

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH :: RAIPUR

VIRTUAL HEARING

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.96/RPR/2020
निर्धारण वर्ष / Assessment Year :2012-13

Vaswani Industries Limited, Bahesar Road, Near Cycle Park, Vill-Sondra Phase-II, Industrial Area, Siltara, Raipur – 493221. PAN: AABCV 9564 E	Vs	The Asst. Commissioner of Income Tax-4(1), Raipur,(C.G.).
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri R.B.Doshi – CA
Revenue by	Shri Piyush Tripathi – DR
Date of hearing	27/03/2023
Date of pronouncement	05/06/2023

आदेश / ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income Tax(Appeals), Raipur-2, dated 28.08.2020 emanating from assessment order dated 17.03.2015 under section 143(3) of the I.T.Act, 1961 for the A.Y.2012-13. The Assessee has raised the following grounds of appeal:

“1. Ld. CIT (Appeals) has erred in sustaining addition of Rs 6208966/- under section 14A of the Act without considering our submission made before A.O. and CIT appeals proceeding.

1862689/-

2. Ld. CIT (Appeals) has erred is sustain the addition made on account of CSr Social development, Maintenance and street light charges s of Rs. 875000 without considering our submission made before A.O. and CIT appeal proceeding.

262500/-

3. Ld.CIT (Appeals) has erred is sustain the addition made on account of general disallowance of Rs. 377555 without considering our submission made before A.O. and CIT appeal proceeding.

113267

4. The impugned addition made by the Ld. AO.is bad I law, illegal, unjustified, contrary to facts & law and based upon recording of incorrect facts and finding, in violation of principles of natural justice and the same should have been quashed by the Ld. CIT (Appeals).

NIL

Brief facts of the case :

2. The assessee filed return of income electronically on 07.03.2013 declaring total income at Rs.Nil. Assessee's case was selected for scrutiny. The Assessing Officer(AO) made disallowance

under section 14A r.w.rule 8D of Rs.62,08,966/-. The AO also made disallowance of Rs.8,75,000/-, Rs.3,77,555/- out of certain expenses as assessee had not filed necessary evidences before the AO. Aggrieved by the same, assessee filed appeal before the Id.CIT(A). The Id.CIT(A) confirmed the same.

3. Aggrieved by the order of the Id.CIT(A), the assessee filed appeal before this Tribunal.

Submission of Id.AR :

4. The Id.AR filed a paper book containing written submission, computation of income, ledger accounts of maintenance charges, CSR Social Development Expenses, Audit Report. The Id.AR pleaded that there was no exempt income, therefore, there cannot be any disallowance under section 14A. The Id.AR relied on various decisions. The Id.AR also submitted that no expenses have been claimed during the year for investments.

Submission of Id.DR :

5. The Id.DR relied on the order of the Lower Authorities.

Findings & Analysis :

6. We have heard both the parties and perused the records. Our decision is ground wise.

Ground No.1 - 14A :

7. The Id.AR has submitted that there was no exempt income during the year. We have perused the computation of income filed by Id.AR which is at Page No.15 of the paper book. The same is reproduced here as under :

<u>Computation of Total Income</u>		0
Income from Business or Profession (Chapter IV D)		0
Profit as per Profit and Loss a/c	18850254	
<u>Add:</u>		
Donation	257501	
Depreciation Debited in P&L A/c	51805645	
Income tax	539703	
PRIOR PERIDO EXPENSES	900000	
Provision of gratuity	109467	
Interest on late payment of tds and income tax	884375	
Wealth tax	20253	
loss on sale of fixed assets	4893	
Disallowance u/s 43B	<u>1929244</u>	
Total	75301335	
<u>Less:</u>		
Depreciation as per Chart u/s 32	73516743	
Allowable depreciation is Rs. 82769817/- but restricted to Rs. 73516743/- available profits.		
Disallowance u/s 43B Last Year, Allowed This Year	<u>1784592</u>	
	<u>75301335</u>	
	<u>0</u>	
Gross Total Income		<u>0</u>
Total Income		<u>0</u>
Round off u/s 288 A		<u>0</u>

7.1 Thus, it is observed that there was no exempt income for the year. The Hon'ble Bombay High Court in the case of Pr.CIT Vs **Kohinoor Project (P.) Ltd [2020] 121 taxmann.com 177 (Bombay)** has held as under :

Quote, “ Section 14A of the Act deals with expenditure incurred in relation to income not includible in total income. As per sub-section (1) of section 14A, for the purpose of computing the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income. In *Cheminvest Ltd. (supra)* Delhi High Court examined the expression "does not form part of the total income" as appearing in sub-section (1) of section 14A of the Act. Delhi High Court held that the said expression envisages that there should be an actual receipt of income which is not includible in the total income during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. It was clarified that section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

9. This view has been followed in several decisions by this Court. In fact in *Pr. CIT v. Man Infraprojects Ltd. [IT Appeal No. 259 of 2017, dated 9-4-2019]*, this Court followed the decision of the Delhi High Court in *Cheminvest Ltd. (supra)*. It was further noted in *MAN Infraprojects Ltd.* that the decision of the Delhi High Court was challenged by the revenue before the Supreme Court by filing SLP but the SLP was dismissed.

10. In the light of the above, we hold that no substantial question of law arises from the order of the Tribunal. The appeal is devoid of merit and is accordingly, dismissed.” Unquote.

8. Respectfully following the above decision of the Hon’ble Bombay High Court, the Assessing Officer is directed to delete the

additions made under section 14A. Accordingly, ground no.1 of the assessee is allowed.

Ground No.2 – CSR, Maintenance Expenditure of Rs.8,75,000/- :

9. The AO has disallowed Rs.8,75,000/- expenditure, which was claimed by the assessee under the head “CSR Social Development Expenditure” of Rs.5,12,000/- and Maintenance Charges Rs.3,63,000/-. It has been mentioned in the assessment order that assessee has failed to establish any direct nexus of the impugned expenditure with the business of the assessee. It has been claimed by the assessee that Maintenance Charges were paid to Chattisgarh Ispat Bhoomi Limited as Maintenance of Street Light Charges. However, it is not clear, why the said street light charges were paid by assessee!. No submission has been made on this account by the assessee. Therefore, we agree with the AO that assessee has failed to establish that Rs.3,63,000/- claimed to have been paid for street light charges were incurred wholly and exclusively for the purpose of the business of the assessee. The onus was on the assessee to prove the same. The assessee failed to prove by documentary evidence. Therefore, we upheld the disallowance of Rs.3,63,000/-.

10. Assessee has paid Rs.3,25,000/- to Sponge Iron Manufacturing Association. It is mentioned in the assessment order that assessee is in the business of metal manufacturing. Thus, the amount of Rs.3,25,000/- was paid to Sponge Iron Manufacturing Association is business expenditure as the amount is paid to business association. Accordingly, the AO is directed to delete the addition of Rs.3,25,000/-. Thus, ground no.2 of the assessee is partly allowed.

Ground No.3 – disallowance of Rs.3,77,555/- :

11. The relevant part of the assessment order is reproduced here as under :

“General Disallowance:

On verification of the ITR, it has been noted that various expenses has been claimed under the following heads:

<i>Head</i>	<i>Amount (Rs.)</i>
<i>Travelling Expenses{Foreign</i>	<i>25,37,000.00</i>
<i>Telephone Expenses</i>	<i>6,25,000.00</i>
<i>Depreciation on Audi</i>	<i>4,73,429.00</i>
<i>Depreciation on Pajero</i>	<i>1,40,125.00</i>
<i>Total</i>	<i>37.75.554.00</i>

Permissibility of these expenses as business expenses is subjected to the submission of proper vouchers against these expenses vouching the fact that these expenses are directly contributing to the business operations. As the Assessee has failed to provide any documents even after repeated' reminders these expenses stand unverifiable and their business utility is unexplained. Assessee has failed to comply and has not yet submitted any documents vouching these claims. Keeping in mind that these kind of expenses are an integral

part of the business under consideration, a sum of Rs. 3,77,555.00/- is being added back to the income as to avoid any leakage of revenue as these expenses stands unverifiable.”

12. The said disallowance is ad-hoc disallowance without any specific allegation. The AO has not pointed out in the assessment order, any specific defect in the documents filed by the assessee. Therefore, the AO is directed to delete the addition of Rs.3,77,555/-. Accordingly, ground no.3 of the assessee is allowed.

13. Ground No.4 is general in nature and does not need any adjudication, hence dismissed.

14. In the result, appeal of the assessee is Partly Allowed.

Order pronounced under Rule 34(4) of Appellate Tribunal Rules, 1963.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 5th June, 2023 / SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Applicant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-I, Raipur.
4. The Pr. CIT-I, Raipur.
5. DR, ITAT, “Raipur” Bench.
6. गार्डफ़ाइल / Guard File.

ITA No.96/RPR/2020
Vaswani Industries Limited [A]

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.