

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.186/PUN/2018
निर्धारण वर्ष / Assessment Year : 2013-14

M/s. SRK Shelters Pvt. Ltd., Hinjewadi IT Phase-2, Opp. Bharat Petrol Pump, Behind ICICI Bank, Hinjewadi, Pune- 411057. PAN : AANCS8018A	Vs.	DCIT, Circle-6, Pune.
Appellant		Respondent

आयकर अपील सं. / ITA No.255/PUN/2018
निर्धारण वर्ष / Assessment Year : 2013-14

ACIT, Circle-6, Pune.	Vs.	M/s. SRK Shelters Pvt. Ltd., Hinjewadi IT Phase-2, Opp. Bharat Petrol Pump, Behind ICICI Bank, Hinjewadi, Pune- 411057. PAN : AANCS8018A
Appellant		Respondent

Assessee by : None
Revenue by : Shri M. G. Jasnani

Date of hearing : 08.08.2023
Date of pronouncement : 09.08.2023

आदेश / ORDER**PER INTURI RAMA RAO, AM:**

These are the cross appeals filed by the assessee as well as by the Revenue directed against the order of Id. Commissioner of Income Tax (Appeals)-4, Pune [‘the CIT(A)’] dated 13.11.2017 for the assessment year 2013-14.

2. Briefly, the facts of the case are that the appellant is a Private Limited Company engaged in the business of real estate. The Return of Income for the assessment year 2013-14 was filed on 13.05.2014 declaring a loss of Rs.23,55,300/-. Against the said return of income, the assessment was completed by the Dy. Commissioner of Income Tax, Circle-6, Pune (‘the Assessing Officer’) vide order dated 28.03.2016 passed u/s 143(3) of the Income Tax Act, 1961 (‘the Act’) at a total income of Rs.5,60,24,230/-. While doing so, the Assessing Officer made addition of Rs.27,00,000/- on account of on-money consideration received from one Mr. Ajaychandran Nair. The Assessing Officer also made disallowance of interest of Rs.1,96,84,069/- by holding that the interest cannot be allowed as revenue expenditure. The Assessing Officer also made addition on account of unsecured loans of Rs.2,72,14,448/- received from

Sairung Developers & Realtors and SRK Gold Earth Constructions Pvt. Ltd. equal consideration, as the assessee had failed to prove the identity, creditworthiness and genuineness of the above loan amount. The Assessing Officer also made protective addition of Rs.84,85,010/- being the 1/6th of the amount of Rs.5,09,10,063/-, which was added on substantive basis in the assessment year 2014-15.

3. Being aggrieved by the above additions, an appeal was filed before the Id. CIT(A), who vide impugned order deleted the protective addition of Rs.84,85,010/- as the addition of entire amount of Rs.5,09,10,063/- was confirmed on substantive basis for the assessment year 2014-15.

As regards, the addition on account of on-money consideration of Rs.27,00,000/-, the Id. CIT(A) considering the impounded material/documents/diaries containing entries of on-money receipt by the appellant had confirmed the addition of Rs.27,00,000/-.

As regards, the addition u/s 36(1)(iii), the Id. CIT(A) allowed the ground of appeal on the ground that the interest expenditure of Rs.1,96,84,069/- was incurred on the loans borrowed from Kerala Financial Corporation, therefore, should be allowed as deduction.

As regards, the addition of Rs.2,72,14,448/-, the ld. CIT(A) granted relief to the assessee considering the financial statements of the lenders.

4. Being aggrieved by the decision of the ld. CIT(A) confirming the addition on account of on-money consideration of Rs.27,00,000/-, the assessee is in appeal in ITA No.186/PUN/2018. Being aggrieved by that part of the order of the ld. CIT(A), wherein, the ld. CIT(A) had granted relief on account of on-money consideration of Rs.84,85,010/- and relief on account of unsecured loans of Rs.2,72,14,448/- and relief in respect of addition of Rs.1,96,84,069/- u/s 36(1)(iii), the Revenue is in appeal in ITA No.255/PUN/2018.

5. Now, we shall take up the assessee's appeal in ITA No.186/PUN/2018.

ITA No.186/PUN/2018 – By Assessee :

6. When the matter was called on, none appeared on behalf of the assessee despite due service of notice of hearing, therefore, we proceed to dispose of the matter after hearing the ld. Sr. DR.

7. The addition of Rs.27,00,000/- was made by the Assessing Officer based on the material impounded during the course of

survey proceedings in the case of Sairung Developer & Realators. When this material was confronted to the assessee, the assessee contended that the said amount was received from one Mr. Ajaychandran Nair, was in the nature of advance and cannot be brought to tax in the hands of the assessee company. Without prejudice to the above, it is submitted that since the assessee was following percentage completion method, no amount was offered to tax and this amount cannot be brought to tax.

8. On appeal before the ld. CIT(A), the same was confirmed by the ld. CIT(A) considering the material impounded during the course of survey operations.

9. Being aggrieved, the appellant is in appeal before us in the present appeal.

10. We had carefully gone through the impounded material which clearly indicates a sum of Rs.27,00,000/- was received from one Mr. Ajaychandran Nair. It is not even the case of the assessee that the said amount was not received by the assessee company. This amount was not shown in the books of accounts. Therefore, the Assessing Officer had rightly brought to tax on-money

consideration. Thus, we do not find any reason to interfere with the orders of the lower authorities.

11. In the result, the appeal filed by the assessee in ITA No.186/PUN/2018 stands dismissed.

12. Now, we shall take up the appeal of the Revenue in ITA No.255/PUN/2018

ITA No.255/PUN/2018 – By Revenue :

13. Ground of appeal no.1 challenges the deletion of addition of Rs.1,96,84,069/- u/s 36(1)(iii) of the Act. The ld. Sr. DR contends that the same should not be deleted by the ld. CIT(A) without meeting the case of the Assessing Officer. On mere perusal of the assessment order, the Assessing Officer disallowed the interest debited to Profit & Loss Account of Rs.1,96,84,069/- on the ground that the same cannot be allowed as revenue expenditure and the interest needs to be capitalized to the work-in-progress, as the assessee following the percentage completion method. The interest was not disallowed doubting the genuineness of the expenditure. However, the ld. CIT(A) deleted the addition by holding that the assessee had incurred expenditure of Rs.1,96,84,069/- on the loans

borrowed from Kerala Financial Corporation without meeting the reasoning of the Assessing Officer. Therefore, we are of the considered opinion that interest of justice would be met if this ground of appeal no.1 remitted to the file of the ld. CIT(A) to decide the issue in appeal *de novo* considering the reasoning of the Assessing Officer.

14. Ground of appeal no.2 challenges the deletion of protective basis addition of Rs.84,85,010/- on account of on-money consideration received in cash. In the appeal filed by the assessee for the assessment year 2014-15, we had confirmed the addition of Rs.5,09,10,063/- on substantive basis, therefore, the question of pro-rata addition of Rs.84,85,010/- on protective basis does not arise. Thus, the ld. CIT(A) had rightly deleted the addition. Hence, this ground of appeal no.2 stands dismissed.

15. Ground of appeal nos.3 and 4 challenges the deletion of addition on account of unsecured loans of Rs.2,72,14,448/-. The ld. Sr. DR submits that the ld. CIT(A) considering the additional evidence filed before him granted relief without giving an opportunity to the Assessing Officer as provided under Rule 46A of the Income Tax Rules, 1962 ('the Rules').

16. We had carefully perused the assessment order and find that the Assessing Officer had made addition of unsecured loans of Rs.2,72,14,448/-, as the assessee company had failed to discharge the onus of proving the identity, creditworthiness and genuineness of unsecured loans as well as no details of the lenders were filed before the Assessing Officer. It is only during the course of proceedings before the ld. CIT(A), the assessee company had provided the details of lenders. Based on which, the ld. CIT(A) granted relief. Thus, it is clear that the order of the ld. CIT(A) is based on the additional evidence filed before him for the first time. It is requirement of law as provided under Rule 46A of the Rules, if the additional evidence is produced for the first time before the ld. CIT(A), the ld. CIT(A) should give an opportunity of examining this additional evidence to the Assessing Officer, which the ld. CIT(A) had failed to do so. Accordingly, this ground of appeal nos.3 and 4 is remitted to the file of the ld. CIT(A) for *de novo* consideration in accordance with law.

17. In the result, the appeal filed by the Revenue in ITA No.255/PUN/2018 stands partly allowed for statistical purposes.

18. Resultantly, the appeal filed by the assessee stands dismissed and the cross appeal filed by the Revenue stands partly allowed for statistical purposes.

Order pronounced on this 09th day of August, 2023.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 09th August, 2023.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-4, Pune.
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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