

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'G' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 2224/Mum/2021 (A.Y. 2013-14)

DCIT, CC-4(2) Mumbai.	Vs.	M/s. Skylark Buildcon Pvt. Ltd. 402-Sagar Avenue, Plot No. 548 Junction of S.V. Road & Lallubhai Park Andhri West Mumbai-400 058.
(Appellant)		(Respondent)

I.T.A. No. 2036/Mum/2021 (A.Y. 2013-14)

M/s. Skylark Buildcon Pvt. Ltd. 402-Sagar Avenue, Plot No. 548 Junction of S.V. Road & Lallubhai Park Andhri West Mumbai-400 058.	Vs.	DCIT, CC-4(2) Mumbai.
(Appellant)		(Respondent)

PAN : AAOCS9597F

Assessee by	Shri Amit Bothra
Department by	Shri Byomakesh Pradipta Kumar Panda
Date of Hearing	17.11.2022
Date of Pronouncement	10.01.2023

O R D E R

Per B.R.Baskaran (AM) :-

These cross appeals are directed against the order dated 7.9.2021 passed by the learned CIT(A)-52, Mumbai and they relate to A.Y. 2013-14.

2. The assessee is aggrieved by the decision of the learned CIT(A) rendered on the following issues :

- a) Addition made under section 41(1) of the I.T. Act
- b) Disallowance of interest expenditure u/s 36(1)(iii) & 57
- c) Addition made under section 43B of the Act

3. The Revenue is in appeal in respect of the following issues :
- Relief granted in respect of the advertisement expenses
 - Relief granted in respect of interest disallowance
 - Relief granted in respect of addition made under section 14A of the Act
4. The assessee is engaged in the business of real estate development and construction.
5. We shall take up the appeal filed by the assessee first. First issue relates to disallowance made under section 41(1) of the Act. The Assessing Officer noticed from the Balance sheet that following two amounts have been shown as Advance against sale of flats and it was outstanding for quite long period.

S.No.	Date	Name of Buyer	Amount
1	01.10.2008	Ashok Kumar/Harivallab Bisani	51,00,000
2	12.07.2005	Auto Trax	12,00,000
		Total	63,00,000

When question, the assessee merely submitted copy of ledger account of the above said parties and could not explain as to why the above said advances were still shown as outstanding. Even though the assessee has stated that these advances were received against sale of flats, yet no proof or explanation was furnished. Accordingly, in the absence of any evidence, the Assessing Officer took the view that the liability does not exists and accordingly assessed the above said amount of Rs. 63 lakhs as income of the assessee under section 41(1) of the Act. The learned CIT(A) also confirmed the same.

6. We heard the parties and perused the record. We noticed that the assessee, except stating that these are advances received against the sale of flats, has not furnished any details. These amounts have been received during the years 2005 and 2008. It is in the common knowledge that no

buyer of flat will remain quiet for such a long period unless there is proper reason. Hence it is the responsibility of the assessee to explain as to why these two advances remain outstanding. We notice that the assessee could not furnish any explanation as to why these advances have not been repaid or adjusted against sale of flats. The assessee could not identify the flats against which these advances have been received.

7. We noticed that the AO has assessed the above said amounts u/s 41(1) of the Act. Before the learned CIT(A), the assessee has contended that the provisions of section 41(1) of the Act are not applicable as above said amount has not been claimed as deduction in any of the years. However, we noticed that the assessee has claimed to have received these amounts as advances against the sale of flats. Hence the same constitutes trading liability in the hands of the assessee. Sec. 41(1) covers the cases of remission of trade liabilities. Even otherwise, the long pending trade liabilities would take the form of revenue receipts over a period of time, if remained unclaimed, as held by Hon'ble Supreme Court in the case of T V Sundaram Iyengar and sons Ltd (222 ITR 344)(SC). Under facts and circumstances of the case, we are of the view that the AO was justified in assessing the long pending advances, which has remained unexplained as income of the assessee. Accordingly we confirm the order passed by the learned CIT(A) on this issue.

8. The next issue contested by the assessee as well as Revenue relates to disallowance made under section 36(1)(iii) and sec. 57 of the Act. We noticed that an identical issue has been examined by the Coordinate Bench of the Tribunal in the assessee's own case in AY 2014-15 in ITA No.2037 & 2226/Mum/2021 and the said issue has been restored back to the file of the Assessing Officer for examining it afresh by considering various claims put forth by the assessee. Accordingly, following the decision rendered by the Coordinate Bench in A.Y. 2014-15, we restore the issue of disallowance made u/s 36(1)(iii) and sec.57 of the Act to the file of the Assessing Officer for

examining them afresh by duly considering various contentions of the assessee.

9. The next issue contested by the assessee relates to disallowance of Service tax payable by invoking sec.43B of the Act. We noticed that the assessee has not paid the service tax of Rs. 3,09,000/- before the due date of filing the return of income and hence the Assessing Officer has disallowed the above said claim and the learned CIT(A) has confirmed the disallowance. Since the assessee has not paid the amount before the due date prescribed for filing the return of income u/s 139(1) of the Act, we do not find any infirmity in the order passed by the learned CIT(A) on this issue.

10. Now we shall take up the appeal filed by the Revenue. The first issue relates to disallowance of advertisement expenses of Rs. 28.09 lakhs. During the year under consideration, a company named M/s. Rane Prakashan Pvt. Ltd. has arranged a programme named 'Prahahar Bhushan Award, 2013'. In that program, the then Chief Minister and another important minister were invited. The assessee has sponsored the programme by contributing a sum of Rs.28.09 lakhs, which included Service tax of Rs.3.09 lakhs. When questioned about the necessity of incurring this expenditure, the assessee submitted before the Assessing Officer that it needs to maintain good relationship with the Government and since the Chief Minister and another minister were participating in the programme, it had incurred this expenditure in order to get the political mileage and consequent benefit in long run. The Assessing Officer, however, noticed that the assessee has not carried on any business activity during the year under consideration and has declared only interest income. Hence he took the view that the assessee has spent this amount to get personal mileage in the political circles. Accordingly he took the view that the assessee has failed to show as to how these expenditure is related to the business activity of the assessee. Accordingly he disallowed the claim of Rs. 28.09 lakh.

11. Before the learned CIT(A), the assessee furnished detailed explanation and hence the learned CIT(A) called for the remand report from the Assessing Officer. In the remand report the Assessing Officer submitted that the assessee has only produced copy of the invoice in support of incurring of expenditure and did not furnish any explanation as to how this expenditure is eligible for deduction. However, the learned CIT(A) took the view that the assessee is engaged in the business of real estate development and deals in slum redevelopment projects in addition to other projects. Accordingly he took the view that the assessee is required to have considerable interaction with the political authorities in obtaining necessary approvals as well as negotiating with various persons. Accordingly the learned CIT(A) took the view that this expenditure has been incurred for the purpose of business. The learned CIT(A) also held that there is no condition that the assessee should have carried on the business and earned revenue for allowing expenditure. Accordingly, he deleted the disallowance.

12. We have heard the parties on this issue and perused the record. We noticed that the Assessing Officer has disallowed the claim mainly on the reasoning that the assessee has not carried on any business activity during the year under consideration and it has earned only interest income. Accordingly the Assessing Officer has taken the view that this expenditure would result in personal benefit to the assessee. On the contrary, the learned CIT(A) has recorded a finding that the assessee is engaged in the business of development of slum project, which involved interaction with the political authorities and other Government officials. Accordingly, the learned CIT(A) has taken the view that it is imperative for the assessee to maintain good relationship with them. According to the assessee it has incurred this expenditure since the Chief Minister and another Minister were participating in the programme and it would become familiar with them, which will result in getting mileage in the long run for the benefit of the business. We notice

that the assessee has also submitted that the said sponsorship shall be bring visibility and hence it was brand building exercise also. We find merit in the submission made by the assessee. We noticed that the purpose of incurring this expenditure is to promote the name of the assessee and to maintain good relationship with the Government officials. Hence, we are of the view that this expenditure has been incurred for the purpose of business of the assessee. We notice from the assessment order that the assessee is having work-in-progress. Even though the opening and closing balance of work in progress remained the same, which would signify that the assessee has not put up any new construction. But the AO has not stated that the assessee has completely stopped the construction activities. Hence, temporary lull in the business would not disentitle the assessee to claim expenses. Accordingly, the learned CIT(A) was justified in deleting the disallowance.

13. The Last issue contested by the Revenue relates to disallowance made under section 14A of the Act. During the year under consideration, the assessee did not earn any exempt dividend income and hence did not make any disallowance under section 14A of the Act. However, the Assessing Officer computed the disallowance at Rs. 19.29 crore under rule 8D for the reason that the assessee has held investment to the tune of Rs. 482 crore and Rs. 333 crore as at the end and beginning of the year respectively. The learned CIT(A) however deleted the addition by following the decision rendered by Hon'ble Bombay High Court in the case of M/s. Nirved Traders Pvt. (ITA No. 149 of 2017 dated 23.4.2019) wherein Hon'ble Bombay High Court has held that the disallowance under section 14A should be restricted to the tax exempt income. Since the assessee has not earned exempt income, the learned CIT(A) deleted the disallowance made under section 14A of the Act. Above said view of the learned CIT(A) also gets support from the decisions rendered by Hon'ble Delhi High Court in the case of Era Infrastructure (India) Ltd. (2022) 141 taxmann.com 289 and also decision rendered in the care of IL&FS Energy Development Company Ltd. In view of

the above said decisions, we do not find any reason to interfere with the order passed by the learned CIT(A) on this issue.

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

Pronounced in the open court on 10.1.2023

Sd/-
(RAHUL CHAUDHARY)
Judicial Member

Sd/-
(B.R. BASAKARAN)
Accountant Member

Mumbai; Dated : 10/01/2023

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,

(Assistant Registrar)
ITAT, Mumbai

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