

आयकर अपीलीय अधिकरण
मुंबई पीठ " डी ", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " D ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आअसं. 1894/मुं/2023 (नि. व. 2018-19)
ITA NO.1894/MUM/2023(A.Y.2018-19)

Devarshi Commercial LLP,
84-A, Mittal Court, Nariman Point,
Mumbai 400 021

PAN: AAHFD-1854-E

..... अपीलार्थी/ Appellant

बनाम Vs.

Dy. Commissioner of Income-tax-17(1), Mumbai,
Kautilya Bhavan, Bandra (East)
Mumbai – 400 051

..... प्रतिवादी/ Respondent

Assessee by : Shri Madhur Agrawal, Advocate with
Shri Nimesh Vora, Sr.A.R

Revenue by : Ms. Agnes P. Thomas

सुनवाई की तिथि/ Date of hearing : 30/11/2023

घोषणा की तिथि/ Date of pronouncement : 07/02/2024

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 31/03/2023, for the Assessment Year 2018-19.

2. The assessee in appeal has assailed the order of CIT(A) on solitary ground i.e. disallowance of interest claimed u/s. 57(iii) of the Income Tax Act, 1961 [in short 'the Act']. The assessee vide application dated 16/10/2023 raised additional grounds of appeal, the same read as under:

“1. Erred in disallowing Rs.2,29,20,562 u/s. 57 (iii) of the Act which was beyond its jurisdiction as the same was not a subject matter of 'limited scrutiny' assessment proceedings in which the assessment order was passed.

2. Failed to appreciate that the interest expenditure of Rs. 2,29,20,562 is allowable as deduction u/s. 36(I)(iii) and not disallowable u/s. 14A as the borrowed funds were utilised for business purposes.”

3. Shri Madhur Agrawal appearing on behalf of the assessee submitted that additional ground raised by the assessee is purely legal and no fresh document is required to be furnished for adjudication of the additional grounds of appeal. The assessee, in additional grounds of appeal has challenged the action of Assessing Officer in enlarging the scope of 'Limited Scrutiny'.

4. Per contra, Ms. Agnes P. Thomas representing the Department opposed admission of additional grounds of appeal raised by the assessee at this belated stage. The Id. Departmental Representative submitted that Assessing Officer has acted within his jurisdiction and has not crossed the line of limited scrutiny.

5. We have heard the submissions made by rival sides on the issue of admission of additional grounds of appeal. After examining additional grounds of appeal we find that they are legal in nature and no fresh document is required to be adduced for adjudication of the same. The additional grounds of appeal raised by the assessee goes to the root of validity of assessment order, hence, the additional grounds of appeal raised by the assessee are admitted.

6. The Id.Counsel for the assessee submitted that the case of the assessee was selected for limited scrutiny under E-Assessment Scheme on the following issues:

(i) Short Term Capital Gains u/s. 111A

(ii) Expenses incurred for earning exempt income.

The Assessing Officer over stepped his jurisdiction and made addition of Rs.2,29,20,592/- u/s. 57(iii) of the Act. The Id.Counsel for the assessee referring to Circular F. No.225/402/2018/ITA.II dated 28/11/2018 pointed that the said Circular was in specific reference to CASS cycles 2017 and 2018, wherein the cases were selected for 'Limited Scrutiny'. The CBDT has categorically stated that the Assessing Officer cannot go beyond the issues for which the case was selected in Limited Scrutiny. He further submitted that it is a well settled legal proposition that in a case of Limited Scrutiny, the Assessing Officer cannot expand the scope of enquiry beyond the issues for which the case was selected for Limited Scrutiny. Where the Assessing Officer exceeds his jurisdiction in 'Limited Scrutiny' the assessment order was held to be bad in law. To support his arguments he placed reliance on the decision in the case of PCIT vs. Weilburger Coatings (India) (P) Ltd, 155 taxmann.com 580 (Cal).

7. On merits of the addition, the Id.Counsel for the assessee submitted that the assessee has earned dividend income exempt from tax aggregating to Rs.8,06,60,286/-. The assessee has made suo-moto disallowance of Rs.2,33,038/- incurred towards administrative expenses for earning exempt income. The assessee has utilized own interest free funds for making investment. No part of borrowed funds were utilized towards investment. The assessee had taken overdraft facility of Rs.260.00 crores from Bank on 21/06/2017. The overdraft was fully paid back to the bank on 24/07/2017. The assessee paid interest on the overdraft Rs.2,29,20,562/-. The said interest

expenditure is allowable u/s. 57(iii) of the Act. The investments were made after repayment of overdraft in July 2017, hence, no part of overdraft facility was utilized by the assessee for the purpose of investment. The Id.Counsel for the assessee further placed on record the details of source of funds used to earn dividend income during the year.

8. On the other hand, Ld. Departmental Representative vehemently supported the impugned order and prayed for dismissing the appeal of assessee. She submitted that the Assessing Officer was well within his jurisdiction to examine utilization of borrowed funds towards investment. The Assessing Officer after examining the documents on record came to the conclusion that interest expenditure claimed u/s. 57(iii) of the Act was in respect of borrowing utilized by the assessee for making the investment.

9. We have heard the submissions made by rival sides and have examined orders of authorities below. The assessee has raised additional grounds of appeal challenging the action of Assessing Officer in making addition by disallowing interest claimed u/s. 57(iii) of the Act by the assessee. The case of the assessee was selected by CASS for Limited Scrutiny on the following issues:

- (i) Short Term Capital Gains u/s. 111A of the Act
- (ii) Expenses incurred for earning exempt income.

The contention of the assessee is that while examining the second issue the Assessing Officer has overstepped the 'Laxman Rekha' of Limited Security and has made disallowance of interest expenditure u/s. 57(iii) of the Act. A perusal of computation of income filed by the assessee reveals that the assessee has not reported any income under the head 'Income from Business

or Profession'. Admittedly, the assessee has made borrowings/overdraft during the relevant period and has claimed interest expenditure u/s. 57(iii) of the Act. No interest expenditure is claimed under the head "Business Income'. The Assessing Officer while examining the issue of expenses incurred for earning exempt income was well within his jurisdiction to examine the interest expenditure claimed u/s. 57(iii) of the Act. Therefore, we are of considered view that Assessing Officer has not overstepped his jurisdiction in examining the issue of expenses incurred for earning exempt income. In our considered view, the Assessing Officer did not cross his jurisdiction in ascertaining the facts on the issue flagged for Limited Scrutiny. Hence, the additional grounds of appeal raised by the assessee are devoid of any merit, therefore, the same are dismissed.

10. The assessee has challenged disallowance of interest expenditure u/s. 57(iii) of the Act on merits as well. The contention of the assessee is that the aforesaid interest is with respect to overdraft facility availed by the assessee. The assessee while referring to ledger accounts pointed that overdraft facility was availed by the assessee on 21/06/2017 and overdraft was repaid on 24/07/2017. The assessee has paid interest of Rs.2,29,20,562/- on the said overdraft facility, hence, the same was claimed as expenditure u/s. 53(iii) of the Act. The contention of the assessee is that no part of borrowed funds were utilized for the purpose of making investments. The assessee has also furnished details of source of funds utilized for making investments on which dividend income was earned. We are in agreement with the submissions of assessee that if no part of borrowed funds were utilized for making investments on which dividend income is earned, no disallowance of interest

expenditure is warranted. The assessee has given details of source of funds utilized for making investment. The said table is reproduced herein below:

INVESTMENT				SOURCE		
Sr. No.	Nature of Investment	Date of investment	Amount(Rs)	Dividend Received(Rs.)	Name of the Party	Amount(Rs.)
1.	Investment in Mutual Fund: PGIM India Arbitrage Fund-Regular Plan. (Previously known as DHFL PRAMERICA TERM INCOME FUND-DIRECT PLAN) Amount Invested during the year Total -1	21-12-2017	830000000 <u>830000000</u>	79616657	Unsecured Loan received from Sikka Port & Terminals Private Limited	830000000
2.	Investment in Mutual Fund: Kedera Capital Alternative Investment Fund-II Amount invested during the year Total -2	13-10-2017 23-01-2018	3872218 <u>5081000</u> <u>8953218</u>	 43629	Redemption of Principal Mutual Fund Principal Collection Mutual Fund SBI Magnum Insta Cash Fund Aditya Birla Money Manager fund-Growth	1600000 <u>2311388</u> <u>3911388</u> 5081000
	TOTAL OF (1+2)		838953218	79660286		

The Id. Counsel for the assessee pointed that unsecured loan from Sikka Port & Terminals Pvt. Ltd. is interest free. Taking into consideration entire facts, we deem it appropriate to restore this issue back to the file of Assessing Officer for the limited purpose of verification of source of investments made by the assessee during the period relevant to the assessment year 2018-19 . If,

investments are made from interest free funds available with the assessee, no disallowance of interest expenditure is to be made. Thus, grounds raised in appeal are allowed for statistical purpose.

11. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on Wednesday the 07th day of February, 2024.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य / ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/ Dated 07/02/2024

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल / Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, Mumbai