

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 35/Jodh/2022
(ASSESSMENT YEAR- 2014-15)**

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| Sunil and Company 26/28 2 nd Floor, Mohan Niwas, Industrial Area, Jodhpur. | Vs | Deputy Commissioner of Income Tax, Circle-1, Jodhpur. |
| (Appellant) | | (Respondent) |
| PAN NO. AAASF 4938 B | | |

(Virtual Hearing)

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|------------------------------|--------------------------|
| Assessee By | Shri Amit Kothari-C.A. |
| Revenue By | Shri S.M. Joshi, JCIT-DR |
| Date of hearing | 03/07/2023 |
| Date of Pronouncement | 14/07/2023 |

ORDER

PER: Dr. S. Seethalakshmi, JM

The assessee has filed an appeal against the order of the Learned Commissioner of Income Tax, Deldhi-44 [herein after “Ld.CIT(A)”] dated 04.03.2022 for the assessment year 2014-15.

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

“1.a. The order passed by the Id. CIT(A), New Delhi is bad in law and bad on facts, and without proper jurisdiction.

b. The Id. CIT(A) has erred in not granting proper opportunity of hearing to the appellant.

c. The order passed is contrary to the principles of natural justice.

d. The Id. CIT(A) has erred in confirming the finding of the Id. AO. in making the additions which were bad in law and bad on facts. 2.

The Id. CIT(A) has erred in confirming the addition of Rs. 2,36,58,021/- made by the Id. AO in relation to specified domestic transactions. The addition so sustained is bad in law and bad on facts, and contrary to the principles of natural justice.

3. The Id. CIT(A) has erred in confirming the addition for notional interest of Rs. 9,36,505/- on advances given on which interest was already charged. The Id. CIT(A) has erred in estimating notional interest @12% on such advances while the actual interest was at 10% and 9%.

4. The Id. CIT(A) has erred in sustaining adhoc disallowance of Rs. 5,00,000/- made by the Id. AO out of business expenses on presumption that personal element cannot be ruled out. The disallowance so made is bad in law and bad on facts.

5. The appellant pray for suitable costs.

6. The appellant pray for stay of impugned order

7. The appellant crave liberty to add, amend, alter, and modify any of the ground of appeal on or before its hearing before your honour.”

3. Brief facts of the case are that the return of income was filed on 22.11.2014 declaring nil income. In view of specified domestic transactions, a reference was made to the Transfer Pricing Officer. In his order u/s 92CA(3) of the Act dated 23.10.2017, the TPO made

adjustment of Rs. 2,36,58,021/- in respect of transactions with AE on account of purchase of goods, job work charges paid and freight paid. The adjustment was added to the total income. The TPO also disallowed Rs. 9,36,505/- being interest pertaining to the borrowed funds diverted to the family members of the partners at lower rate. Further disallowance of Rs. 5,00,000/- was made out of various expenses for want of complete verifiability the assessment was finalized at Rs. 2,96,35,828/-. Aggrieved with the assessment, the assessee has filed an appeal before us.

4. Being aggrieved the order of the AO, the assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) observed that notices were issued on 21.01.2021 and 08.11.2021 requiring the assessee to file the details in support of grounds taken by the assessee. Since the assessee has not complied with the notices issued by the Id. CIT(A) but he has dismissed the appeal of the assessee ex-parte order. The extract of the order of the Id. CIT(A) is reproduced as under:-

“Ground no 4 to 22 are against transfer pricing adjustment.

6.1 The appellant was an authorized dealer of Tata Motors vehicles and also purchases oil cake from the All and the same is transferred to it for de-oiling on job work bass. The major specified domestic transaction was that of purchase of goods. The appellant had used profit split method for benchmarking of the transaction. However, despite having repeated opportunities, detailed information

in this regard was not submitted. The appellant does not have any plant and machinery or infrastructure to de-oil the functions, assets and risk of the appellant and its AE are totally different. The TPO therefore asked the appellant to justify use of PSM method. As the appellant did not submit any justification, the PSM was rejected and TNMM was applied. After applying appropriate methods, the AO arrived at a set of four comparables. OP/Sales was chosen as the PLL. The average OP/Sales of comparables was 4.85 percent which showed arm's length cost to be Rs. 51,89,29,044/-. The appellant had shown cost of Rs. 53,62,31,335/-. The related party transaction was 96.95% which led to an adjustment of Rs. 2,36,58,031/-. The TPO's order was sent to the appellant. The appellant submitted similar contentions before the AD which were submitted before the TPO. The AO considered the same and made addition of Rs. 2,38,58,031/-.

6.2 The appellant has not filed any submission in support of the grounds of appeal despite having repeated opportunities. The TPO has given cogent reasons for rejecting the PSM used by the appellant. The TPO has applied appropriate filters and chosen the correct comparables. The methodology used by the TPO is found to be justified in the facts of the case. In absence of any submissions controverting the findings of TPO, the adjustment made by the TPO is found to be correct and reasonable. Find no reason to interfere with the conclusions drawn by the TPO. The TPO adjustment is upheld. The grounds of appeal are dismissed.

7. Ground numbers 23 to 25 are against disallowance of interest.

7.1 The AO observed that the appellant has given advances to various relatives of the partners and charged interest at the rate 9-10%. The appellant was paying interest in banks at the rate 12%. The AO disallowed the proportionate interest as it was not paid wholly and exclusively for the purpose of business.

7.2 The appellant has not filed any submission in support of the grounds of appeal despite having repeated opportunities. The AD has disallowed the interest on the ground that extending loans to related persons at lower rate than the cost of borrowing was not proper and the same warranted proportionate disallowance of interest as it was not paid wholly and exclusively for the purpose of business. On facts, the disallowance is found to be justified. The disallowance is confirmed and the grounds of appeal are rejected.

8. Ground number 26 & 27 are against disallowance of Rs. 5,00,000/-.

8.1 The AO observed that complete vouchers were not available in respect of various expenses and complete details were not filed in respect of telephone expenses, travelling general expenses, hospitality expenses and conveyance etc. Further, in absence of complete details, personal use could not be ruled out. It could not be established that the expenses were incurred wholly and exclusively for the purpose of business. The AD therefore disallowed Rs 5,00,000/- out of these expenses.

8.2 The appellant has not filed any submission in support of the grounds of appeal despite having repeated opportunities. As complete vouchers were not available in respect of various expenses and complete details were not filed in respect of telephone expenses, travelling general expenses, hospitality expenses and conveyance etc. In absence of complete details and considering the nature of expenses, personal use is not ruled out. The conclusion of the AO that it could not be established that the expenses were incurred wholly and exclusively for the purpose of business is found to be justified. The disallowance of Rs. 5,00,000/- is found to be reasonable and correct. The same is confirmed. These grounds are dismissed.

9. In the result, the appeal is dismissed.”

5. Per contra, the ld. DR relied upon the orders of the ld. CIT(A).

6. We have heard the both sides and perused the materials available on record. The ld. AR for the assessee submitted that before the ld. CIT(A) it was an ex-parte order and no opportunity of being to the assessee was granted and the ld. CIT(A) as erred in confirming the finding of the AO in making addition which is bad in law. Before us, we observed that the ld. AR for the assessee has filed paper book containing at 1 to 221. In view of the above facts and circumstances, The Ld. AR prays that the matter may be remanded to the file of Ld. AO for a proper adjudication on merit after giving due opportunity of hearing to the assessee. The Ld. DR does not have any objection but prays to direct the assessee to represent his case before Ld. AO and do not seek unnecessary adjournments. In view of such pleadings by parties and also having regard to the principle of natural justice and fair play,

we deem it fit and appropriate to remand this matter back to the file of Ld. AO for a proper adjudication after giving opportunity of hearing to the assessee, uninfluenced by his earlier decision. We order accordingly, the assessee is also directed to ensure participation in the hearing fixed by the ld. AO and do not seek unnecessary adjournment.

In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 14/07/2023.

Sd/-

(RATHOD KAMLESH JAYANTBHAI)
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 14/07/2023

**Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench