आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

आ.अपी.सं /**ITA Nos.1061 & 1062/Hyd/2018**
(निर्धारण वर्ष / Assessment Years: 2012-13 & 2013-14)

Jt. CIT (OSD) Range-1 Hyderabad	Vs.	Agarwal Industries (P) Ltd, Hyderabad PAN:AACCA0094R
(Appellant)		(Respondent)

राजस्व द्वारा/Revenue by:	Smt. K. Haritha, CIT(DR) and Smt. Sheetal Sarin, DR
निर्धारिती द्वारा/Assessee by:	Shri Sunil Kumar Jain, CA
सुनवाई की तारीख/Date of hearing:	19/03/2024
घोषणा की तारीख/Pronouncement:	22/03/2024

आदेश/ORDER

Per Laliet Kumar, J.M

ITA Nos.1061 & 1062 filed by the Revenue are directed against the separate orders dated 09.01.2018 of the learned CIT (A)-1, Hyderabad relating to A.Ys 2012-13 & 2013-14 respectively.

2. Ground of appeal No.2 in ITA 1061/Hyd/2018 and Ground of appeal No.3 in ITA No.1062/Hyd/2018 pertains to the deletion of disallowance made by the Assessing Officer by the learned CIT (A) which reads as under:

ITA No.1061/Hyd/2018 – Ground No:2

> *"(ii) The learned CIT (A) ought to have appreciated the addition of Rs.1,70,212/- made by the Assessing Officer in accordance with the CBDT Circular No.22/2015 towards late remittance of PF (Rs.1,48,417) and ESI (Rs.21,795/-) and requires to be upheld.*

ITA No.1602/Hyd/2018 – Ground No.3

> *"(iii) The learned CIT (A) ought to have appreciated the addition of Rs.5,24,344/- made by the Assessing Officer in accordance with the CBDT Circular No.22/2015 towards late remittance of PF (Rs.4,78,378) & ESI (Rs.45,966/-) as requires to be upheld".*

3. The learned DR submitted that the issue of disallowance of ESI & PF was allowed by the learned CIT (A) relying upon the decision of the Tribunal in the case of Tetrasoft India (P) Ltd in ITA Nos.218 & 219/Hyd/2015. It was submitted by the learned DR that the issue is no more res integra as the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd vs. CIT vide civil appeal No.2833 of 2016 order dated 12th October 2022, decided the issue in favour of the Revenue and therefore, it was submitted that the grounds raised by the Revenue in ITA Nos.1061 & 1062/Hyd/2018 is required to be allowed.

4. Per contra, the learned AR relied upon the orders of the learned CIT (A).

5. We have heard the rival arguments made by both the sides and perused the record. We find the Hon'ble Supreme Court in the case of Checkmate Services (P) Ltd (Supra) has decided the issue in favour of the Revenue and therefore, respectfully

following the decision of the Hon'ble Supreme Court, we allow the grounds raised by the Revenue.

6. In the result, grounds raised by the Revenue is allowed.

7. Ground of appeal No.4 in ITA 1061/Hyd/2018 and Ground of appeal No.2 in ITA 1062/Hyd/2018 read as under:

ITA No.1061/Hyd/2018 – Ground No:iv

> *"iv. The learned CIT (A) erred in reducing the rate of interest from 16% to 8% on the loans advanced by the assessee to the sister concerns.*

ITA No.1062/Hyd/2018 – Ground No.ii

> *"ii. The learned CIT (A) erred in reducing the rate of interest from 16% to 8% on the loans advanced by the assessee to the sister concerns.*

8. In this regard the learned DR submitted that the learned CIT (A) had granted relief to the assessee and our attention was drawn to para 10.1 to 10.3 of the order passed by the learned CIT (A). It was submitted by the learned DR that this is contrary to the case of the assessee's own case for the A.Ys 2008-09 and 2009-10 in ITA No.629/Hyd/2012 vide paras 26 & 27 which are to the following effect:

> "26. We find that the AO was silent on the interest free funds received by the assessee from its sister concerns. We are of the view that if the assessee has got surplus funds which do not carry interest and also as other borrowals like bank overdraft etc., as per various judicial decisions the presumption is that

> the interest free and own funds are advanced to the sister concerns and, therefore, the charging of notional interest does not arise. Our opinion is based on the ratio of decision of the Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. [2009] 313 ITR 340 (Bom.) wherein it was held that "if there were funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of interest free funds generated or available with the company, If the interest free funds were sufficient to meet the investments."
>
> 27. Since the orders of the revenue does not contain the fact on the existence of the excess or own and interest free funds of the assessee. AO also rejected the claim of the assessee without considering the ratio of the above said judgment, which has relevance in the factual matrix in any case of hybrid funds. AO is required to study the funds position before the making of interest free advances. The AO shall also apply the 'principle of presumption' in correct perspective and in accordance with the law in force. In these circumstances and it is in the interest of the revenue, that the issue must be set aside to the file of the AO to examine the fund flow statement and decide the issue in accordance with law. Hence, the revenue's appeal on this issue is set aside for statistical purposes."

9. The learned AR had relied upon the order passed by the learned CIT (A) and submitted that the issue is required to be examined based on the above-said decision of the Tribunal. He also relied on the decision of the Tribunal in the case of the assessee in ITA No.629/Hyd/2012 vide paras 26 & 27 which are reproduced herein above.

10. We have heard the rival contentions and perused the material available on record. In the present case, admittedly, the assessee is not in appeal against the partial relief granted by the learned CIT (A) to the assessee. From the perusal of the paras produced herein above, the learned CIT (A) has restricted the interest @ 8% as against 16% disallowed by the Assessing Officer. Against the restriction of the interest at 8%, the assessee is not in appeal before us.

In fact, under identical circumstances, the Tribunal while recording a finding in Paras 26 & 27 in ITA No. 629/Hyd/2012 had remanded the matter back to the file of the Assessing Officer. In the present case, there is no such prayer of the Revenue. On the contrary, the Revenue submitted that the interest rate of 8% is far less and is required to be increased to 16%.

11. We have considered the issue at length. In the present case, the assessee in the statement before the learned CIT (A) had submitted that the assessee is having interest-free funds of Rs.91,84,04,263/- available with the assessee. Thereafter, the learned CIT (A) examined the funds availability statement of the assessee in Para 10.2 (Supra). The learned CIT (A) thereafter has considered the totality of the facts and circumstances of the case and reduced the notional interest from 16% to 8%. In our view, the law is fairly settled in favor of the assessee, that if the assessee has the availability of interest-free funds, then the notional interest cannot be charged and for the above purposes, we rely on the decision of the Hon'ble Supreme Court in the case of SA Builders Ltd vs. CIT (2007) 158 Taxmann.74 (S.C), Punjab Stainless Steel Industry vs. CIT (2011) 196 Taxmann.com 404 and CIT vs. Rokman Cycle Industries (P) Ltd (2010) 187 Taxmann 242(P&H) and in the case of Ranjani Enterprises 139taxmann.com 208.

11.1 While the proposition raised by the learned AR for the assessee may be correct. But in the absence of any cross objection

raised / appeal by the assessee against the order passed by the learned CIT (A) it is not possible to grant any relief to the assessee in the appeal filed by the revenue. Therefore, in our view, the findings given by the learned CIT (A) cannot be faulted with ld.CIT(A) as he had examined the availability of funds and thereafter had restricted the interest at 8% .

11.2 In our view, the view of the learned CIT (A) is accordance with law and therefore the appeal of the revenue is dismissed. In light of the above, the ground raised by the Revenue in both appeals are dismissed.

12. Ground No.3 in ITA No.1061/Hyd/2018 reads as under:

> *"iii. The learned CIT (A) erred in deleting the disallowance of expenses of Rs.2,86,63,051/- without giving proper reasons".*

13. This is concerning the disallowance of expenses of Rs.2,86,63,051/- by the learned CIT (A). In this regard, the learned DR drew our attention to the order passed by the Assessing Officer and our attention was drawn to para-v, which is to the following effect:

> *"(v) The turnover of the assessee has increased from Rs.363 crores of A.Y 2011-12 to Rs.502 Crores for the AY 2012-13. There is an increase of about 27% in the turnover. It is noticed that the expenditures under the heads Selling Manufacturing Expenses have increased abnormally. The selling and Distribution expenses have increased by about 46%, Administrative & other Manufacturing Expenses have increased abnormally. after excluding the increase in Fire & General Insurance, have increased by 53% and Manufacturing Expenses have increase by 40%. The assessee*

was asked to justify the huge increase in expenditure under these heads. The assessee filed a letter containing self-serving statements without any evidence and without production of the vouchers. Hence, the explanation of the assessee is not acceptable. Considering the facts of the case and keeping the increase in turnover, the following disallowances were made on estimation basis:

15% of Selling & Distribution expenses- Rs.96,66,110
20% of Administrative & Other Expenses- Rs.58,80,148
10% of Manufacturing expenses – Rs.1,31,16,793

The total disallowance in respect of the above heads of expenditure works out to Rs.2,86,63,051/-".

14. The learned DR submitted that the learned CIT (A) upheld the entire disallowances made by the Assessing Officer and she drew our attention to para 9.2 and 9.3 of the order of the learned CIT (A) which are to the following effect:

"9.2 Before me, the appellant submitted that the appellant has been accounting for both categories as one indivisible business and all expenses are vouched and verifiable. The appellant submitted that strict bifurcation may not be possible as both activities are interlinked. The appellant submitted that the entire disallowance is arbitrary, untenable and cannot be sustained. The appellant submitted that the payment for most of the expenses is made by crossed account payee cheques. The appellant submitted that some increase in expenses when Compared year on year could also be due to reclassification of the heads of expenditure. The appellant submitted that all the expenses are incurred in normal course of business. The increase in expenses year on year (viz., when compared to previous FY 2010-11) is beyond the control of the company. The appellant submitted the bills and vouchers for Manufacturing, administrative and selling and distribution expenditures along with ledger extracts.

9.3 The submissions of the appellant have been carefully considered. The addition has been made by the Assessing Officer based on percentage analysis. There has been an increase in the total turnover and subsequently the expenditures on part of the appellant. The appellant has submitted that reclassification of the expenditure has been made during the current F Y and hence certain expenditure has been increased for than

> *the others. However, in making disallowance the Assessing Officer has not given reasons as to why certain percentage were disallowed. The disallowances have been made on adhoc basis, also the Assessing Officer has not taken the market percentage analysis while making the disallowance. In this background, arbitrary disallowance cannot be allowed. The addition made by the Assessing Officer on this issue is deleted."*

15. It was submitted by the learned DR that the order passed by the learned CIT (A) is without any merit. The lumpsum pro rata addition made by the Assessing Officer is required to be upheld and the order of the learned CIT (A) is required to be dismissed.

16. The learned AR for the assessee, on the other hand, drew our attention to the letter filed by the assessee dated 26.03.2015 before the Assessing Officer wherein the assessee has submitted details of expenses, and our attention was also drawn to the chart prepared by the assessee filed before the Assessing Officer to that effect.

17. We have perused the material available on record. The Assessing Officer in the order passed by him has mentioned that the assessee has not filed the requisite bills/vouchers/documents substantiating the increase in expenditure which is in the range of more than 39% of the earlier expenditure. However, the above-said statement of the Assessing Officer is required to be disbelieved as the assessee had filed a letter dated 26.3.2015 before the Assessing Officer, which was filled before the passing of the order, where in the assessee had explained the increase in the expenditure . The

situation continues to be the same even before the ld CIT (A). The learned CIT (A) in para 9.2 has mentioned that the " *Manufacturing, administrative and selling and distribution expenditures along with ledger extracts."* were produced before the revenue authority. The above-said, categorical finding of the learned CIT (A) recorded in the order have gone unrebutted. Undoubtedly, there is no ground raised by the Revenue challenging the order of the learned CIT (A) on the ground of the no adherence to principles of natural justice mentioned in Rule 46A of I.T. Rules. In the absence of any ground-raising violation of principles of natural justice or accepting the evidence at the back of the assessee, the finding recorded by the learned CIT (A) that the assessee has produced bills/vouchers explaining the increase in expenditure before the Assessing Officer and before the learned CIT (A) is required to be accepted.

17.1 Once the bills have been produced by the assessee before the Revenue authorities and the bills have been examined by the learned CIT (A) and thereafter only the disallowance made by the Assessing Officer has been deleted. We do not find any reason to interfere with the findings given by the learned CIT (A) and accordingly, the disallowance deleted by the learned CIT (A) is sustained.

18. In the result, the ground raised by the Revenue is dismissed.

19. To sum up, both the appeals of the revenue are partly allowed.

Order pronounced in the Open Court on 22nd March, 2024.

Sd/-	**Sd/-**
(R.K. PANDA) **VICE-PRESIDENT**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 22nd March, 2024
Vinodan/SPS

Copy to:

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3.	Agarwal Industries (P) Ltd 15-9-449 Jagdish Niketan, Afzalgunj Road, Hyderabad 500012
3	Pr. CIT -1, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order