IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

[CONDUCTED THROUGH VIRTUAL COURT]

Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member

ITA No. 14/Rjt/2017
Assessment Year 2010-11

M/s. Western India Ceramics Pvt. Ltd. Bardoa Padra National Highway, Near Ceramic Nagar, Padra, Baroda PAN: AAACW1838K (Appellant)	Vs	Dy. CIT, Central Circle-1 Rajkot (Respondent)

Assessee by: **Shri D.M. Rindani, A.R.**
Revenue by: **Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 08-02-2023
Date of pronouncement : 03-03-2023

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This assessee's appeal for A.Y. 2010-11, arises from order of the CIT(A)-11, Ahmedabad dated 17-11-2016, in proceedings under section 250 of the Income Tax Act, 1961; in short "the Act".

2. The assessee has taken the following grounds of appeal:-

"1. The learned Commissioner of Income Tax, (Appeals)-11, Ahmedabad has erred in dismissing the appeal and whereby upholding the disallowance of interest expenses of Rs.2,36,855/- is unwarranted, unjustified and bad in law.

2. The learned Commissioner of Income Tax, (Appeals)-11, Ahmedabad has erred in dismissing the appeal and whereby upholding the disallowance of Rs.19,07,213/- u/s. 40(a) (ia) of the IT Act is unwarranted, unjustified and bad in law.

3. The learned Commissioner of Income Tax, (Appeals)-11, Ahmedabad has erred in dismissing the appeal and whereby upholding the disallowance of Rs.2,36,900/- u/s. 40(a) (ia) of the IT Act is unwarranted, unjustified and bad in law.

4. The learned Commissioner of Income Tax, (Appeals)-11, Ahmedabad has erred in dismissing the appeal and whereby upholding the disallowance of Rs.4,29,627/- out of depreciation on Plant & Machinery and vehicle is unwarranted, unjustified and sad in law.

5. The learned Commissioner of Income Tax, (Appeals)-11, Ahmedabad has erred in dismissing the appeal and whereby upholding the charging interest u/s. 234A, 2348 and 234C is unwarranted, unjustified and bad in law.

6. The learned Commissioner of Income Tax, (Appeals)-11, Ahmedabad has erred in dismissing the appeal and whereby upholding the initiating penalty u/s. 271(1)(c) of the IT Act, 1961 is unwarranted, unjustified and bad in law.

Your applicant reserves the right in addition or alteration in the grounds of appeal at the time of hearing."

Ground number 1: disallowance of interest expense of ₹ 2,36 855/-

3. The brief facts relating to this ground of appeal are that assessee had given interest free advances of ₹ 19,73,788/- to certain parties and as per the AO, the assessee on one hand had paid interest on borrowed funds, whereas

on the other hand, the assessee had given interest free loans to its sister concerns and promoters. Accordingly, the AO disallowed proportionate interest amounting to ₹ 2,36, 855/-.

4. The assessee filed appeal before Ld. CIT(Appeals) wherein it was contended that the loans were given prior to the year 1996-97 and also enclosed copy of assessment order for assessment year 1999-2000. However, CIT(Appeals) dismissed the appeal of the assessee with the following observations:

> *"5.1 The AR of the appellant filed submissions in the office on 15.11.2016 when it was stated that as per Annexure-l the loan was given prior to 1996-97. It was claimed that copy of the assessment order for the AY 1999-2000 was enclosed the above submissions. However, after perusal of the submission, it was found that no such details were furnished except copy of ledger of Sri PD Vachan VD Vachhani, G.B Vachhani, KD Vachhani and that of the associated concerns, Swis Health Food P Ltd and Swiss Pack P Ltd (Dobhasa) for the accounting year 2000-02 to accounting year 2009-10 However, these details do not lead to a model evidence to establish that the advances were given in the earlier years as claimed by the appellant. Similarly, the appellant also submitted that the company was having capital of Rs 2.76 crores in addition to its reserves and other funds and no such addition was made on this issue in the earlier assessment years.*
>
> *5.2 The facts of the case and submissions of the appellant were gone through and it was found that the appellant did not furnish any supporting evidence in the appeal proceedings. Therefore, such submission without relevant evidence cannot be treated as adequate material to refute the finding of the AO. In view of the given facts and circumstances of the case, in my considered opinion, it is difficult to accept the contention of the appellant. Accordingly, the ground of appeal dismissed."*

5. Before us, the counsel for the assessee drew our attention to balance sheet of the assessee as on 31st March 2010 and submitted that the own funds of the assessee were to the tune of ₹ 9 crores, whereas the assessee

had only advanced a sum of ₹ 19.73 lakhs and that too way back in 1996-97 and accordingly, in view of the decision of Reliance Industries 401 ITR 466, no disallowance can be made in the hands of the assessee in the instant facts. In response, the DR relied upon the observations made by Ld. CIT(Appeals) in the appellate order and submitted that the aforesaid advances were given to the erstwhile Directors of the company, from whom the assessee drew no benefit. Accordingly, keeping in view of the above facts, proportionate interest needs to be disallowed.

6. We have heard the rival contentions and perused the material on record. We observe that during the year under consideration, the assessee had substantial interest free funds to the tune of ₹ 9 crores as own funds at its disposal. Further, the assessee submitted before us copy of the ledger account of the parties to whom the aforesaid advances were made and it is evident that the said advances were made in the earlier assessment years. In the case of **CIT v. Reliance Industries Ltd. 410 ITR 466 (SC)**, the Hon'ble Supreme Court held that where Assessing Officer rejected assessee's claim under section 36(1)(iii) taking a view that interest would not have been payable to banks if funds were not provided to subsidiaries, in view of fact that interest free funds were available to assessee which were sufficient to meet its investment in subsidiaries, appellate authorities were justified in allowing assessee's claim for deduction. Accordingly, keeping in view the instant facts, since the assessee is having substantial interest free funds at its disposal amounting to ₹ 9 crores as against an advance of 19.7 lakhs approximately advanced to sister concerns, we are of the view that addition on this count cannot be sustained.

7. In the result, ground number 1 of the assessee's appeal is allowed.

Ground number 2 and 3: disallowance of ₹ 19,07,213/- and ₹ 2,36,900/- u/s 40(a)(ia) of the Act

8. The 2nd and 3rd grounds of appeal relate to addition of ₹ 19,07,213/- and ₹ 2,36,900/-u/s 40(a)(ia) of the Act. The brief facts of the case in relation to this ground of appeal are that assessee claimed rent expenses of ₹ 52,42,183/- and the AO discovered that the assessee had not deducted TDS on rent amounting to ₹ 19,07,213/-. Accordingly, this amount of ₹ 19,07,213/- was added back to the income of the assessee by the ld. Assessing Officer u/s. 40(a)(ia) of the Act. Further, the AO also disallowed a sum of ₹ 236,900/-on account of short deduction of TDS on rent. In appeal before Ld. CIT(Appeals), the assessee furnished a chart containing details of Rent and TDS deducted thereon and submitted that TDS was not deducted on rent only in cases where the rent was below the prescribed limit of ₹ 1,20,000/-. Moreover, two parties furnished certificate under section 197 of the Act for a lower rate of TDS on rent. Accordingly, the assessee has correctly deducted TDS on rental payments as above. However, Ld. CIT(Appeals) dismissed the appeal of the assessee with the following observations:

> *"6.3 After considering the facts of the case and remand report of the AO it was difficult to accept the contention of the assessee that TDS was not deducted on rent payment of Rs 1907213/- for the reason that payment of rent was below the limit prescribed for deduction of tax on rent in the case of many parties. As discussed above, the assessee did not furnish any evidence for verification before the AO. In the case of Ara Enterprise (P) Ltd the TDS was required to be deducted @ 2.10% alongwith surcharge and cess but the assessee deducted TDS*

> *only at the rate of 0.45%. Therefore, the AO disallowed proportionate rent of Rs.236900/- on this account and added to his income. Therefore, after having regard to the facts and circumstances of the case, in my considered opinion, the action of the AO does not warrant any interference. Accordingly, the ground of appeal is dismissed."*

9. Before us, the counsel for the assessee drew our attention to reply of the assessee dated 07-10-2014 before ACIT and submitted that complete chart giving details of rent and details of TDS thereon were furnished before the AO. However, the AO as well as Ld. CIT(Appeals) failed to appreciate the same. According to assessee, the AO has clearly made contradictory statements that assessee failed to file details, wherein apparently all details were filed by the assessee during the course of assessment proceedings. In response, DR relied upon the observations made by the AO and Ld. CIT(Appeals) in their respective orders and submitted that evidently as per the remand report of the AO furnished during the course of appellate proceedings before Ld. CIT(Appeals), no details were furnished by the assessee.

10. We have heard the rival contentions and perused the material on record. We observe that the assessee had filed a detailed chart giving details of rent before the assessing Officer vide submission dated 07-10-2014, however, evidently the same was not taken cognizance by the Revenue Authorities. Before us, the counsel for the assessee submitted that the assessee has correctly deducted TDS on rent as per law. The TDS was not deducted only in cases where either the payment of rent was below the threshold limit or the recipient of rental income had furnished a lower tax

withholding the certificate furnishing the rate at which taxes were to be deducted by the assessee. Accordingly, in the interests of justice, looking into the facts of the case that evidently the detailed chart filed by the assessee regarding TDS on rent payments, furnished during the course of assessment proceedings was not properly examined by the AO, we are hereby restoring the matter to the file of AO for proper examination of the details of rent paid and TDS deducted thereon, after giving due opportunity of hearing to the assessee.

11. In the result, grounds number 2 and 3 are restored to the file of AO with the above directions. In the result, grounds number 2 and 3 of the assessee's appeal are allowed for statistical purposes.

Ground number 4: disallowance of depreciation of ₹ 4,29,627/-

12. The brief facts relating to this ground of appeal are that during the course of assessment, the AO observed that in the assessment order for assessment year 2009-10, assessee's claim of depreciation on plant and machinery and vehicle to the tune of ₹ 4,29,627/- was declined. In the said assessment order, it was also held that such depreciation would never be allowed in the future as well as the WDV arrived at was Nil. However, the assessee did not exclude plant and machinery and vehicles to the extent of depreciation claimed as mentioned above. Hence, the AO made addition of ₹ 4,29,627/- to the total income of the assessee.

13. In appeal, Ld. CIT(Appeals) dismissed the assessee's appeal on the ground that in absence of any material on record, it would not be possible to allow the claim of the assessee. While, dismissing the assessee's appeal, Ld. CIT(Appeals) observed as under:

> *"7.1 The A.R. of the appellant submitted that WDV for the A.Y. 2006-07 was wrongly taken at Rs.43711111/- in place of WDV at Rs.50577338/-. It was a mistake in carrying forward the WDV. Therefore, no further claim was made in the subsequent assessment years on the WDV of Rs.6866227/-. It was further submitted that he enclosed copies of returns of income and computation of income for the AY. 2005-06 and 2006-07 in Annexure-2 and separate calculation of depreciation as per Annexure-3 with the submissions.*
>
> *7.2 The submission of the appellant was gone through and it was found that no such details were filed before the AO or in the appeal proceedings. In absence of the material on record it was not possible to allow the claim of the assessee only on the basis of the said submissions. Accordingly, the ground of appeal is dismissed."*

14. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) dismissing this ground of appeal of the assessee. We observe that identical set of facts and identical submissions on this issue were already made before the assessing Officer by the assessee during the course of assessment for assessment year 2009-10. In the said assessment order, the AO denied the assessee's claim for depreciation after discussing the issue in detail. Similar observations were also made by the AO in the assessment order for the present year as well. In light of the above facts, we find no infirmity in the order of ld. CIT(A) and we are not inclined to interfere with the order of Ld. CIT(Appeals) for the present year as well.

15. In the result, ground number 4 of the assessee's appeal is dismissed.

16. In the combined result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 03-03-2023

Sd/-	**Sd/-**
(WASEEM AHMED)	**(SIDHHARTHA NAUTIYAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad : Dated 03/03/2023

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot