

आयकर अपीलीय अधिकरण
मंबईपीठ "बी"
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
आअसं. 7811/मुं/2019 (नि.व. 2013-14)
ITA NO.7811/MUM/2019(A.Y.2013-14)

M/s. Mega Management Services P. Ltd.

301 Level-3, Ceejay House F Block

Shiv Sagar Estate, Dr. Annie Besant

Worli, Mumbai 400018

PAN: AAACM4143K

..... अपीलार्थी/Appellant

बनाम Vs.

DCIT, Central Circle 6(4)

Room No. 209, 2nd Floor

Aayakar Bhavan, M.K. Road

Mumbai 400020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Piyush Chhajer

प्रतिवादी द्वारा/Respondent by : Dr. Samuel Pitta

सुनवाई की तिथि/ Date of hearing : 23.09.2022

घोषणा की तिथि/ Date of pronouncement : 16.12.2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -17 [hereinafter referred as "the CIT(A)"], dated 24.10.2019 for the Assessment Year 2013-14.

2. The assessee in the appeal has raised eight grounds, the gist of the grounds of appeal is as under: -

Ground No. 1: Disallowance of interest expenditure Rs.1,90,46,940/- u/s. 36(1)(iii) of the Income Tax Act, 1961 (hereinafter "the Act");

Ground No. 2: Disallowance of expenditure u/s. 14A of the Act;

Ground No. 3: Disallowance of unsecured loans of Rs.5,35,00,000/- u/s. 68 of the Act;

Ground Nos. 4 to 7: Disallowance of various expenses, viz. travel expenses, business promotion expenses, purchase of paintings u/s. 37 of the Act; and

Ground No. 8: General in nature.

3. Shri Piyush Chhajed appearing on behalf of the assessee submits that the assessee is a private limited company engaged in the business of providing financial services. During the period relevant to assessment year under appeal, the assessee had taken interest free loans as well as interest bearing loans. Interest free loans amounting to Rs. 198.58 crores were taken from unrelated parties. Whereas, interest bearing loan amounting to Rs.48.98 crores was taken from M/s. Mega Custodial Services Pvt. Ltd., holding company of the assessee. The said company is having 99.3% shareholding in the assessee company. The assessee paid interest of Rs.6,82,92,321/- to its holding company. The aforesaid loans were taken purely on account of commercial expediency. The interest bearing loans from holding company was taken to fund the losses. The aforesaid loan was taken in preceding assessment years. No fresh advances/loans were received during the period relevant to the assessment year under appeal. In the preceding assessment years no addition/disallowance were made in respect of the interest expenditure u/s. 36(1)(iii) of the Act. The Id. AR placed reliance on the decision of Hon'ble Bombay High Court in the case of Sesa Resources Ltd. (2007) 85 Taxman 88 (Bom) to contend that where loan is taken on account of commercial expediency there can be no disallowance of interest on such loans u/s. 36(1)(iii) of the Act.

3.1 The Id. AR further pointed that during the period relevant to the assessment year under appeal, the assessee had also advanced interest free and interest bearing loans to unrelated parties. The interest free loans advanced were to the tune of Rs.38.8 crores and interest bearing loans advanced amounted to Rs.177.84 crores. The Id. AR referred to the details of interest bearing unsecured loans and advance taken from related and unrelated parties on pages 33 & 34 of the paper book and the details of interest free unsecured loans advanced to various unrelated parties at pages 45 & 46 of the paper book.

3.2 In respect of ground No. 3 relating to disallowance u/s. 14A of the Act, the Id. AR submits that the assessee has taken unsecured loans from M/s. Rajat Diamond Exim Pvt. Ltd. amounting to Rs.35 lakhs and M/s. Proficient Merchandise Ltd. Rs. 5 crores. During scrutiny assessment proceedings the assessee had furnished various documents, viz. copy of PAN card, ITR acknowledgement, bank statement, Financials for AY 2012-13 and confirmations from both the parties. The AO without giving any weightage to the documents furnished by the assessee made addition u/s. 68 of the Act merely for the reason that the summons issued u/s. 133(1) of the Act could not be served to the lenders on the address furnished by the assessee nor could the assessee produce the aforesaid parties before the AO. The Id. AR submits that to prove genuineness of the parties and loan transactions and to prove creditworthiness of the lenders, the assessee had furnished all the request documents. Merely for the reason that the summons could not be served on the parties, the addition u/s. 68 of the Act cannot be made.

3.3 In respect of ground Nos. 4 to 7 the Id. AR submits that to substantiate the expenditure disallowed u/s. 37(1) of the Act, the assessee is filing additional evidences. The same may kindly be taken on record. The additional evidences, if examined, would show that the expenses disallowed were indeed incurred by the assessee for the purpose of business and thus, are allowable.

4. Per contra Dr. Samuel Pitta representing the Department vehemently defended the findings of the CIT(A) on the issues raised in appeal by the assessee. The Ld. DR submits that the assessee had paid interest amounting to Rs. 6.82 crores, on the loans taken for funding its losses, at the same time the assessee had employed large amount of funds in advancing interest free loans. The Ld. DR referred to the Profit & Loss Account for the year ending 31st March, 2013 at page 10 of the paper book.

4.1 In respect of Ground No. 3 of appeal, the Ld. DR submits that a perusal of the return of income of M/s. Rajat Diamond Exim Pvt. Ltd. at page 48 of the paper book would show that the gross total income of the said company is merely Rs.3,73,602/- whereas it has advanced Rs.35 lakhs to the assessee. This shows that the said entity had no sufficient resources for advancing loans. In respect of M/s. Proficient Merchandise Ltd. the Ld. DR referred to the Profit & Loss Account of the said company as on 31.03.2015 at page 114 of the paper book. The Ld. DR pointed out that the said company have negative revenue during the year. Therefore, creditworthiness of both the companies were not proved by the assessee. The Id. DR further submitted that both the above said companies were involved in providing accommodation entries.

4.2 In respect of ground Nos. 4 to 7, the Ld. DR strongly objected to filing of additional evidence at this stage. The Id. DR submits that the assessee was at liberty to furnish relevant documents before the AO during assessment proceedings. However, the assessee chose not to file the documents to substantiate its claim. Even during first appellate proceedings the assessee failed to furnish the documents. No reason, whatsoever, has been given by the assessee for not placing these documents before the AO/CIT(A), which are now being filed as additional evidence before the Tribunal.

5. We have considered the submissions made by rival sides and have examined the orders of the authorities below. In ground No. 1 of appeal, the assessee has assailed disallowance of interest expenditure u/s. 36(1)(iii) of the Act. The contention of the assessee is that the interest has been paid to holding company, i.e. M/s. Mega Custodial Services Pvt. Ltd. As per the assessee interest bearing loans were taken only on account of commercial expediency in the normal course of business. It has further been argued that substantial loans were taken in the preceding assessment years and no additions were made in the preceding assessment years on the loans taken while framing the assessment. Therefore, following the principle of consistency no addition can be made in the impugned assessment year. We find that the assessee had taken interest bearing loans as well as interest free loans. Similarly, the assessee had advanced interest bearing loans and interest free loans. The assessee had paid interest amounting to Rs.6,82,92,321/- on unsecured loans during the period relevant to the year under appeal. The assessee has received interest on advances Rs.4,92,45,351/-. The AO has made addition of the difference between the interest received and interest paid. The assessee is engaged in providing financial services. There is no other business

of the assessee. The Revenue has not disputed the fact that in the preceding assessment years no disallowance of interest u/s. 36(1)(iii) of the Act was made. However, it is not emanating from records that in the preceding assessment years whether the interest paid was more than the interest received and still no addition was made or it was in vice versa situation that no addition was made. Although, the assessee has filed assessment orders for assessment years 2011-12 and 2012-13, however, the relevant facts are not emanating from the said orders. In the absence of sufficient information we deem it appropriate to restore the issue back to the AO for de novo assessment. In case no disallowance was made in the preceding assessment years u/s. 36(1)(iii) of the Act under identical circumstances, the AO is directed to delete the addition. Consequently, ground No. 1 of the appeal is allowed for statistical purposes.

6. In respect of disallowance u/s. 14A of the Act, the Id. AR of the assessee has stated at Bar that he is not pressing ground No. 2. In view of the statement made by Id. AR of the assessee, ground No. 2 of appeal is dismissed as not pressed.

7. In ground No. 3 of appeal, the assessee has assailed addition of Rs.5.35 crores u/s. 68 of the Act. Three mandatory conditions are required to be satisfied to prove genuineness of the loans, viz: (i) creditworthiness of the lender, (ii) identity of the lender, and (iii) genuineness of the transaction. The unsecured loans taken by the assessee from M/s. Rajat Diamond Exim Pvt. Ltd. of Rs.35 lakhs and M/s. Proficient Merchandise Ltd. of Rs.5 crores were disallowed by the Assessing Officer as the assessee purportedly failed to discharge its onus in proving the genuineness and identity of the lenders and genuineness of the transaction. During assessment proceedings, summons u/s. 131(1) of the Act were issued to the aforesaid parties. However, they could not

be served. The assessee had filed copy of PAN card, ITR acknowledgement for AY 2013-14, confirmations, bank statement and financials for financial year 2013-14 of M/s. Rajat Diamond Exim Pvt. Ltd. Undoubtedly, M/s. Rajat Diamond Exim Pvt. Ltd. had issued confirmations. The same is at pages 49 to 54 of the paper book. The bank statement of M/s. Rajat Diamond Exim Pvt. Ltd. placed at page 55 reveals that an amount of Rs. 25 lakhs was advanced on 28.12.2012 and another sum of Rs.10 lakhs was advanced in two equal instalments of Rs. 5 lakhs each on 29.12.2012 & 31.12.2012 to the assessee through banking transaction. It is not the case of Revenue that before advancing of loans there were cash deposits in the bank account of the lenders.

8. Similarly, in the case of M/s. Proficient Merchandise Ltd. the assessee furnished copy of PAN Card, ITR acknowledgement for AY 2013-14, audit report for the accounting year 2012-13, financials and confirmations. A perusal of the copy of ITR acknowledgement at page 99 of the paper book shows that the company has disclosed an amount of Rs.24,35,556/-. As per the Balance Sheet as on 31.03.2013 the said company has share capital reserves and surplus aggregating to an amount of Rs.13 crores. The assessee has also filed bank statement of M/s. Proficient Merchandise Ltd. at page 118 of the paper book. A perusal of the bank statement reveals that an amount of Rs.5 crores was advanced to the assessee in three tranches of Rs.1 crore on 01.10.2012 and two transactions of Rs.2 crores each on 03.10.2012 through RTGS. Merely for the reason that the summons u/s. 131(1) of the Act could not be served on the aforesaid parties and in separate proceedings it was held that the aforesaid companies were involved in providing bogus loan entries could not mean that in the case of the assessee bogus unsecured loan entries were provided. The

documents on record clearly substantiate that the amount of unsecured loan was indeed transferred to the assessee through banking channel. The lenders have confirmed advancing of loans. The confirmation at page 117 of the paper book also reflects that the assessee has repaid Rs.25 lakhs on 10.01.2013. The loan amounts have been reflected in the Books of the assessee. The documents furnished by the assessee to substantiate its claim were neither rebutted by the Assessing Officer nor any doubt was raised over their correctness. Hence, we find merit in ground No. 3 of appeal. Therefore, the same is allowed.

9. In so far as ground Nos. 4 to 7 of appeal, the assessee has assailed the addition u/s. 37 of the Act on account of: (i) travelling expenses – Rs.53,44,638/-, (ii) Business promotion expenses – Rs.10,52,900/-, (iii) Commission expenses – Rs. 8,91,442/- and (iv) Purchase of paintings – Rs.1,40,485/-.

10. A perusal of the assessment order reveals that the assessee has failed to substantiate that the aforesaid expenses were incurred for business purposes. No documentary evidences were filed by the assessee before the lower authorities to show nexus of the expenditure claimed vis-à-vis business of the assessee. Even in the proceedings before the CIT(A), the assessee failed to discharge its onus in establishing nexus of expenditure with the business of the assessee. The assessee has filed additional evidences before the Tribunal in respect of ground Nos. 4 to 7. No reason, whatsoever, has been given as to why the documents now filed as additional evidence were not furnished to the AO or the CIT(A). Without any plausible reasons for non furnishing of these additional evidences before the authorities below, we are not inclined to admit these documents at second appellate stage as additional evidence.

The Id. AR of the assessee has not been able to rebut the findings of the authorities below for making addition u/s. 37 of the Act. In the facts of the case we do not find any merit in ground Nos. 4 to 7 of the appeal, hence the same are dismissed.

11. Ground No. 8 is general in nature, hence requires no adjudication.

12. In the result, appeal by the assessee is partly allowed.

Order pronounced in the open court on Friday the 16th day of December, 2022

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 16/12/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-17, Mumbai
4. आयकर आयुक्त CIT- 10, Mumbai
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt.Registrar)/

Sr.Private SecretaryITAT, Mumbai