

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.329/Ind/2022**  
**(Assessment Year:2013-14 )**

ACIT(Central)-2 Indore	vs.	M/s Keti Construction Ltd Vastalya Chamebers, Sapna Sangeeta, 31/6, Sneh Nagar Main Road, Indore
(Appellant / Revenue)		(Respondent/ Assessee)
<b>PAN: AAACK6893Q</b>		
Revenue by	Shri P.K. Mishra CIT DR	
Respondent by	Shri Pankaj Shah & Shri Soumya Bumb ARs	
Date of Hearing	03.05.2023	
Date of Pronouncement	30.05.2023	

**O R D E R**

**Per Vijay Pal Rao, JM:**

This appeal by the department is directed against the order of Ld. Commissioner of Income Tax (Appeals) (in short Ld. CIT(A)-3, Bhopal dated 03.06.2022 for Assessment Years 2013-14. The department has raised following grounds of appeal:

*1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition of Rs. 3,79,85,854 /- made by the AO on account of disallowances of operating expenses, cost of material consumed and employee benefits and other expenses debited in P&L account of the company without appreciating the fact that the assessee failed to produce any*

*document to substantiated these expenses before the Assessing Officer during the assessment proceeding.*

*2. Whether on the fact and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting addition of Rs.1,68,64,954/- made by the AO on account of disallowances of difference of current year and previous year of other long term liabilities, current liabilities and statutory liabilities shown in books of account without appreciating the fact that the assessee failed to furnish the details of current and statutory liabilities and other long term liabilities before the Assessing Officer during the assessment proceedings.*

*3. Whether on the fact and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting addition of Rs.1,29,26,925/- made by the AO on account of disallowances made under section 14A of the Income Tax Act, 1961 without appreciating the fact that the assessee did not furnish any details of investment made in shares of various companies. Further, the Ld. CIT(A) erred in the ignoring that section 14A shall be applicable in the case of investment made by the assessee and disallowance u/s 14A shall be worked out even if the assessee does not have any exempt income as clarified by the CBDT as per circular No. 05 of 2014 dated 11.02.2014. This has been further reaffirmed by amendment in Finance Act 2022. Inserting explanation which is clarificatory in nature & hence has retrospective operation*

2. Ground No.1 is regarding adhoc disallowance @10% made by the AO in respect of expenses is deleted by the Ld. CIT(A). Ld. DR has submitted that the AO has issued show cause notice to substantiate the operating expenses, cost of material consumed, employee benefits and other expenses etc. debited in the profit and loss account. The assessee did not furnish the full details or produced books of account to substantiate the claim of the expenses the AO has recorded the fact that these expenses claimed by the assessee could not be verified in the absence of relevant details and supporting evidences. The AO has also referred to the search and seizure action proceedings carried out in the case of assessee and its associates on the 05.05.2011 wherein it was unearth that the assessee was inflating its expenses. Accordingly the AO made disallowance of 10% of the expenses under the head operating expenses, cost of material consumed, employee benefits and other expenses etc. debited by the assessee in the profit and loss account. The Ld. CIT(A) has deleted the said addition made by the AO on account of disallowance of these

expenses by accepting the explanation of the assessee and without verifying the relevant record in support of these expenses. He has relied upon the order of the Ld. AO.

3. On the other hand, Ld. AR of the assessee has submitted that the assessee has duly made compliance of notice issued by the AO as recorded in the assessment order. The representative of the assessee has participated in the assessment proceedings and also filed the details. The AO has not passed the assessment u/s 144 of the Act but it has been passed u/s 143(3) of the Act. All the relevant details and supporting evidence was filed before the AO and the expenses claimed in the profit and loss account are based on supporting evidence and settled Principles of accountancy. Ld. CIT(A) has considered the details and supporting evidence filed by the assessee before the AO and no fresh details or evidence was filed before the Ld. CIT(A). The assessee is making payment of the expenses mainly through banking channels after deduction of tax at source therefore, the genuineness of payments and identity of the payee are not in question. He has further submitted that the AO has not questioning commercial expediency or rationale of the expenses in any preceding year or year under consideration therefore, adhoc disallowance is made by the AO is not justified and liable to be deleted.

4. He has referred to the submission made by the assessee before the Ld. CIT(A). This is only assessment year where the AO has made such adhoc disallowance. The AR has referred to the para 1.1. and submitted that Ld. CIT(A) vide notice dated 27.01.2021 was asked the AO to confirm the facts having a bearing on the appeal. The AO was also asked to specify whether he would like to present at the time of hearing in view of provision of section 250(2)(b) of the Act. The AO did not submit any report or any reply in respect to the notice issued by Ld. CIT(A), therefore, it is not a case of considering the record without giving opportunity to the AO. Ld. CIT(A) has verified the relevant record, books of account as well as the facts that the assessee himself has made suo-moto disallowance of Rs.18,84,65,541/- on account of noncompliance of TDS u/s 40a(ia) of the

Act. Thus, about 50% of the total expenses debited in the profit and loss account were already disallowed by the assessee while computing total income in view of the provision of section 40a(ia) whereas the AO has made an adhoc disallowance by considering the total expenditure debited in the profit and loss account without considering fact that the assessee has already made suo-moto disallowance about 50% of the expenses u/s 40a(ia). He has relied upon the impugned order of the Ld. CIT(A).

5. We have considered the rival submissions and relevant material on record. The assessing officer has made to disallowance of 10% of the expenses under the head of operating expenses, cost of material consumed, employee benefits and other expenses etc. given in the table at page 2 of the Assessment order as under:

A.Y.	Items	Claimed amount (Rs.)	Disallowances (Rs.)
2013-14	Operating expenses	27,95,08,350/-	2,79,50,835/- (10% disallowed )
	Cost of material consumed	5,07,16,893/-	50,71,689/- (10% disallowed)
	Employee Benefit	3,04,05,401/-	30,40,540/- (10% disallowed)
	Other expenses	1,92,27,902/-	19,22,790/- (10% disallowed)
	Total disallowance		Rs.3,79,85,854/-

6. The AO has considered the total amount of Rs.3,79,85,854/- as found debited in the profit and loss account while making adhoc disallowance of 10%. The AO has completely ignored the fact that the assessee itself has

made suo-moto disallowance of Rs.18,84,65,541/- u/s 40a(ia) of the Act while computing the total income. Therefore, it is manifest from the order of the AO that the adhoc disallowance is made by the AO in a casual manner without considering any material on record and facts. The CIT(A) has considered and decided this issue in para 3.1.1 as under:

*“I have considered the facts of the case, plea raised by the appellant and findings of the AO. On perusal of the assessment order, the main plank on which the entire addition stands is the presumption of the AO that during the course of search and seizure proceedings u/s 132 of the Act on 05.05.2011 various documents were found suggesting inflation of expenses and suppressing of profit and the appellant has surrendered sum of Rs. 35 crores. Per contra, the appellant during appellate proceedings has contended that it had claimed total expenses of Rs. 37.98 crores in profit and loss account during the year under consideration and the same has been verified by the tax auditor during the audit. The appellant while computing total income has already made suo-moto disallowance of Rs. 18.84 crores on various grounds. Thus the disallowance is approx. 50%. The disallowances have been made as per law and the same has been reported in tax audit report. In support appellant has filed copy of return of income, computation of income, P&L statement and balance sheet. On perusal of computation of total income it has been observed that the appellant has already made disallowance of sum of Rs. 18,84,65,541/- on account of expenses inadmissible u/s 40a(ia) of the Act. Thus, the disallowance made by the appellant is 49.60%. It also become apt here to mention that the years involved in the search proceedings were different than the impugned assessment proceedings, during the course of search various documents were found and sized on the basis of which the appellant has surrendered additional income and also various documents were found and seized suggesting suppression of profit and inflation of expenses, however, no such cogent evidences has been brought on record by the AO in the year under consideration. Hence, the AO cannot adopt same analogy in both the proceedings. Furthermore, the AO has not pointed out any specific defect in the books of account produced during assessment or remand proceedings. Hon'ble ITAT Delhi in the case of*

*Simbholi Sugar Mills vs ACIT on the issue in hand has held that adhoc disallowance cannot be upheld when no defect has been pointed out by the AO. The operative part of the decision is as under:-*

*47. Before us, learned Counsel for the assessee submitted that the tax authorities below have disallowed the expenses on ad hoc basis merely on the assumption that these might not have been incurred wholly and exclusively for the purpose of business and further because the element of personal use cannot be ignored, however,*

*ignoring the audited schedule of manufacturing and other expenses having been filed by the assessee before the assessing officer and without pointing out any defect in the books of account and without identifying any expenses with regard to personal use and further without specifying any unverifiable expense.*

*48. On the reasoning given by us while disposing of the Ground No. 6 and Ground No. 4 of the respective appeals of the assessee the impugned ad hoc disallowances made out of the manufacturing and other expenses made/sustained by the tax authorities below cannot be upheld as the same were made arbitrarily and without any justifiable basis. Accordingly, the orders of the tax authorities below in this regard are set aside and the Ground No. 7 and Ground No. 5 of the respective appeals of the assessee are allowed.”*

7. The facts given by the Ld. CIT(A) is based on the facts on record and particularly suo-moto disallowance made by the AO u/s 40a(ia) of the Act as well as various precedence on this issue. The Assessing Officer has not brought any fact or material before us to controvert the fact recorded by the Ld. CIT(A) while deciding this issue. Accordingly in the facts and circumstances of the case, we do not find any error or illegality in the impugned order of the CIT(A) *qua* this issue same is upheld.

8. Ground No.2 is regarding addition made by the AO on account of difference in the liability as on 31.03.2012 and 31.03.2013. The Ld. DR has submitted that during the scrutiny assessment the AO noted that the assessee company has shown other Long term liabilities dues to other company, other current liabilities and statutory liabilities for which no details were furnished. The AO compared the current years liabilities with the preceding years and difference of the long term liability, current liabilities and statutory liabilities total amounting to Rs.1,68,64,954/- was added to the total income of the assessee as unexplained. The Ld. CIT(A) has deleted addition made by the AO by treating additional evidence filed by the assessee. Ld. DR has submitted that the said additional evidence was not got verification from the AO. Therefore, ld. CIT(A) is not justified in deleting the addition without getting any additional evidence verified.

9. On the other hand, Ld. DR has submitted that during the assessment proceedings. The AO did not even ask any details or question the genuineness of the liability from the assessee. The AO has made the addition without even issuing show cause notice sent on this issue before the Ld. CIT(A). The assessee produced relevant details and evidence and also filed the confirmation of the creditors and lenders. The said additional evidence was forwarded in his remand report to AO for comments and verifications. However, the AO has not conducted any proceedings and submit his remand report only to object the admission of the additional evidences and he has thus, contended that AO was given full opportunity to verification and examine the additional evidences which was not even asked by the AO during the course of assessment proceedings. He has relied upon the order of the Ld. CIT(A).

10. We have considered the rival submissions and relevant material on record. The AO has made the addition of difference of the closing balance sheet proceeding year and the year under consideration in para 5 as under:

*5. On perusal of profit & Loss Account, it is found that the assessee company has shown other Long term liabilities dues to other company, other current liabilities and statutory liabilities for which no details was furnished. Since, the assessee company has not submitted complete reply/submission during assessment proceedings; its verification is not possible. Hence, the difference of current year and previous year of these liabilities is disallowed and added to the total income of the assessee company. Details of these additions are as under:*

Particulars	Current year (in Rs.)	Previous year (in Rs.)	Difference in Rs.
Other long term liability-dues to other company	5,65,43,575/-	4,99,80,000/-	Rs.65,63,575/-
Current liabilities	19,87,40,499/-	19,71,95,499/-	Rs.15,45,000/-

Statutory liabilities	2,61,24,023/-	1,73,67,644/-	Rs.87,56,379/-
Total disallowance- Rs.1,68,64,954/-			

11. Though the AO has mentioned that the assessee has not submitted any reply or submission during the assessment proceeding for verification, however, the AO has not mentioned any notice or show cause notice where the relevant details was called from the assessee. Before the ld. CIT(A) the assessee has furnished relevant details and additional evidence for the sale of confirmation of the creditors and lenders which were forwarded to the AO for the comment and verifications. The AO in the remand report has objected to the admission of the additional evidences but did not conducted any inquiry on the additional evidence filed by the assessee. The Ld. CIT(A) after considering the remand report of the AO has decided this issue as under:

*I have considered the facts of the case, plea raised by the appellant and findings of the AO. The appellant during appellate proceedings has submitted details of outstanding liabilities. The brief details of liabilities and addition made by the AO are as under:*

**Current Liabilities**

Name	As on 31.3.2013	As on 31.3.2012	Difference (Addition made by the AO)
Gopal Krishna Jakheta	700000	400000	300000
Jyoti Jakhata	465000	-	465000
Kedarmal Jakheta	900000	350000	550000

Agroha Infrastructure Developer Pvt. Ltd.	230000	-	230000
		Total	1545000/-

Other Long Term Liabilities

Name	As on 31.3.2013	As on 31.3.2012	Difference (Addition made by the AO)
Agroha Indrastruction Developers Pvt. Ltd.	45793575	39230000	6563575
		Total	6563575/-

Statutory Liabilities

Name	As on 31.3.2013	As on 31.3.2012	Difference (Addition made by the AO)
Provision of interest of TDS(AY 2012-13)	606485	-	606485
Provision of interest of TDS(AY 2013-14)	307005	-	307005
Provision of Income Tax(AY2011-	7353319	7353319	-

12)			
Provision of interest on income tax (AY2011-12)	495059	495059	-
Provision for Income Tax (AY-2012-13)	473817	473817	-
Provision for Income Tax (AY-2013-14)	4497069	-	4497069
Provision of interest on TDS (A.Y. 2011-12)	-	609028	609028
Provision of interest on service tax (AY 2011-12)	-	138	138
Entry tax payable (F.Y.2012-13)	1640	37067	35427
VAT payable (F.Y.2012-13)	168	-	168
Interest on entry tax payable	40	743	703
Professional tax payable	7500	15000	7500
TDS payable (FY 2012-13)	4435658	-	4435658

TDS payable F.Y. 2012-13	7946599	8371076	424477
Service Tax payable	-	12397	123997
		Total	8756379/-

*The appellant during appellate proceedings by way of additional evidences has filed confirmation of the creditors and lenders. A copy of these additional evidences was also forwarded to AO for comments/verification. The AO in his remand report dated 01.02.2022 stated that more than sufficient opportunities were allowed to the appellant during assessment proceedings, therefore, the additional evidences submitted by the appellant during appellate proceedings cannot be admitted. The AO remained silent on the merits of these evidences. Since, the additional evidences furnished by the appellant goes to the roots of the addition made by the AO the same has already been admitted for the sake of natural justice. From the above it can be clearly seen that the statutory liability has arisen from provisions of TDS, Income tax, service tax, entry tax, VAT, professional tax, interest on these taxes for different assessment years. Therefore, the same cannot be treated as unexplained liability. Further, the increase in current and long term liabilities is due to amount received from directors and their relatives and concerns. In support appellant has filed copy of confirmation letter from the creditors/lenders. The confirmation letter clearly mentions name, address, PAN details of the creditor/lender and date of transaction. Further, no fresh long term borrowing has been taken by the appellant. The appellant has only paid interest of Rs. 75,48,418/- on outstanding loan of Rs. 3,90,00,000/- as on 31.03.2012 which has been held as genuine by the AO. The appellant has also deducted TDS on the interest paid amounting to Rs. 7,54,843/-. Thus, the appellant has proven reason for increase in liabilities with supportive documentary evidences. Thus, addition made by the AO amounting to Rs. 1,68,64,954/- is directed to be deleted. Therefore, appeal on this ground is allowed.*

12. The Ld. CIT(A) has specifically stated the statutory liability arisen from provisions of TDS, Income Tax, Service Tax, entry tax, professional tax, interest and interest on these taxes for the various years cannot be treated as unexplained liability. It is further recorded that the increase in current and long term liabilities is due to amount received from directors and their relatives and concerns. The assessee filed a copy of confirmation letter

from these creditors/lenders giving the details of name, Pan, Address and date of transactions. The ld. CIT(A) has also recorded the fact that no fresh long term borrowing has been taken by the assessee. Rather the assessee has paid of Rs.75,48,418/- on outstanding loan of Rs.3.90 crore as on 31.03.2012 the payment of interest was subjected to TDS. The AO has not controverted these facts records and considered by the Ld. CIT(A) while deleting addition even the AO was given an opportunity of verification and examination of additional evidence but the same was not availed by the AO. Hence in the facts and circumstances of the case, we do not find any error or illegality in the impugned order of the Ld. CIT(A) same is upheld.

13. Ground no.3 regarding the disallowance made u/s 14A r.w. Rule 8D which was deleted by the Ld. CIT(A).

14. We have heard the Ld. DR as well as ld. AR and considered the relevant material on record. At the outset, we note that there is no exempt income earned by the assessee during the year under consideration whereas the AO has made disallowance u/s 14A@ .5% of the average value of investment. Ld. CIT(A) has deleted this addition by considering the fact that there is no exempt income earned by the assessee and by following the decision of Hon'ble Delhi High Court in case of *Cheminvest Limited vs. CIT 317 ITR 86* as well as decision of this tribunal in case of *DCIT vs. Keti KJ Construction Limited* dated 31.07.2019. We further note that this tribunal in assessee's own case for A.Y. 2017-18 in ITANo.96/Ind/2022 vide order dated 30.01.2023 has considered and decided this issue as under:

*5. In view of above the controversy regarding making disallowance u/s. 14A r.w.r 8D of the Rules no disallowance can be made in the hands of the assessee when the assessee has not claimed any exempt income. Ld. CIT(A) after considering the written submissions of the assessee has granted relief to the assessee by following judgement of Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs. CIT (supra) where Their Lordship categorically held that section 14A will not apply if no exempt income is received or receivable during the relevant previous year by the assessee. In view of above we are unable to see any valid reason to interfere with the*

*findings arrived at by the Ld. CIT(A), therefore we uphold the same. The sole contention of the revenue is that the Hon'ble Supreme Court has issued notices in the cases of PCIT vs. Adani Wilmar Ltd(2021) 133 taxmann.com 444 Ltd against the order of Hon'ble High Court of Gujarat reported as (2021) 133 taxmann.com 443 (Guj) and in the PCIT vs. Karnataka State Financial Corporation against judgement of Hon'ble Karnataka High Court reported as (2021) 127 taxmann.com 115 (Kar.) wherein Hon'ble respective High Courts granted relief to the assessee by holding that no disallowance of expenditure of expenditure u/s. 14A of the Act can be made more than actual exempt income earned by the assessee. Similar proposition has been rendered by Hon'ble High Court of Delhi in the case of Cheminvest Ltd. vs Commissioner of Income Tax (supra). In our humble view until unless the issue is adjudicated at the level of Hon'ble Supreme Court modifying of setting aside the orders of judgments of Hon'ble High Court all authorities below to the High Court's including this Tribunal is duty bound to follow the propositions rendered by Hon'ble High Court therefore we are inclined to hold that the Ld. CIT(A) was right in granting relief to the assessee by following the proposition rendered by various High Court's including judgment of Hon'ble Delhi High Court in the case of Cheminvest vs. CIT (supra). Consequently ground of revenue being devoid of merit is dismissed.*

15. Accordingly having considered the facts that there is no exempt income in the year under consideration and following the order of this tribunal in assessee's own case for A.Y.2017-18(supra). We do not find any error or illegality in the impugned order of the Ld. CIT(A) for this issue.

16. In the result, appeal of revenue is dismissed.

Order pronounced in the open court on 30.05.2023.

**Sd/-**

**(B.M. BIYANI)**  
Accountant Member

**Indore, 30.05.2023**

**Patel/Sr. PS**

**Sd/-**

**(VIJAY PAL RAO)**  
Judicial Member

Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Sr. Private Secretary*  
*Income Tax Appellate Tribunal*  
*Indore Bench, Indore*