

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No. 1654/Del/2021
(Assessment Year: 2017-18)
Mansarover Tradex Ltd, Vs. ITO,
28, Najafgarh Road, Ward-16(3),
New Delhi New Delhi
(Appellant) (Respondent)
PAN: AAACM0211C

Assessee by : Shri Rohit Jain, Adv
Ms. Tejasvi Jain, CA

Revenue by: Shri Kanv Bali, Sr. DR

Date of Hearing 12/12/2023
Date of pronouncement 11/03/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1654/Del/2021 for AY 2017-18, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No.ITBA/NFAC/S/250/2021-22/1036097948(1) dated 01.01.2021 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 19.12.2019 by the Assessing Officer, ITO, Ward-16(3), Delhi (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal:-

"1.On facts and in law, the Ld. Commissioner of income tax (Appeals) (CIT (A) has erred in confirming disallowance of Rs. 34,56,689/- out of interest expenses.

1.1 On facts and in law, the lower authorities have erred in holding that the appellant has failed to establish the utilization of the loans taken for business purposes.

1.2 The lower authorities have erred in making/confirming the disallowance even when the appellant has provided detailed explanation and documents

regarding the direct nexus of the borrowing and lending of the money which is a business activity for the appellant being a Non banking and finance company.

2. On facts and in law, the CIT (A) has erred in confirming addition of Rs. 8,62,543/- as alleged interest income on the advances given by the appellant.

2.1 The lower authorities have erred in making/confirming the above addition on the ground that the appellant has advanced amount to different parties by charging no interest or lesser interest which is factually wrong.

3. That in the facts and circumstances of the case and in law the Id. CIT(A) has grossly erred in confirming the disallowance u/s 14A of Rs 39,61,865/-.

3.1. The lower authorities have erred in enhancing/confirming the disallowance u/s 14A without pointing out as to how the disallowance made by the appellant was incorrect.

3.2 Without prejudice, the lower authorities have erred in disregarding the settled law that the disallowance u/s 14A cannot exceed the exempt income."

3. We have heard the rival submissions and perused the material available on record. The assessee is a Non-Banking Finance Company ("NBFC") registered with the Reserve Bank of India and is engaged in the business of making investments in shares and securities, advancing loans and deriving income from interest on loans, interest on fixed deposits in bank, dividend on long term investments and profit on sale of investments. For the relevant assessment year 2017-18, the assessee filed return of income declaring total income of Rs.9,01,790 and paid tax thereon amounting to Rs.2,69,363. Certain basic facts relevant for adjudication of the issues raised are summarized as under:-

(a) Out of total interest expenditure amounting to Rs.34,56,689/-, the assessee disallowed Rs.5,76,609/- and claimed deduction of Rs.28,80,080/-.

(b) Borrowed funds were utilized to advance interest bearing loans resulting in interest income of Rs.29,72,215/-.

(c) Other than above interest expense, the assessee incurred total expenditure of Rs.11,06,217/- (including depreciation of Rs.97,484/-) only.

(d) Assessee received exempt dividend income of Rs.94,465/- only.

(e) Assessee suo-motu disallowed Rs.5,78,343/- u/s 14A of the Act.

4. In the aforesaid facts, assessment was completed vide order dated 19.12.2019 passed u/s 143(3) of the Act wherein total income was assessed at Rs.91,82,887/- after making the following additions/ disallowances:

(a)	Disallowance of interest expenses	Rs.34,56,689	Despite: -actual expense claimed of Rs.28,80,080; -interest income of Rs.29,72,215
(b)	Addition of notional interest on interest free advances	Rs. 8,62,543	-notional addition -interest bearing loans utilized for earning - interest income (refer supra)
(c)	Disallowance under section 14A	Rs.39,61,865	-dividend income of Rs.94,465 only -suo-motu disallowed Rs.5,78,343; -entire interest expense separately disallowed by AO; - total expenditure (other than interest) amounting to Rs. 11,06,217 only

5. The aforesaid order was challenged in appeal before the Id. CIT(A). The Id. CIT(A) vide order dated 01.10.2021 confirmed the additions/ disallowances made by the Id. AO.

6. Let us now address the issues involved one by one.

7. **a. Disallowances of interest: Rs. 3456689/-**

During the year under consideration, the assessee incurred interest expenditure amounting to Rs. 34,56,689/- on unsecured loan taken from M/s. Nalwa Sons Investment Ltd (NSIL). This loan was taken in earlier year and also partially during the year under consideration. The aforesaid interest was computed for the period 01.04.2016 to 30.11.2016 @7.50% and for the period from 01.12.2016 to 31.03.2017 @7%. It is not in dispute that the amount borrowed by the assessee from NSIL was utilized to advance interest bearing loans to Om Project Consultants and Engineering Ltd, JSL Jindal Ltd, and Jindal Consultancy Services Ltd on which the assessee has earned interest income of Rs. 29,72,215/- which was duly offered to tax as business income and assessed as such. Out of the total interest expenditure of Rs. 34,56,689/-, a sum of Rs. 5,76,609/- was already disallowed by the assessee in the return of income and deduction of interest expenditure was claimed only to the extent of Rs. 28,80,080/- against the

business income. While this is so, it is highly unfair and unjust on the part of the Id AO to disallow the entire interest expenditure of Rs. 34,56,689/-. We find that the loans borrowed by the assessee from NSIL had been utilized for advancing interest bearing loans to aforesaid three parties. Accordingly, we hold that interest bearing loans were utilized for the purpose of business of the assessee and hence, the interest expenditure claimed by the assessee in the sum of Rs. 28,80,080/- would be eligible for deduction while computing the business income given the fact that loans given by the assessee to the aforesaid three parties are also interest bearing and interest income indeed had been duly offered to tax by the assessee as business income in the sum of Rs. 29,72,215/-. Though the relevant details had indeed been furnished by the assessee before the lower authorities with the supporting documents, we find that the lower authorities had not applied their mind on the documents placed on record. Hence, the ground No. 1, 1.1 and 1.2 raised by the assessee are hereby allowed.

7.2 The ground Nos. 2 and 2.1 raised by the assessee are challenging the addition of Rs. 8,62,543/- towards alleged interest income on notional interest on the advances given by the assessee.

7.2.1. We have heard the rival submissions and perused the material available on record. We find that the Id AO considered notional interest adopted @9.5% interest on the loans advanced to two parties in the sum of Rs. 90,79,399/- and made a notional interest income addition of Rs. 8,62,543/- which was upheld by the Id CIT(A). In our considered opinion, the lower authorities grossly erred in not looking into the facts of the assessee and the documents placed on record. The addition made by the Id AO which has been confirmed by the Id CIT(A) goes clearly to prove that there was absolute non-application of mind on the part of the lower authorities. We are forced to say this in view of the fact that the balance of Rs. 90,79,399/- represents closing balance of amount advanced to Om Project Consultants and Engineering Ltd of Rs. 19,56,160/- and Jindal Consultancy Services Ltd of Rs. 71,23,239/- which was interest bearing loans and assessee had indeed earned interest income of Rs. 20,25,032/- and Rs. 1,36,932/- respectively. While this is so, there is absolutely no case of adding notional interest income on

the very same advance on which interest income had already offered to tax. Accordingly, the ground Nos. 2 and 2.1 raised by the assessee are hereby allowed.

7.3. Disallowance u/s 14A of the Act.

The assessee company earned dividend income of Rs. 94,465/- and claimed a sum as exempt in the return of income. The assessee company suo moto disallowance of expenditure of Rs. 5,78,343/- u/s 14A of the Act in the return of income. The Id AO proceeded to invoke computation mechanism provided under Rule 8D(2) of the Rules and made the disallowances as under:-

- i. Under Rule 8D(2)(i)-Rs. 5,78,343/- (being the amount voluntarily disallowed by the assessee.
- ii. Under Rule 8D(2)(ii)-@1% of annual average of monthly average of investments – Rs 50,02,854/-.

7.3.1. The Id AO arrived at the disallowance of Rs. 55,81,197/- and restricted the total disallowance to Rs. 39,61,865/- to the extent of expenditure claimed as deduction in the entire return of income. In other words, the assessee had disallowed a sum of Rs. 5,78,343/- u/s 14A of the Act and Id AO had disallowed a sum of Rs. 39,61,865/- u/s 14A of the Act and by this process, the entire expenditure debited in the profit and loss account has been disallowed by the Id AO. This action of the Id AO was upheld by the Id CIT(A). As stated earlier, the action of the lower authorities depicts complete non-application of mind in as much as the entire expenditure debited to the Profit and Loss account has been disallowed u/s 14A of the Act. This lead to prove the situation that no expenditure has been incurred by the assessee for the purpose of earning taxable business income. This action of the lower authorities had lead to this clear anomaly. First of all, the exempt income itself is only Rs. 94,485/-. The law is precisely settled that the disallowance u/s 14A of the Act cannot exceed the exempt income. Reliance in this regard is placed on the decision of the Hon'ble Jurisdictional High Court in the case of Joint Investment Pvt. Ltd Vs. CIT reported in 372 ITR 694. However, the assessee itself had disallowed a sum of R. 5,78,343/- u/s 14A of the Act in the return of income. Hence, the assessee itself had already made excess disallowance

u/s 14A of the Act and accordingly, no further disallowance need to be made thereon. Accordingly, the entire disallowance u/s 14A of the Act would be restricted to Rs. 5,78,343/- and which has been already disallowed by the assessee in the return of income and no addition need to be made thereon. Accordingly, ground Nos. 3 to 3.2 raised by the assessee are allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 11/03/2024.

-Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 11/03/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi