

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)

ITA No. 1924/MUM/2023
Assessment Year: 2015-16

Dy. CIT-6(1)(1),
Room No. 504, 5th floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

PAN No. AAACJ 2883 P

Appellant

M/s Essar House Pvt. Ltd.,
11, Essar House, K.K.
Marg, Mahalaxmi,
Mumbai-400034.

Vs.

Respondent

Assessee by : None
Revenue by : Mr. Biswanath Das, CIT-DR

Date of Hearing : 28/08/2023
Date of pronouncement : 28/08/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the Revenue against the order dated 25.03.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2015-16, raising following grounds:

1. "Whether on the facts and circumstances of the case in law, the Ld. CIT(A) has erred in deleting the disallowance made u/s 14A r.w.r. 8D of the I.T. Act amounting to Rs.2,59,66, 127/- despite the clarification issued vide CBDT Circular No. 5/2014 dt. 11.02.2014 that disallowance u/s 14 has to be made irrespective of the fact whether any exempt income has been earned during the year by the assessee or not?"

2. "Whether on the facts and circumstances of the case in law, the Ld. CIT(A) has erred in deleting the disallowance made u/s 14A r.w.r. 8D



of Rs. 2,59,66,127/- despite the amendment issued vide Circular No. 23/2022 (Explanatory notes to the provisions of the Finance Act, 2022) dt. 03.11.2022 that disallowance u/s 14A has to be made irrespective of the fact whether any exempt income has been earned during the year by the assessee or not?"

3. "Whether on the facts and circumstances of the case in law, the Ld. CIT(A) has erred in deleting the disallowance in respect of interest on sales tax liability of Rs. 1,76,26,00,000/-without giving any working / findings as to how the assessee has incurred the said expenses."

4. "Whether on the facts and circumstances of the case in law, the Ld. CIT(A) has erred in allowing the expense claimed as interest on sales tax liability when the AO has accepted that the transaction is colorable transaction."

5. "Whether on the facts and circumstances of the case in law, the Ld. CIT(A) has erred in allowing the interest expenses, without appreciating the fact that the interest on sales tax liability has been paid to Essar Oil Ltd. as per the agreement with M/s. Essar Oil Ltd. and the assessee has no connection to the income earned by Ms. Essar Oil Ltd."

6. "Whether on the facts and circumstances of the case in law, the Ld. CIT(A) has erred in allowing the expenses of the nature of interest on sales tax liability without appreciating the fact that the assessee entered in to agreement dated March, 2009 with M/s. Essar Oil Ltd. by way of misrepresentation of facts as Ms. Essar Oil Ltd. was not eligible for the benefit and hence, the agreement itself was void."

2. Briefly stated, facts of the case are that the assessee filed return of income electronically on 29.09.2015 declaring total income at Rs. Nil. The return of income filed by the assessee was selected for scrutiny and statutory notices were issued and complied with. In the assessment completed u/s 143(3) of the Act on 23.11.2017, the Assessing Officer made disallowance u/s 14A of the Act amounting to Rs.225,66,127/- and disallowance of interest paid on sales tax liabilities amounting to Rs.1,76,26,00,000/-. On further appeal, the Ld. CIT(A) deleted both the additions. Aggrieved,



the Revenue is in appeal before the Tribunal by way of raising grounds as reproduced as above.

3. At the outset, we may like to mention that none appeared on behalf of the assessee and a written application was filed for adjournment. Before us, the Ld. Departmental Representative (DR) submitted that issue in dispute involved in both the grounds is covered in favour of the assessee and therefore, the appeal was heard ex-parte qua the assessee after hearing arguments of the Ld. DR.

4. The ground Nos. 1 and 2 of the appeal relate to disallowance made u/s 14A r.w.s. 8D of the Income-tax Rules, 1962 (in short 'the Rules'). The Ld. CIT(A) has deleted the disallowance u/s 14A of the Act observing that there was no exempted income earned by the assessee. The relevant finding of the Ld. CIT(A) is reproduced as under:

"6.3 Decision

I have considered facts of the case, assessment order and submissions filed by the appellant. The A observed that the appellant had made investments in equity shares of Rs. 3311727575 on which the appellant did not receive any exempt income during the year by way of dividend. The appellant submitted before the AO that no disallowance us 14A can be made as the assessee did not receive any exempt income during the year. The AO did not accept the contention of the appellant and calculated the disallowance of Rs. 25966127. However, the calculation of disallowance is not correct as the AO computed wrongly Rs. 860288 being 0.5% of average value of investment of Rs.1881727575 instead of correct amount of Rs. 9408638.

The appellant has submitted various decisions of the Courts in which it is held that when there is no exempt income no



disallowance u/s 14A can be made. This view finds support from the following case laws:-

1. *GVK Projects and Technical Services Ltd. (2019) 106 Taxmann.com 181 (SC)*
2. *Oil Industry Development Board (2019) 103 Taxmann.com 326 (SC)*
3. *Chettinad Logistics P. Ltd. (2018) 95* Taxmann.com 250 (SC)*
4. *State Bank of Patiala (2018), 99 Taxmann.com 286 (SC)*
5. *CIT Vs. Shivam Motors P. Ltd (272 GTR 277)*
6. *CIT Vs. Lakhani Marketing ITA NO: 970/2008 dated 02.04.2014.*
7. *PCIT Vs. Ballarpur Industries Ltd. ITA: No. 15 of 2016 dated 13.10.2016 (Mumbai High Court)*

The Hon'ble. Delhr High, Court in its fécent order in the' case of PCIT Vs. M/s ERA Infrastructure (India) Ltd. ITA No. 2004/2022 dated 20.07.2022 held that amendment brought in by the Finance Act 2022 in sec. 14A is applicable prospectively we.f 01.04:2022 (from A. Y. 2022-23 onwards). This view is supported by the decision of the Mumbai Tribunal in the case of K.Raheja Corporate Services P. Ltd. ITA no. 2521 to 2527/Mum/2021 dated 17.06.2022.

I find merits in the argument of the appellant that when there is no exempt income received by the appellant during the year no disallowance u/s 14A r.w.r. 8D can be made. Further, Hon'ble Mumbai Tribunal in the appellant's own case for assessment years 2011-12, 2012-13, 2013-14 and 2014-15 have allowed the contention of the appellant by following the decision of jurisdictional Mumbai High Court in the case of PCIT Vs.Ballarpur Industries Ltd. wherein the Hon'ble High Court have held that no disallowance u/s 14A r.w.r. 8D is required to be made when there is no exempt income. Accordingly, in the present case, the AO is directed to delete the disallowance made us 14A r.w.r. 8D of the IT Act.

In the result, the appeal on this ground is Allowed.”

5.1 We find that the Ld. CIT(A) has followed the binding precedent of the Hon'ble Delhi High Court in the case of PCIT v. ERA Infrastructure India Ltd. (supra), wherein it is held that the



amendment brought by way of Finance Act, 2022 in section 14A of the Act is applicable prospectively. Since, the Ld. CIT(A) has followed the binding precedent on the issue in dispute, we do not find any error in the order of the Ld. CIT(A) and accordingly we uphold the same. The ground Nos. 1 & 2 raised by the Revenue are accordingly dismissed.

6. The ground Nos. 3 to 6 of the appeal of the Revenue relate to the issue of interest on sales tax liabilities. The Ld. CIT(A) has deleted the disallowance observing as under:

“7.3 Decision

I have considered facts of the case, assessment order and submissions filed by the appellant. Facts of the case are as per the Sales Tax Scheme granted by Gujarat Government. Essar Oil Ltd. was entitled to collect Sales Tax/AT and defer the payment of such sales tax which was collected upto 14.08.2020. Subsequent to 14.08.2020 this deferred tax liability was payable to Government in 6 equal annual installments. Essar Oil Ltd. decided to assign the sale tax liability in favour of the appellant by paying the present value of such liability which was calculated by discounting the value of liability. Accordingly, the appellant vide agreement dated 31.03.2009 agreed to take over the sales tax liability of Essar Oil Ltd. for a consideration of Rs. 1805.52 crores which was determined to the present value of the liability. The appellant in order to meet the liability on account of sales tax which would entail under the scheme and also to earn margin on the said amount received invested the amount received of Rs. 1805.52 crores from Essar Oil Ltd. in zero coupon bonds of Imperial Consultants and Securities Pvt. Ltd. (ICSL). In the mean time the Hon'ble Supreme Court delivered a judgment in the case filed by Gujarat Sales Tax Department against Essar Oil Ltd. wherein it was held that Essar Oil Ltd. was no entitled to the above, sales tax incentive scheme. As a result of said judgment, Essar Oil Ltd, was no longer entitled to the deferment of the sales tax liability and as a result the payment of the same had to be made immediately to the government.

Essar Oil Ltd. demanded Rs. 1805.52 crores paid to the appellant along with the interest. The appellant in order to make payment to Essar Oil Ltd., encashed the zero coupon bonds of ICSL. The appellant received interest income from zero coupon bonds of Rs. 176.26 crores and the



same was credited in the P&L account. Similarly, the appellant had paid interest of Rs. 176.26 crores (out of total interest payment of Rs. 287.05 crores paid to EOL) to Essar Oil Ltd. which was debited to the P&L account. In the computation of the income, the income was offered as income from other sources and interest expenditure was claimed against the same income as 57. (il) of the Act. The appellant contended that since the amount received from Essar Oil Ltd. was invested in the zero coupon bonds, any interest payable on the money received from Essar Oil Ltd. is allowable as deduction as 57 (i) of the Act against the interest income received from the zero coupon bonds as there is a direct nexus between the amount received from Essar Oil Ltd. and amount invested in zero coupon bonds in ICSL. However, contention of the appellant was not accepted by the AQ who relied on the judgement of CIT Vs. VP Gopinathan 248 IT 449 (SC). The AO disallowed interest of Rs. 1,76,26,00,000. discounting charges income from zero coupon bonds and the interest paid on the funds received from Essar Oil Ltd. This factual position has not been doubted by the AO in the assessment order. The appellant has further submitted that the AO had erroneously applied decision of the Hon'ble Supreme Court in the case of VP Gopinathan (supra). The most distinguishing fact of the appellant's case with that of VP Gopinathan case is that, in the case of Gopinathan the fixed deposit was made out of surplus money whereas in the case of appellant the investment in zero coupon bonds were made out of funds received from Essar Oil Ltd. on which interest was paid. Therefore, interest expenses are allowable as 57 (ji) of the Act. The appellant has informed that this issue is covered by the decisions of Hon'ble ITAT in appellant's favour in preceding assessment years from A. Y. 2012-13 to 2014-15.

The relevant part of decision of ITAT Mumbai in the appellant's case for A.Y. 2012-13, IT No. 6980/M/2016 dated 04.04.2019 is reproduced as under:-

“13. We have heard the rival submissions of both the parties and perused the material on record. According to the assessee, Essar Oil Ltd. was entitled to collect the sales tax/AT and defer the same up to 14.08.2020 and thereafter the said deferred sales tax liability was to be paid in six annual installments. Essar Oil Ltd. decided to assign the sales tax liability to another entity at the present value which was worked out at Rs. 1805.52 crores. The sales tax liability was assigned in favour of the assessee and the assessee received Rs. 1,805.52 Cr from Essar Oil Ltd. from time to time. The said money received by the assessee was invested in zero coupon bonds of Imperial Consultants and Securities Pvt. Ltd. In the meantime the Hon'ble Supreme Court delivered a judgment in a case filed by the Sales Tax Department, Government of Gujarat wherein the Hon'ble Supreme Court held that Essar Oil Ltd. was not entitled to sales tax incentive scheme following which the Essar Oil Ltd. was asked to make the payment to the government exchequer. As per the agreement between Essar Oil Ltd. and the assessee the money was to be ITA No.2199/M/2017 M/s. Essar House Pvt.



Ltd. paid along with interest, thus assessee had to pay interest of Rs.296.19 crores to Essar Oil Lid. The assessee enashed the bonds and received interest income on the said zero coupon bonds of Rs.296.90 crores. The assessee credited the income by way of interest on zero coupon bonds in the P&L account while interest paid was charged in the P8L Account. While making the computation of income, the assessee offered the said income under the head of other sources by claiming interest paid to Essar Oil Ltd. of Rs.296.19 crores under section 57(il) of the Act. After the examining the facts, we are of the considered opinion that there is a direct nexus between the money received by the assessee from Essar Oil Ltd. upon the assignment of sales tax liability and therefore there is a nexus between the interest received from the zero coupon bonds and interest liability which the assessee was liable to pay as per the agreement on the said assigned amount accordingly the same is allowable under section 57(il) of the Act. We have carefully perused the decision passed in the case of CIT vs. Gopinathan (supra) and observed that the facts in the case are distinguishable from the facts of the present case. In the said case the assessee had surplus funds which were invested in fixed deposits and the assessee earned interest on such fixed deposits. Therefore, Hon'ble Supreme Court held that interest paid on money borrowed from the bank against the security the fixed deposits is not allowable under section 57 (ill) of the Act. Since the income earned by the assessee by way of interest from Zero coupon bonds had a corresponding liability attached to it. The assessee has not gained anything from the said transaction and thus it is incorrect to say that interest has to be taxed without allowing deduction under section 57(i). In our opinion, the said transaction is not a sham transaction in view of the fact that the assignment of liability on account of sales tax and VAT has taken place at present value has taken place on a date which was prior to the decision of the Hon'ble Supreme Court. It was clearly a commercial transaction entered into between two entities though related and therefore not colourable transactions to circumvent tax liability. Accordingly, we hold that Ld. CIT(A) has passed a very reasoned and speaking order which does not require any interference at our end.

Facts being the similar for the assessment year under consideration, respectfully following the decision of Mumbai ITAT in appellant's own case in preceding years as referred above, claim of the appellant is allowed. The AO is directed to delete the disallowance made on account of interest paid on sales tax liabilities of Rs. 1,76,26,00,000.

In the result, the appeal on this ground is Allowed.”



6.1 We find that the Ld. CIT(A) has followed the finding of the Tribunal in the case of the assessee for assessment year 2012-13. In the year under consideration, the facts and circumstances being identical, we do not find any error in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same. The grounds Nos. 3 to 6 of the appeal of the Revenue are accordingly dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 28/08/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai