

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2726/Mum./2023

(Assessment Year : 2013-14)

Lakozy Motors Pvt. Ltd.
8, Shah Industrial Estate
Off Veera Desai Road, Andheri (West)
Mumbai 400 058 PAN – AAACL1889K

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-12(3)(1), Mumbai

..... Respondent

Assessee by : Shri Satyaprakash Singh
Revenue by : Shri Manoj Kumar Sinha

Date of Hearing – 18/01/2024

Date of Order – 05/02/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 07/06/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2013-14.

2. In this appeal, the assessee has raised the following grounds:-

"1. On the facts and in the circumstances of the case and in law, R the Hon'ble National Faceless Appeal Centre (NFAC) erred in upholding the decision of Ld.AO of disallowance of Rs.21,48,282/- on account of interest claimed in profit

& loss A/c without considering the submission made and documents provided. The appellant company prays that the said disallowance may please be deleted.

2. On the facts and in the circumstances of the case and in law, R the Hon'ble National Faceless Appeal Centre (NFAC) erred in upholding the decision of the Ld.AO of disallowance of Rs. 25,20,300/- on account of expenses claimed in profit & loss A/c under the head Sales Promotion Expenses without considering the submission made and documents provided. The appellant company prays that the said disallowance may please be deleted.

3. On the facts and in the circumstances of the case and in law, R the the Hon'ble National Faceless Appeal Centre (NFAC) erred in upholding the decision of Ld.AO of disallowance of Rs.2,97,198/- on account of Section 14A r.w.r 8D. The appellant company prays that the said disallowance may please be deleted.”

3. The brief facts of the case are that the assessee is engaged in the business of sale and service of Swaraj Mazda LCV vehicles. It also owns one fuel station, viz. IBP engaged in the sale of fuel and oil. For the year under consideration, the assessee filed its return of income on 30/09/2013 declaring a total income of INR 10,55,391. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. Vide order dated 23/03/2016 passed under section 143(3) of the Act the Assessing Officer (“AO”) computed the total income of the assessee at INR 71,68,472 after making certain additions. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

4. The first issue raised by the assessee pertains to the disallowance of interest expenditure amounting to INR 21,48,282.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, on verification of details

filed by the assessee, it was observed that the assessee has borrowed loans, long-term capital borrowings of INR 3,85,44,906 and short-term borrowings of INR 1,27,04,814. It was also observed that the assessee has claimed an interest expenditure of INR 69,25,239. It was further noticed that the assessee has advanced INR 2,98,36,451 which includes advances to related parties of INR 1,41,49,131. During the assessment proceedings, the assessee was asked to furnish the details of loans and advances given to the related parties and the nature of relation with each party. However, the assessee only furnished the names of the parties without giving any details of relation with them. Accordingly, the AO vide order passed under section 143(3) of the Act disallowed the proportionate interest expenditure of INR 21,48,282 in respect of the interest-free advances given to the related parties. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on this issue.

6. We have considered the submissions of both sides and perused the material available on record. From the perusal of the Balance Sheet of the assessee for the year ending 31/03/2013, forming part of the paper book from pages 1-18, we find that the assessee has share capital and reserves and surplus of INR 4,35,09,958, which is more than interest-free loan of INR 1,41,49,131, advanced by the assessee to the related parties. We find that the Hon'ble Jurisdictional High Court in CIT v/s Reliance Utilities & Power Ltd., [2009] 313 ITR 340 (Bom.), held that if funds are available with the assessee, which are sufficient to meet the investment, then the presumption would arise that the investment is made out of funds so available with the assessee. Accordingly, we find no basis in the proportionate disallowance of interest

expenditure made by the AO and upheld by the learned CIT(A). Therefore, the same is directed to be deleted. As a result, ground no. 1 raised in assessee's appeal is allowed.

7. The next issue raised in assessee's appeal pertains to the disallowance of INR 25,20,300 on account of sales promotion expenses.

8. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, it was observed that the assessee has incurred sales promotion expenses of INR 32,87,444, which include a major amount paid to Ramesh Chand Auto, i.e. INR 25,20,300. In the absence of any reason for incurring the expenditure and nature of services provided by them, the AO vide order passed under section 143(3), inter-alia, disallowed the aforesaid expenditure of INR 25,20,300. The learned CIT(A), vide impugned order, after noting the fact that similar expenses under the aforesaid head were credited in the last year as well and no substantial clarification has been offered by the assessee, upheld the disallowance made by the AO. Being aggrieved, the assessee is in appeal before us.

9. We have considered the submissions of both sides and perused the material available on record. As per the assessee, the entries pertaining to aforesaid expenditure were passed through a common ledger named "*Ramesh Chand*" (employee of the company responsible as a cost centre). It is further the plea of the assessee that the said entry was passed to the said account only for the sake of accounting convenience so that all the expenses related to sales promotion paid to agents/drivers/mechanics can be accumulated under

one ledger. We find that a similar issue came up for consideration in the preceding assessment year before the coordinate bench of the Tribunal in Lakozy Motors Ltd. v/s ITO, ITAs no. 338 and 339/Mum./2018, for the assessment years 2011-12 and 2012-13. We find that vide order dated 23/05/2018, the coordinate bench restored the issue to the file of the AO for examination afresh. During the hearing, the learned AR submitted that in the remand proceedings, the AO made the disallowance of 15% of the aforesaid expenditure and the same has been accepted by the assessee. Since it is undisputed that the nature of the expenditure is similar to the preceding year, therefore the AO is directed to restrict the disallowance to 15% of the aforesaid expenditure in the present case. As a result, ground No. 2 raised in assessee's appeal is partly allowed.

10. The last issue raised in assessee's appeal pertains to the disallowance of INR 2,97,198 under section 14A read with Rule 8D of the Income Tax Rules, 1962 (*"the Rules"*).

11. The brief facts of the case pertaining to this issue, as emanating from the record, are: The AO vide order passed under section 143(3) of the Act made disallowance of INR 2,97,198 under section 14A read with Rule 8D. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee on this ground. Being aggrieved, the assessee is in appeal before us.

12. We have considered the submissions of both sides and perused the material available on record. From the perusal of the submissions filed by the assessee before the learned CIT(A), as noted on page 18 of the impugned

order, we find that the assessee specifically submitted that during the year under consideration, no dividend income was earned by it out of the investments. The aforesaid fact has also not been disputed by the Revenue. We find that the Hon'ble Delhi High Court in *Cheminvest Ltd. v. CIT*: [2015] 378 ITR 33 (Delhi) held that section 14A will not apply if no exempt income is received or receivable during the relevant previous year. We further find that the Hon'ble jurisdictional High Court in *Pr.CIT v/s Kohinoor Project (P) Ltd.*, [2020] 121 taxmann.com 177 (Bom.), rendered similar findings and dismissed the Revenue's appeal on a similar issue. Since, in the present case, the assessee has not earned any dividend income, therefore, respectfully following the aforesaid judicial pronouncements, disallowance of expenditure under section 14A read with Rule 8D is not sustainable.

13. We further find that vide amendment by the Finance Act, 2022, the non-obstante clause and explanation were inserted in section 14A of the Act to the effect that the section shall apply even if no exempt income has accrued or arisen or has been received during the year. We find that while dealing with the issue of whether the aforesaid amendment by the Finance Act, 2022 is prospective or retrospective in operation, Hon'ble Delhi High Court in *PCIT vs M/s Era infrastructure (India) Ltd*, [2022] 288 Taxman 384 (Delhi) held that the amendment by Finance Act, 2022 in section 14A is prospective and will apply in relation to the assessment year 2022-23 and subsequent assessment years. Thus, even in view of the aforesaid amendment also, the disallowance under section 14A read with Rule 8D is not permissible in the present case.

14. Thus, in view of the above, the disallowance computed under section 14A read with Rule 8D is directed to be deleted. Accordingly, ground no.3 raised in assessee's appeal is allowed.

15. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 05/02/2024

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 05/02/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai