

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 4959/Mum/2019
(A.Y: 2013-14)

Shree Sainath Enterprises, (Now converted into Shree Sainath Enterprises Constructions & Developers Pvt Ltd.,) 412, Floor – 4, 17G Vardhaman Chambers Cawasji Patel, Horniman Circle, Fort Mumbai – 400001	Vs.	DCIT, Central Rang – 7(3) Room No. 655, 6 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABDFS2374M		
Appellant	..	Respondent

Appellant by :	Shri Niraj Seth.AR
Respondent by :	Shri S.K Jain.DR

Date of Hearing	19.10.2022
Date of Pronouncement	29.11.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals) – 49, Mumbai passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal;

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the disallowance of interest of Rs. 46,94,439/-U/sec36(1)(iii).

2. The brief facts of the case are that the assessee is a partnership firm part of the Lodha Group and is engaged in the business of land development and construction of real estate properties. The assessee has filed the return of income on 30.09.2013 for the A.Y 2013-14 disclosing a total loss of Rs. 28,71,63,095/-. Subsequently the case was selected under the CASS and notice u/s 143(2) and U/sec 142(1) of the Act calling for various details and clarification was issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details. The AO on perusal of the financial statement found that the assessee has made investments of Rs. 22.48 Lakhs in the share of Indian companies, therefore the AO called for the information and also dealt on the provisions of Sec. 14A r.w Rule 8D and made a disallowance of Rs. 96,63,023/-.

3. Similarly, the AO found that the assessee has brought trading material from one company name M/s Cowtown land Development Pvt Ltd and the amount outstanding payable was Rs.32,44,87,186/- and the said materials was utilized by the assessee for the construction purpose. Since the assessee has used the material for trading purposes and also major

part of the material was sold to M/s. Suvidhanath Buildtech Pvt Ltd and the amount received from the party is Rs. 28,20,61,251/-, the AO found that the assessee has paid interest of Rs.85,47,372/- on the trade payable to M/s. Cowtown Land Development Pvt Ltd and has not recovered any interest from Suvdhinath Bildtech Pvt Ltd. The assessee was asked to explain the why interest pertaining to trade received from Suvidhinath Bildtech Pvt Ltd was not disallowed. The Ld. AR has submitted that no interest shall be disallowed as the debtors are outstanding for the business purpose. In the alternative, the assessee has also filed the ledger account of M/s Suvidhinath Buildtech Pvt Ltd wherein the debtors outstanding reflected and the average interest@15% worked out to Rs. 46,94,439/-. The AO was not satisfied with the explanations of the assessee as on one hand the assessee is paying interest to the creditors and claiming the same as deduction and on the other hand the assessee is supplying the materials and not charging any interest. With these observations the AO found that the assessee has wrongly claimed the interest without offering any corresponding income and therefore 30 days credit period has given by the assessee and interest income worked out to Rs. 46,94,439/- and assessed the total loss of Rs.27,28,05,633/- and passed order u/s 143(3) of the Act dated 30.03.2016.

4. Aggrieved by the order the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO and in respect of disallowance u/s 14A of the Act, the CIT(A) has granted partial relief and confirmed the addition of interest and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing the Ld. AR has filed the additional ground of appeal and the same was not pressed. Further the Ld. AR has made submissions on the facts that the assessee has considered the commercial expediency and also the assessee has not charged any interest on the debtors as the material supplied to non related party. The contentions of the Ld. AR that this transaction is purely a commercial transaction and they are not related concerns and the assessee has purchased the materials from sister concern and paid interest and it was claimed deduction. Similarly the assessee has also utilized the funds for the purpose of selling the products and has shown as debtor and the Ld. AR substantiated his submissions with the financial statements and paper book and prayed for allowing the appeal. Contra, the Ld. DR supported the order the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole disputed issue envisaged by the Ld.AR that the CIT(A) has erred in confirming the disallowance of interest proportionately as the assessee has not charged the any interest on debtors. The Ld. AR's contentions are that the assessee is the business of construction and development of real estate properties and developed residential houses at various places. The Ld. AR also emphasized on the fact that the assessee has also submitted the bank account, brought forward unabsorbed depreciation /losses. The contention of the Ld. AR that the assessee has submitted the details of unsecured loans and confirmations supporting the return of income filed and the details of the receivables and trade payables and the loans and advances reflected in the balance sheet and the assessee's transactions are purely in the nature of business transactions and interest expenses and interest income are reflected at page 114 to 123 of the paper book. The Ld. AR mentioned that the assessee has acquired the trading materials from the sister concerns and has paid interest. Whereas the material was sold to the M/s Suvidinath Bildtech Pvt Ltd which is not related concern and the transactions are at Arm's length. We found from the facts and the material information filed by the assessee and the assessment order there are no discussions on share holding pattern or directors of the debtor company. Accordingly, the Assessing officer is directed to verify whether the assessee is a related

concern or any of the directors and share holders of debtor company have stakes in the partnership firm and decided on merits and we allow the grounds of appeal for statistical purpose.

7. In the result, the appeal filed by the assessee is treated as partly allowed for statistical purpose.

Order pronounced in the open court on 29.11.2022.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 29.11.2022

KRK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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(Asst. Registrar)
ITAT, Mumbai