

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JM &
MS PADMAVATHY S, AM**

I.T.A. No. 2605/Mum/2023
(Assessment Year: 2010-11)

I.T.A. No. 2606/Mum/2023
(Assessment Year: 2011-12)

ITO-6(1)(1) Room No. 503, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	Barindra Overseas Pvt. Ltd. 13 th Floor, Tower B, Peninsula Bsuiness Park, Senapati Bapat Marg, Lower Parel (West), Mumbai-400013. PAN : AAACB2699H
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Nitesh Joshi., CA
Revenue/Respondent by : Shri Laxmi Kant , Sr. DR

Date of Hearing : 07.05.2024
Date of Pronouncement : 10.05.2024

ORDER

Per Padmavathy S, AM:

These appeals by the Revenue are against the separate orders of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] both dated 26.05.2023 for the AY 2010-11 & 2011-12. The issues contended in these appeals are common and hence, they were heard together and disposed of by this common order.

2. The assessee is a domestic company and filed the return of income for AY 2010-11 on 15.10.2010 declaring the income of Rs. 5,83,68,520/- under the normal provisions of the Income Tax Act, 1961 (for short 'the Act'). For AY 2011-12 the return was filed on 09.09.2011 declaring income under the normal provisions of the Act at Rs. 1,54,20,713/-. The case was selected for scrutiny and the assessment was completed under section 143(3) of the Act wherein the AO assessed the income for AY 2010-11 at Rs. 5,95,49,643/- after making a disallowance under section 14A r.w.r. 8D of the Act. For AY 2011-12 the AO assessed the income at Rs. 1,56,91,200/-. Subsequently DCIT-12(1)(2), Mumbai vide letter dated 19.03.2015 invoked the provisions of section 263 of the Act setting aside the order of assessment passed under section 143(3) of the Act. The reasons for invoking the provisions under section 263 for AY 2010-11 and 2011-12 was that the AO failed to disallow the deduction claimed towards interest expenses on loans borrowed against Short Term Capital Gains (STCG) to the tune of Rs. 1,12,98,722/- and Rs. 22,49,952/- respectively. For AY 2010-11 it was also held that the AO failed to add the disallowance made under section 14A r.w.r. 8D to the book profits computed under section 115JB by completing the assessment under section 143(3) of the Act.

3. The AO passed the order under section 143(3) r.w.s. 263 for AY 2010-11 and 2011-12 wherein the interest expenses claimed against STCG was disallowed. The AO in AY 2010-11 also added the disallowance made under section 14A r.w.r. 8D to the book profits computed under section 115JB. Aggrieved the assessee filed further appeal before the CIT(A) in which the CIT(A) deleted the disallowance made by the AO towards interest expenses and for AY 2010-11 the CIT(A) also deleted the addition made to the book profits towards disallowance made under

section 14A. Aggrieved the Revenue is in appeal before the Tribunal raising the following grounds

For AY 2010-11

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law and on facts in deleting the Interest expenses of Rs. 1,12,98,722/- without appreciating that it is in accordance with Sec.48 of the I.T.Act.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 11,81,123/- made by the AO to Book Profit, without appreciating that it is as per the formula based disallowance as prescribed under clause (f) of Explanation 1 to Sec.115B(2) of the I.T. Act.

3. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

For AY 2011-12

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law and on facts in deleting the Interest expenses of Rs. 22,49,952/ without appreciating that it is in accordance with Sec. 48 of the I.T. Act.

2. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

Interest Expense claimed as part of Cost of acquisition – Ground No.1 for AY 2010-11 & AY 2011-12

4. The Id. Departmental Representative (DR) submitted that as per section 48 the cost of acquisition would include only those expenses which are incurred wholly and exclusively for the purpose of acquiring the asset and therefore the interest expenses claimed by the assessee cannot be considered as cost of acquisition. The Id. DR further submitted that the AO has rightly placed reliance on the decision of the Co-ordinate Bench in the case of ITO Vs. Vikram Sadanand

Hoskote (2007) 18 SOT 130 (Mum) wherein it has been held that interest expenses on borrowed funds are not to be considered as part of cost of acquisition of shares while computing capital gain under section 48 of the Act for the reason that for only those costs which are incurred to bring the assets into existence and put them in working condition should only be considered for cost of acquisition. The Id. DR therefore submitted that the interest paid on the loans borrowed for purchase of shares is a recurring expense and accordingly cannot be considered as part of cost of acquisition.

5. The Id. Authorized Representative (AR) on the other hand submitted that the Department has not disputed the fact that the loans are borrowed for the purpose of acquiring shares and that the interest is paid on such loans borrowed. The Id. AR further submitted that, when the fact that the loans borrowed has direct link to the acquisition of shares is not disputed, then the interest paid thereon which is not claimed as revenue expenditure cannot be denied to be added to cost of acquisition. The Id. AR also submitted that the Co-ordinate Bench of the Tribunal in the case of DCIT Vs. Shri Fritz D Silva (ITA No. 236/Mum/2010 dated 08.05.2015) has considered a similar issue and held that interest paid on loans borrowed for acquisition of shares should be part of cost of acquisition. Accordingly, the Id. AR prayed that the order of the CIT(A) be upheld.

6. We have heard the parties and perused the material available on record. The assessee has considered the interest paid on loan borrowed towards acquisition of shares as part of cost of acquisition and accordingly claimed the same as a deduction for computing the STCG on sale of shares. The AO has denied the claim of the assessee for the reason that the interest paid on borrowed funds does not fall within the ambit of section 48 of the Act. Therefore before proceeding further let us look at the relevant provisions of section 48 which reads as under –

48. The income chargeable under the head "Capital gains" shall be computed, by deducting from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts, namely :—

- (i) expenditure incurred wholly and exclusively in connection with such transfer;*
- (ii) the cost of acquisition of the asset and the cost of any improvement thereto;*

7. From a plain reading of the above provision it can be inferred that any expenditure incurred exclusively for the purpose of the transfer of the asset or the cost incurred for acquisition of the asset and for any improvements pertaining to the said asset are allowable deduction u/s. 48 of the Act. In assessee's case the AO did not refute the fact that the loan is borrowed for the purpose of acquisition of shares and that the interest has been paid on the same. The claim of the assessee was denied by the AO by placing reliance on the decision in the case of Vikram Sadanand Hoskote (supra). However we notice in a subsequent decision by the coordinate bench in the Shri Fritz D Silva (supra), the coordinate bench has relied on the decision of Hon'ble Madras High Court in the case of *CIT v. Trishul Investments Ltd. [2008] 305 ITR 434* to hold that the interest on loans borrowed for the purpose investment in shares are to be allowed as part of cost of acquisition eligible for deduction while computing the capital gains. The relevant observations of the coordinate bench is extracted here under –

“3. We have considered the rival stands. The controversy before us is as to whether the interest paid by the assessee on loans taken for acquiring the shares in the past can be allowed as a deduction u/s 48 as cost of acquisition while computing capital gain on sale of such shares. On this aspect, the Ld. Representative for the respondent assessee relied upon the Judgment of Hon’ble Madras High Court in the case of Trishul Investments Ltd. 305 ITR 434(Madras) which is directly on the point. In the case before the Hon’ble Madras High Court, the assessee was carrying on the business of investment in shares/securities and the profit derived from sale of shares was held subject to capital gains. Apart from other issues, the Revenue had contested the order of the Tribunal wherein the assessee was allowed the interest liability incurred on borrowings utilized to acquire the shares, while determining the cost of

acquisition of shares for the purpose of computing capital gain. As per the Hon'ble High Court, the Tribunal was correct in holding that the interest paid for acquisition of shares would partake of the character of cost of shares and, therefore, the same was rightly capitalized along with the cost of acquisition of shares. The Hon'ble High Court affirmed the decision of this Tribunal that the interest payable on moneys borrowed for acquisition of shares should be added to the cost of acquisition of shares for the purpose of computing capital gains. The aforesaid legal position propounded by the Hon'ble Madras High Court fully covers the conclusion drawn by the CIT(A) in the present case. Notably, it is not disputed by the Revenue that the interest costs in question were incurred on the funds utilized for acquisition of shares in the past. In fact, as per the Statement of Facts filed before the CIT(A), the assessee had tabulated the amount of interest capitalized along with the cost of shares, which were purchased in the past. The assessee had also asserted before the CIT(A) without rebuttal, that the interest cost so incurred in the past was not claimed as a deduction against any other income. Be that as it may, in so far as the factual position is concerned, there is no denial by the Revenue that monies borrowed have been utilized for acquisition of shares in question. Therefore, having regard to the factual findings of the CIT(A), in our view, the legal position as propounded by the Hon'ble Madras High Court in the case of Trishul Investments Ltd (supra) supports the plea of the assessee that interest paid for acquisition of the shares would partake the character of cost of shares and, therefore, assessee had rightly capitalized the interest along with the cost of acquisition for the purpose of computing capital gains. The conclusion of the CIT(A) thus deserves to be affirmed.

4. Before us, the Ld. DR however referred to the decisions of Mumbai Bench of the Tribunal in the case of Macintosh Finance Estates Limited Vs. Additional Commissioner of Income Tax (2007) 12 SOT 324. The question before the Tribunal in the case of Macintosh Finance Estates Limited (supra) was as to whether interest expenses incurred for holding shares as investment can be added to the cost of investment. The Tribunal noted the factual matrix of the case before it and found that the assessee therein was earning dividend income from the investment in shares and it observed that it was a settled position that the interest was allowable under the head "income from other sources". However, the Tribunal did not deem it fit to allow the interest under the head "income from other sources" because of section 14A, under which any expenditure incurred in relation to exempt income cannot be claimed as deduction. The Tribunal decided to deny the claim of assessee on the ground that interest expenditure was an allowable expenditure only under the head "income from other sources" and that the same cannot be allowed to be added to the cost of investment only because in the year before the Tribunal no deduction could be allowed to the assessee with respect to interest because the dividend income was exempt from tax. As per the Tribunal it would result into double deduction. In fact, we find

that the question which is presently before us, arose for consideration directly before the Hon'ble Madras High Court in the case of Trishul Investments Ltd. (supra). Ostensibly, the Mumbai Bench of the Tribunal in the case of Macintosh Finance Estates Limited (supra), did not have the benefit of the Judgment of Hon'ble Madras High Court because the Judgment of Hon'ble Madras High Court was rendered on 12.07.2007, whereas, the decision in the case of Macintosh Finance Estates Limited (supra), was rendered by the Tribunal on an earlier date i.e. on 27.02.2006. Therefore, the Judgment of Hon'ble Madras High Court being directly on the point, we prefer to follow the same.

5. The next decision which has been relied upon by the Ld. DR before us, is the decision of Ahmadabad Bench of the Tribunal in the case of Harish Krishnakant Bhatt Vs. ITO [91 ITD 311]. The said decision of Ahmadabad Bench of the Tribunal is not relevant in the present context because the issue therein was not relating to the treatment of interest paid as cost of acquisition but it was a case where interest paid was claimed as a revenue expenditure against dividend income which was not taxable in the relevant assessment year. The Tribunal opined that since the dividend was the exempt from tax, the interest expenditure could not be claimed as a deduction thereof. Quite clearly, the controversy in the present case stands on a different footing than in the case of Harish Krishnakant Bhatt (supra) We also find that the Hyderabad Bench of the Tribunal in the case of ACIT Vs. Mr. Vishnu Kant Inani [ITA No. 1787/Hyd/2013] dated 13.08.2014, in similar circumstances as are before us, distinguished the decision of Ahmadabad Bench of the Tribunal in the case of Harish Krishnakant Bhatt (supra), and applied the Judgment of Hon'ble Madras High Court in the case of Trishul Investments Ltd. (supra). Therefore, the decision of the Ahmedabad Bench of Tribunal in the case of Harish Krishnakant Bhatt (supra) does not help the Revenue in the present case. The third decision relied upon by the Ld. DR was in the case of Mohanlal M. Shah. Vs. DCIT [105 ITD 669(Mum)] which is also inapplicable in the present situation in as much as the same is merely a reiteration of the decision of Ahmadabad Bench of Tribunal in the case of Harish Krishnakant Bhatt (supra), which we have found to be inapplicable in the facts of the present case. Therefore, the decision of the Mumbai Bench of Tribunal in the case of Mohanlal M. Shah (supra) also does not help the case of Revenue in the present appeal.

6. In view of the above discussion and having regard to the Judgment rendered by the Hon'ble Madras High Court in the case of Trishul Investments Ltd. (supra), we find no error in the conclusion drawn by the CIT(A), which we hereby affirm.”

8. We notice that a similar view has been expressed by the coordinate bench in the case of *Dosch Pharmaceuticals (P.) Ltd vs DCIT* ([2023] 156 taxmann.com 728 (Mumbai - Trib.)). It is also relevant to mention here that the facts of the case law relied on by the AO in assessee's case viz., *Vikram Sadanand Hoskote* (supra) are similar to the case of *Macintosh Finance Estates Limited* (supra) which the coordinate bench has distinguished in the above decision of *Shri Fritz D Silva* (supra). Therefore respectfully following the above decision of coordinate bench in the case of *Shri Fritz D Silva* (supra), we hold that the interest on loans borrowed for the investment in shares which are not claimed as revenue expenditure by the assessee, are eligible to be treated as cost of acquisition under section 48 of the Act. We therefore see no reason to interfere with the decision of the CIT(A).

Adjustment of 14A disallowance to Book Profits computed under section 115JB of the Act – Ground No.2 of AY 2010-11

9. The assessee while filing the return of income of A.Y 2010-11 declared book profits under section 115JB at Rs 19,19,93,247. The Pr CIT-12, Mumbai passed Order under section 263 of the Act on 30.03.2015 for the reason that the AO failed to examine the issue of adding back disallowance u/s 14A of the Act while computing book profit u/s 115JB of the Act. The AO while completing the assessment under section 143(3) r.w.s.263 added the disallowance of Rs.11,81,123 made under section 14A to the book profits of the assessee. The CIT(A), deleted the addition made to the book profits by placing reliance on various judicial pronouncements rendered in this regard by the Tribunals and High Courts. The revenue is in appeal before the Tribunal against the order of the CIT(A).

10. We heard both the parties on the issue contended. It is now a settled position that the disallowance made under section 14A of the Act, cannot be adjusted

against the book profits computed under section 115JB of the Act. We notice that the Hon'ble Bombay High Court in the case of CIT Vs Bengal Finance & Investments Pvt. Ltd (ITA No.337 of 2013 dated 10.02.2015) has considered the same issue where it has been held that –

2. The Revenue press the following questions of law for our consideration:

“(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in restoring the issue of disallowance u/s. 14A to the file of the Assessing to decide afresh in view of the decision of the Honorable Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. [328 ITR 81] without appreciating the fact that the issue of disallowance u/s. 14A read with Rule 8D, has not reached its finality as the Department has agitated the matter before the Honorable Supreme Court, which is pending for final decision.?”

(b) Whether on the facts and in the circumstances of the case, and in law, the ITAT is justified in deleting the addition of Rs. 78,84,387/ under clause (f) of Explanation 1 to Section 115JB relying upon the decision in the case of Goetze (India) Ltd. v/s. CIT (2009) 32 SOT 101 (Del.), which has been followed by ITAT, Mumbai in the cases referred to in para 5 of the impugned order without appreciating that the above decision in the case of Goetze (India) Ltd. was rendered by the ITAT, Delhi Bench on completely distinguishable set of facts, peculiar to the said case?”

3 So far as Question (a) is concerned, we find that the Tribunal has merely followed the decision of this Court in Godrej & Boyce Manufacturing Co. Ltd. v/s. DCIT 328 ITR 81, directing the Assessing Officer to work out the dis allowance on a reasonable basis and not under Rule 8D under the Income Tax Rules for the Assessment Year 2007- 08. The Tribunal has merely followed the decision of the jurisdictional High Court and no fault can be found with the same. Accordingly, no substantial question of law arises in Question (a). Hence dismissed.

4 So far as Question (b) is concerned, the impugned order of the Tribunal followed its decision in M/s. Essar Teleholdings Ltd. v/s. DCIT in ITA No. 3850/Mum/2010 to held that an amount disallowed under Section 14A of the Act cannot be added to arrive at book profit for purposes of Section 115JB of the Act. The Revenue's Appeal against the order of the Tribunal in M/s. Essar Teleholdings (supra) was dismissed by this Court in Income Tax Appeal No.438 of 2012 rendered on 7th August, 2014. In view of the above, question (b) does not raise any substantial question of law.

11. Respectfully considering the decision of the Hon'ble Jurisdictional High Court we see no infirmity in the decision of CIT(A) in deleting the addition of Rs 11,81,123 to the book profit based on disallowance u/s 14A of the Act.

12. In the result, the appeals of the revenue for AY 2010-11 and 2011-12 are dismissed.

Order pronounced in the open court on 10-05-2024.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai