

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

Before Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 6236/Mum/2018 (A.Y. 2012-13)
I.T.A. No. 2124/Mum/2019 (A.Y. 2015-16)

DCIT, Central Circle-5(4) 19 th Floor Air India Building Nariman Point Mumbai-400 021.	Vs.	Rakesh Kumar Kuldipsingh Wadhawan Wadhwa House, Plot No. 32/A, Union Parak Road Near Shatranj Hotel Bandra West Mumbai-400 050.
(Appellant)		(Respondent)

I.T.A. No. 2038/Mum/2019 (A.Y. 2014-15)
I.T.A. No. 2039/Mum/2019 (A.Y. 2015-16)

Rakesh Kumar Kuldipsingh Wadhawan Wadhwa House, Plot No. 32/A, Union Parak Road Near Shatranj Hotel Bandra West Mumbai-400 050.	Vs.	DCIT, Central Circle-5(4) 19 th Floor Air India Building Nariman Point Mumbai-400 021.
(Appellant)		(Respondent)

Assessee by	None
Department by	Ms. Riddhi Mishra
Date of Hearing	13.03.2023
Date of Pronouncement	17.03.2023

ORDER

PER BENCH:-

The assessee had filed appeals for assessment years 2014-15 and 2015-16. The revenue has filed appeals for assessment years 2012-13 and 2015-16. None appeared on behalf of the assessee, even though the hearing of these appeals was adjourned several times at the specific request of the

assessee. Hence we proceed to dispose of these appeals, ex parte, without presence of the assessee.

2. In the appeals filed by the assessee for assessment year 2014-15 and 2015-16, a common issue urged relates to disallowance of interest expenditure by reducing the same from the work in progress. The facts relating to the said issue are stated in brief. The assessee is engaged in the business of real estate & share trading. In the assessment proceedings of these 2 years, the AO noticed that the assessee has claimed interest expenditure of 91.58 crores and ₹ 152.33 crores respectively in the years relevant to the assessment years 2014-15 and thousand 2015-16. The assessing officer noticed that the assessee has paid this interest amount to PMC bank. However he noticed that the loan funds have been the diverted to the sister concerns of the assessee. Accordingly, the assessing officer took the view that the loan funds have not been used for the purpose of business and accordingly held that the above said interest expenditure is not related to the business carried on by the assessee. The AO further noticed that the assessee has included the interest expenditure in the value of "Work in progress". Hence, the assessing officer reduced the above said interest expenditure from the value of "work in progress" in both the years under consideration.

3. In the appellate proceedings, the learned CIT (A), in principle, agreed with the view taken by the assessing officer. However, in AY 2014-15, the Ld CIT(A) restored the issue to the file of the AO for correcting certain computational errors. In the set aside proceedings, the assessing officer retained the addition made by him initially. Aggrieved by the order so passed by the assessing officer in AY 2014-15, the assessee filed appeal before the learned CIT(A). In the 2nd round of proceedings the learned CIT (A) confirmed the action of the AO. The present appeal has been filed before the Tribunal in AY 2014-15 against the order passed by Ld CIT(A) in the second round. In

AY 2014-15 & 2015-16, the Ld CIT(A) confirmed the action of the AO in reducing interest expenditure from the value of work in progress.

4. We heard the learned DR on this issue in both the years and perused the record. We noticed that the case of the assessee before tax authorities was that he had taken loan from its sister concerns for the purpose of real estate business in the past. The loan taken from the bank has been used to repay the loan taken from the sister concerns earlier. It was submitted that the loans were initially taken from the sister concerns and the same has been substituted by the bank loans. Accordingly, it was submitted that there was no diversion of funds to the sister concerns, as alleged by the tax authorities. We noticed that the tax authorities, however, has taken the view that there was diversion of loan funds to the sister concerns, i.e., the loan funds were not used for the purpose of business.

5. However we notice that the important contention of the assessee that he had taken loan initially from the sister concerns for the purpose of real estate business and the loans taken from banks were used to repay the said loans, has not been examined by the tax authorities. If the above said contention of the assessee is found to be correct, then it is possible to hold that the loan taken from the bank was used for the purpose of construction business only. Because of substitution of a business loan by another loan will not affect the claim of interest expenditure. In that case there is no requirement of disallowing interest expenditure. No doubt, it is the responsibility of the assessee to prove the nexus between loans taken from sister concerns and usage of the same for construction activity.

6. We noticed that these factual aspects need to be examined by the tax authorities. It is also the responsibility of the assessee to furnish necessary documents and evidence in support of above said claim put forth by him. Accordingly, we set aside the order passed by learned CIT (A) on this issue in

both the years under consideration and restore the same to the file of the assessing officer for examining it afresh in both the years in the light of discussions made supra.

7. Next common issue contested by the assessee in A.Y. 2014-15 & 2015-16 and also by the Revenue in A.Y. 2015-16 relates to the disallowance made under section 14A of the Act. It is pertinent to note that the revenue is contesting this issue only in its appeal filed for AY 2015-16. The Assessing Officer, upon noticing that the assessee has made huge investments, computed disallowance under section 14A of the Act in both the years by applying provisions of Rule 8D of the I.T. Rules. The learned CIT(A) granted partial relief in both the years. The assessee is in appeal in both the years in respect of additions sustained by the learned CIT(A). The Revenue is in appeal in A.Y. 2015-16 in respect of the relief granted by the learned CIT(A).

