

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 380/Hyd/2022
(निर्धारण वर्ष / Assessment Year: 2019-20)

M/s. Avexa Corporation Private Limited, Hyderabad [PAN No. AAICS9943F]	Vs.	Assistant Commissioner of Income Tax, Central Circle-2(4), Hyderabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri A.V. Raghuram, AR
राजस्व द्वारा/Revenue by: Shri K.E. Sunil Babu, CIT-DR

सुनवाई की तारीख/Date of hearing: 11/07/2023
घोषणा की तारीख/Pronouncement on: 28/07/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 23/06/2022 passed by the learned Commissioner of Income Tax (Appeals)-12, Hyderabad ("Ld. CIT(A)"), in the case of M/s. Avexa Corporation Private Limited ("the assessee") for the assessment year 2019-20, assessee preferred this appeal.

2. Brief facts of the case are that assessee is engaged in execution of infrastructure projects like irrigation canals, dams, roads, buildings and civil erection works in power and industrial segments. For the assessment

year 2019-20, assessee filed its return of income on 31/10/2019, declaring total income at Rs. 15,72,31,620/-. A search and seizure operation under section 132 of the Income Tax Act, 1961 (for short "the Act") was conducted in the case of M/s. Prathima Infrastructure Pvt. Ltd., and its associated entities on 06/02/2020, and the assessee was also covered in the search and seizure operation. In response to the notice under section 153C of the Act, the assessee filed the return of income on 02/11/2021, admitting total income at Rs. 15,72,31,620/-.

3. In back-up of mobile data of the Director of assessee company, impounded during the search proceedings, certain images or sheets were found. The sheet contains details of loan transactions having heading "Sri V. Radhakrishna – Loan". As per the sheet, total principal amount of this loan was Rs. 5,00,00,000/- and interest @24% p.a. was being charged. The said loan was started on 27/02/2017 and last transaction was on 06/03/2019. As per this sheet, total interest was Rs. 2,62,85,178/-, out of which Rs. 1,00,00,000/- had already been paid.

4. Assessee submitted ledger account of Shri V. Radha Krishna in the books on M/s. Avexa Corporation Pvt. Ltd. On perusal of the ledger account, learned Assessing Officer opined that the transaction of principal amount if reflected in the ledger, however, there is no entry about the interest component. Thus, learned Assessing Officer concluded that the assessee has paid interest amount of Rs. 2,62,85,178/- and added the same to the income returned by the assessee, invoking section 69A of the Act and taxed under section 115BBE of the Act.

5. Aggrieved by such an action of the learned Assessing Officer, assessee filed appeal and contended before the learned CIT(A) that the addition is illegal, because the learned Assessing Officer did not substantiate that the assessee is the owner of any money, bullion, jewellery or other available valuable article and, therefore, provisions of section 69A of the Act has not application to the facts of the case. It was

further contended that addition is purely based on presumptions and conjectures, without having any corroborative evidence and provisions of law. According to the assessee, these loose sheets are not to be considered since the books maintained in the regular course of business and, therefore, in view of the decision of the Hon'ble Supreme Court in the case of CBI vs. V.C. Shukla [1998] AIR Vol.3 SC 410, relying upon the loose sheets to make the addition, cannot be sustained.

6. Learned CIT(A) perused the paper book filed by the learned AR and from the ledger account of Shri V. Radhakrishna, which shows that the assessee borrowed Rs. 5 crores from Shri V. Radhakrishna and other entities are tallying with the entries to be found in the WhatsApp document is not a dumb document and it establishes that the assessee was charged interest @24% on such borrowings. Since the assessee did not give any accounting treatment to the interest in the books, learned CIT(A) believed that such an interest expense was met by the assessee in cash and out of books. On this premises, learned CIT(A) held that such an un-explained expenditure has to be brought to tax under section 69C of the Act, but not under section 69A of the Act. Learned CIT(A) justified such an action based on the decision of Chandigarh Tribunal in the case of Anup Sharma in ITA No. 161/Chd/2012, dated 10/09/2014 and Kantilal Chandulal & Co., vs. CIT (Hon'ble Calcutta High Court).

7. Assessee is, therefore, before us in this appeal, basically challenging the findings of the learned CIT(A), sustaining addition to the tune of Rs. 2,62,85,178/- stating that the provisions under section 69A or 69C of the Act have no application to the facts of the case. In the alternative, it is pleaded that under the provisions of section 292C of the Act, the contents of the documents are to be taken as correct and the authorities are not permitted to go beyond the contents of the documents and to make any addition on the basis of presumption.

8. Learned AR contended that the WhatsApp documents shows that out of total amount of Rs. 2,62,85,178/-, only Rs. 1 crore was paid back, leaving a balance of Rs. 1,62,85,178/- and this document does not speak of any cessation of such liability. He, accordingly, contends that when the document speaks that a sum of Rs. 1 crore was paid towards part payment of the interest, there is no presumption under law that the entire interest was paid.

9. Per contra, learned DR contends that when the contents of WhatsApp documents are compared with the books of the assessee, the date of borrowings are tallied and as rightly found out by the learned CIT(A), the data found on the interest computation sheet directly matches with the ledger accounts in the books of the assessee and, therefore, the interest computation did not found in WhatsApp chat is not a dumb document and got an evidentiary value. When such a document recovered from the possession of the assessee speaks that the rate of interest was 24% and the assessee did not make any entry about the interest component in its books, the authorities have rightly held that the interest component must have been paid by the assessee out of books and, therefore, such an un-explained expenditure is rightly brought to tax under section 69C of the Act.

10. We have gone through the record in the light of the submissions made on either side. The entire edifice of Revenue's case rests on the WhatsApp document, and it is printed in the assessment order. It shows that the interest expense was to the tune of Rs. 2,62,85,178/-. This document further shows that there was payment of Rs. 1 crores and the balance was Rs. 1,62,85,178/-.

11. There is no rebuttal of the finding of the learned Assessing Officer that there is no entry about the interest component in the books of assessee. When this document was sent by one K.V. Rao with mobile No. 9866352050, the Director of assessee acknowledged the same. Further,

as rightly pointed out by the learned CIT(A), the details to be found in this WhatsApp document tallies with the dates of borrowings as admitted by the assessee in its books of accounts. We, therefore, are of the considered opinion that undoubtedly, this is an incriminatory material, and it is not open for the assessee to challenge the reliance of Revenue on this document, without explaining the existence of contents of the document.

12. Now coming to quantum of addition, when the document itself reads that the payment of interest was only Rs. 1 crore and the balance of Rs. 1,62,85,178/- was clearly shown therein, Revenue may accept or reject the document as a whole. They cannot say that this document proves the charging of interest and its rate, but ignore the payment of Rs. 1 crore alone. Revenue is accepting the rate of interest and charging thereof, but they are not accepting the quantum of payment. It is impermissible. Revenue has to accept or reject the documents as a whole. Since we are of the considered opinion that this document cannot be thrown away without consideration, we accept the same as a whole and reach a conclusion that the assessee paid interest only in part to the tune of Rs. 1 crore and the balance of liability is Rs. 1,62,85,178/-. With that view of the matter, we sustain the addition only to the tune of Rs. 1 crore, which is an interest expense, not to be found in the books and direct the learned Assessing Officer to delete the balance.

13. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on this the 28th day of July, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 28/07/2023

TNMM

Copy forwarded to:

1. M/s. Avexa Corporation Private Limited, 3rd Floor, Plot No. 17,
Road No. 3, Aurora Colony, Banjara Hills, Hyderabad.
2. Asst. Commissioner of Income Tax, Central Circle-2(4), Hyderabad.
3. Pr.CIT(Central)-Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

TRUE COPY

ASSISTANT REGISTRAR
ITAT, HYDERABAD