

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

ITA No. 237/Jodh/2019
(ASSESSMENT YEAR- 2013-14)

The DCIT Central Circle-1 Udaipur	Vs	Shri Manohar Lal Anjana Anjana Compound, Petch Area, Opportunity. Dak Bungalow, Nimbahera, Chittorgarh
(Appellant)		(Respondent)
PAN NO. ABWPA 2124 L		

Assessee By	Shri Sakar Sharma, CA
Revenue By	Ms. Nidhi Nair, jCIT-DR
Date of hearing	19/01/2023
Date of Pronouncement	20 /01/2023

ORDER

PER: B. R. BASKARAN, AM

The appeal of the revenue is directed against the order dated 25.04.2019 passed by Ld CIT(A)-1, Udaipur and it relates to the assessment year 2013-14. Following two issues are urged by the revenue:-

- (a) Relief granted in respect of interest disallowance.
- (b) Relief granted in respect of addition made u/s 14A of the Act.

2. The assessee herein is an individual and derives income from salary, house property, share of profit from firm, dividend etc. He is also engaged in the business of mining laterite and red ochre. The assessee filed his return of income for the year under consideration declaring total income of Rs.96,42,260/-. The AO disallowed interest expenses to the tune of Rs.1,25,70,319/- and also made addition of Rs.60,71,716/- u/s 14A of the Act. The Ld CIT(A) deleted the interest disallowance and sustained addition made u/s 14A of the Act to the extent of Rs.5.28 lakhs only. The revenue is aggrieved.

3. The first issue relates to the disallowance of interest expenses. The AO noticed that the assessee has given interest free advances to various persons to the tune of Rs.10.47 crores. The AO noticed that the assessee has also incurred interest expenses on the loan taken by it. Accordingly, the AO took the view that proportionate interest expenses that could be attributed to the interest free advances should be disallowed, as the assessee has not shown commercial expediency in giving interest free advances. Accordingly, the AO computed disallowance of interest expenses at Rs.1,25,70,319/- and added the same to the total income. The Ld CIT(A) noticed that an identical disallowance made in AY 2009-10 has been deleted by the ITAT in the order passed in the hands of the assessee in ITA No.219/Jodh/2014 dated 18-09-2014. Following the said order of ITAT, the Ld CIT(A) deleted the disallowance of interest expenses.

4. The Ld D.R submitted that the assessing officer had computed notional interest on the interest free advances in AY 2009-10 and added the same. Hence the Tribunal held that notional interest cannot be added. However, in the instant year, the AO has disallowed a part of interest expenditure u/s 36(1)(iii) of the Act. She submitted that the addition of notional income goes against real income principle, where as the interest disallowance could be made u/s 36(1)(iii) of the Act, if the loan funds were not utilized for the purposes of business. Accordingly, the Ld D.R submitted that the Ld CIT(A) was not correct in following the decision rendered by the ITAT in AY 2009-10.

5. The Ld A.R, on the contrary, submitted that the AO has been making disallowance of interest expenses year after year by following identical disallowance made in the earlier years. Though the AO has changed the nomenclature, still the purpose of making interest disallowance remained the same. Since identical disallowances made in the earlier years have been deleted by ITAT, the Ld CIT(A) was justified in deleting the disallowance of interest expenses made in this year by following the decision rendered by ITAT.

6. When it was pointed out by the bench that there is vast difference between the addition of notional interest income and disallowance of interest expenditure u/s 36(1)(iii) of the Act, the Ld A.R submitted that this disallowance can be examined from another angle also. He submitted that the new interest free loans given by the assessee during the year under consideration was Rs.50.78 lakhs

only, while the profit earned by the assessee during the year was Rs.156 lakhs. Hence the additional loans have been given out of own funds only. He further submitted that the aggregate amount of interest free funds available with the assessee as on 31.3.2013 was Rs.11.95 crores, where as the interest free advances given by the assessee was Rs.10.47 crores. Since the interest free funds available with the assessee is more than the amount of interest free advances, he submitted that the presumption is that such loans have been given out of interest free funds available with the assessee and hence no disallowance out of interest expenses is required to be made.

7. The above said alternative contention of the assessee finds support from the decision rendered by Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd (313 ITR 340). From the details of interest free funds available with the assessee, which have been extracted from the Balance sheet furnished along with return of income, we notice that the interest free funds available with the assessee are more than the interest free advances given by the assessee. Hence, as per the ratio of decision rendered by Hon'ble Bombay High Court in the above said case, it shall be presumed that the interest free loans have been given out of interest free funds only. In that case, no disallowance out of interest expenditure is called for. Accordingly, the relief granted by Ld CIT(A) on this issue needs to be confirmed on this ground. Accordingly, we uphold the decision rendered by Ld CIT(A) on this issue.

8. The next issue relates to the disallowance made u/s 14A of the Act. The assessee had earned exempt dividend income of Rs.88.58 lakhs, but did not make any disallowance u/s 14A of the Act. The AO, however, computed the disallowance as per provisions of Rule 8D at Rs.60.71 lakhs, which consisted of interest disallowance of RS.57.45 lakhs u/r 8D(2)(ii) and expenditure disallowance of Rs.3.16 lakhs u/r 8D(2)(iii) of I T Rules.

9. The Ld CIT(A) noticed that major portion of interest expenditure has been incurred on the loans, which could be directly linked to the investment made in proprietary and partnership firms, i.e., there was direct nexus between the loans and specific investments. Accordingly, the Ld CIT(A) took the view that the interest on loans, which have direct nexus with the specific investments, should not be considered for computing disallowance u/r 8D(2)(ii) of I T Rules. He noticed that major portion of interest expenditure, i.e. Rs.3.99 crores was related to such kind of specific loans only. Accordingly, the Ld CIT(A) computed interest disallowance by considering remaining amount of interest expenditure, which could not be linked with any specific investment. This exercise has resulted in reduction of disallowance u/s 14A of the Act to Rs.5,27,932/-. The revenue is aggrieved.

10. The Id D.R submitted that Ld CIT(A) was not justified in reducing interest disallowance made u/r 8D(2)(ii) of I T Rules, since share income from partnership firms is also exempt.

11. The Ld A.R submitted that the assessee has not made any new investments during the year under consideration. All the investments have been made in the earlier years out of own funds. He submitted that the major portion of dividend income, i.e., to the tune of Rs.88.00 lakhs has been received from M/s Chetak Enterprises Ltd and the remaining amount of Rs.58,552/- has been received from few other companies. He submitted that M/s Chetak Enterprises Ltd was formed by converting the proprietary concern of the assessee into a limited company. He submitted that, during the year under consideration, there is almost no investment activity and hence the disallowance u/s 14A is not really called for.

12. We heard rival contentions on this issue and perused the record. We notice that the assessee has not made any fresh investments during the year under consideration. It is also stated that investments have been made in the earlier years out of own funds. From the details of income given in page 155 of the paper book, we notice that the assessee has incurred net loss from the partnership firms. Hence exempted income has been received by the assessee through dividend income only and we notice that almost 99.41% of exempt dividend income has been received by way of dividend income from M/s Chetak Enterprises Ltd, which is said to be a company converted from the proprietary concern of the assessee. Hence, in the facts and circumstances of the case, we are of the view that the disallowance of Rs.5,27,932/- sustained by

Ld CIT(A) would meet the requirements of sec. 14A of the Act. Accordingly, we confirm the order passed by Ld CIT(A) on this issue also.

13. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open Court on 20 /01/2023

Sd/-

(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Sd/-

(B. R. BASKARAN)
ACCOUNTANT MEMBER

Dated : 20/01/2023

**Mishra*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar

Jodhpur Bench