8. We have heard learned DR on this issue and perused the record. It is now settled proposition that the disallowance under section 14A should be restricted to the amount of exempt income. In this regard we may gainfully referred to the decision rendered by the Coordinate Bench in the case of Pinnacle Brocom Pvt. Ltd. v. ACIT (ITA No.6247/M/2012) and also decision rendered by Hon'ble Madras High Court in the case of Marg Limited Vs. CIT (ITA Nos. 41 to 43 & 220 of 2017 dated 30.9.2020. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to restrict the disallowance under section 14A of the Act in both the years to the amount of exempt income declared by the assessee.

9. We shall now take up the individual issues contested in A.Y. 2015-16. The first individual issue relates to the assessment of deemed rental income in respect of house properties owned by the assessee. The Assessing Officer noticed that the assessee is the owner of three house properties. However, he did not offer any rental income. The assessee submitted that he could not find tenants for two of its properties and the third property was used for the

purpose of business. However, the assessee did not furnish any document to support the above said contention. Accordingly the Assessing Officer rejected the above said claim of the assessee and computed the deemed rental value of these three properties at Rs. 2,52,000/-. The learned CIT(A) also confirmed the same.

10. We heard learned DR on this issue and perused the record. Before us also no material was placed to contradict the factual aspects mentioned by the Assessing Officer. Accordingly, we confirm the order passed by the learned CIT(A) on this issue.

11. The next individual issue relates to the addition made under section 43CA of the Act. The Assessing Officer noticed that the assessee has sold FSI for a consideration less than the consideration fixed by the stamp valuation authority. Difference between both the amounts was Rs. 23.57 lakhs and the same was assessed by the Assessing Officer under section 43CA of the Act. The learned CIT(A) also confirmed the same.

12. We heard learned DR and perused the record. Since the tax authorities assessed the above said amount as per the legal fiction enshrined section 43CA of the Act, we do not find any reason to interfere with the decision rendered by the learned CIT(A) on this issue.

13. The Last individual issue contested by the assessee in A.Y. 2015-16 relates to the disallowance of TDS credit of Rs. 5,46,000/-. The Assessing Officer noticed that the assessee has claimed TDS credit of Rs. 5,46,000/- without offering corresponding income to tax. Accordingly, he disallowed the claim of TDS.

14. Before the learned CIT(A), the assessee submitted that the TDS was deducted by the customer named Shree Ganesh Ventures, at the time of

making payment. It was submitted that the TDS credit has been claimed in this year, when the concerned property was registered. The Ld CIT(A), however, expressed the view that there is no provision under the Act for carry forward of TDS amount. Accordingly he confirmed the disallowance made by the Assessing Officer.

15. We heard learned DR on this issue and perused the record. There is no dispute with regard to the proposition that the TDS has to be allowed in the year in which corresponding income is offered to tax. For this purpose, one has to refer to the provisions of Rule 37BA of Income tax Rules. We notice that the tax authorities have not followed the provisions of Rule 37BA. Accordingly, we restore this issue to the file of the Assessing Officer with the direction to allow TDS credit in accordance with Rule 37BA of I T Rules.

16. We shall now take up the appeal filed by the Revenue for A.Y. 2012-13. The Assessing Officer has passed the order under section 143(3) read with section 263 of the Act in order to give effect to the revision order passed by Ld PCIT. Before the learned CIT(A) the assessee submitted that the revision order passed by learned PCIT under section 263 of the Act has since been quashed by the ITAT, vide its order dated 11.9.2017 in ITA No. 2783/Mum/2017. Accordingly, the learned CIT(A) held that the impugned appeal filed by the assessee shall become infructuous as the assessment order against which the appeal has been filed does not survive. Accordingly, he allowed the appeal of the assessee. The Revenue has filed this appeal contending that it has challenged the decision rendered by the ITAT quashing the revision order passed under section 263 before Hon'ble High Court.

17. We heard learned DR and perused the record. The Assessing Officer has passed the impugned order under section 143(3) read with section 263 of the Act in order to give effect to the revision order passed by learned PCIT. Since the revision order passed by learned PCIT has been quashed by the

Tribunal, the impugned assessment order passed by the Assessing Officer will not survive. It was not shown to us that the order so passed by the ITAT has either been stayed or reversed by Honourable High Court/Supreme Court. Hence, we are of the view that the learned CIT(A) has allowed the appeal following correct legal proposition. Accordingly, the impugned appeal filed by the Revenue is liable to be dismissed.

18. In the result, appeal filed by the Revenue for A.Y. 2012-13 is dismissed. The appeal filed by the Revenue for A.Y. 2015-16 is treated as allowed and appeal filed by the assessee for A.Y. 2014-15 & 2015-16 are treated as partly allowed.

Pronounced in the open court on 17.3.2023.

Sd/-
(KAVITHA RAJAGOPAL)
Judicial Member

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

Mumbai; Dated : 17/03/2023

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//

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai