interest income. The rental income earned by the assessee was assessed under the head 'Income from House Property' and the claim of business expenditure was denied.

3. Appellate Proceedings

The assessee' submissions were subjected to remand proceedings wherein Ld. AO reiterated the findings rendered in the assessment order. Considering the same, Ld. CIT(A) held that the amount of Rs.35 Crores was nothing but interest on money advanced by the assessee and accordingly, impugned additions were confirmed. The head of income under which the same would be assessable was also confirmed. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. After perusal of given factual matrix, it could be seen that the assessee has entered into a facility agreement with SICCL to acquire rights in land held by that group. The assessee committed financial participation to the extent of Rs.400 Crores to acquire the rights. The terms could not fructify and the assessee is stated to have received compensation of Rs.35 Crores as a compensation for breach of specific performance of the agreement. The same was claimed to be a capital receipt. However, Ld. AO, after analyzing the terms of the agreement, came to a conclusion that it was merely a loan facility agreement for extending the loan to borrower by the assessee. The sum was advanced as inter-corporate deposit at the urgent need of the borrower. The assessee was to receive annual return of Rs.135 Crores for Rs.400 Crores of loan based on number of days from drawdown dates. The non-payment would result into unrestricted right to the lender to transfer or sell the securities offered. The funds so borrowed were to be used for the business purposes of the borrowers. As against this, the assessee did not recognize any revenue during this year since the inception of agreement on 29.12.2006. It was clear that the assessee did not lose any source of income or any profit / income deriving source but it was clearly a loan facility. The findings rendered with respect to re-stated agreement dated 15.02.2007 remain uncontroverted before us. All these facts would lead us to inevitable conclusion that the stated arrangement was nothing but loan facility extended by the assessee to the borrower. In return of loan facility, the assessee was to receive nothing but interest only. Therefore, the amount so received by the assessee has rightly been considered as

interest income by Ld. AO and the adjudication as done by Ld. CIT(A), in the impugned order, to that extent, could not be faulted with.

5. However, at the same time, it could be seen that the assessee is engaged in the business of making strategic investments in real estate space and having objective to invest in large projects both in commercial and residential space. The loans have been granted in furtherance of business objectives and therefore, interest income has to be considered as the 'Business Income' of the assessee and not as 'Income from other sources'. Therefore, The Ld. AO is directed to compute the interest income earned by the assessee as 'Business Income' and as a consequence, allow business expenditure, as allowable against the same. Applying the same reasoning, the interest earned by the assessee on inter-corporate deposits advanced to M/s Indus City Scapes Construction Pvt. Ltd. would be assessed as 'Business Income'. We order so. The appeal stands partly allowed.

Assessment Year 2008-09

6. It is admitted position that facts as well as issues are identical in AY 2008-09. The Ld. AO computed interest income of Rs.333 Lacs and added the same to the income of the assessee as 'income from other sources'. The Ld. CIT(A) confirmed the action of Ld. AO. Aggrieved, the assessee is in further appeal before us. Facts being pari-materia the same, our adjudication as for AY 2007-08, shall mutatis-mutandis apply to this year also. The appeal stands partly allowed.

Assessment Year 2010-11

7. In AY 2010-11, the assessee received similar compensation from another entity i.e., M/s Unitech Ltd. (UTL). The Ld. AO computed

interest income and brought the same to tax as 'income from other sources'. The Ld. CIT(A) confirmed the action of Ld. AO against which the assessee is in further appeal before us. Facts being pari-materia the same as in earlier years, our adjudication as for AY 2007-08, shall mutatis-mutandis apply to this year also. The interest income would be assessable as 'Business income' and the assessee would be eligible to claim business expenditure against the same. The corresponding grounds as well as the appeal stands partly allowed.

8. Another issue in this year is of factoring charges. The assessee claimed factoring charges of Rs.782.68 Lacs in the Profit & Loss Account. It transpired that the assessee took unsecured loan from its holding company M/s Siva Ventures Ltd. (SVL) and advanced the same to its subsidiary company M/s Vantage Reality Pvt. Ltd. (VRPL). The assessee also obtained loan of Rs.100 Crores from M/s Easy Access financial Services Ltd. (EAFSL) and paid factoring charges of Rs.782.68 Lacs by pledging receivables from M/s VRPL. The Ld. AO held that factoring charges was nothing but interest and therefore, the deduction of which would not be allowed to the assessee in terms of Sec.40(a)(ia), inter-alia, for want of deduction of tax at source. The Ld. CIT(A) confirmed the stand of Ld. AO against which the assessee is in further appeal before us.

9. From the facts, it emerges that the assessee has availed factoring facility from EAFSL against receivables and paid factoring charges. We find that factoring charges could not be termed as interest u/s 2(28A) as per the decision of Hon'ble High Court of Delhi in **PCIT vs. M. Sons Gems N Jewellery (P) Ltd. (69 Taxmann.com 373)**. This decision has referred to the decisions of Hon'ble Kolkata High Court in

CIT v. MKJ Enterprises Ltd. 2015 50 Taxmann.com 441 as well as another decision of Hon'ble Delhi High Court in **CIT v. Cargill Global Trading (P.) Ltd (11 Taxmann.com 219)**. Considering these binding decisions and in the absence of any contrary decision on record, we would hold that no such disallowance could have been made u/s 40(a)(ia). Since we have already directed that the interest income earned by the assessee would be assessable as 'business income' and there is complete nexus of factoring charges with the funds advanced by the assessee and therefore, the factoring charges, would be an allowable deduction to the assessee. We order so. This Ground stands allowed. The appeal stands partly allowed.

Conclusion

10. All the appeals stand partly allowed in terms of our above order.

Order pronounced on 21st December, 2022.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 21-12-2022
JPV

आदेशकीप्रतिलिपिअप्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR6. गार्डफाईल/GF