

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

AND

SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

ITA No. 4830/M/2023

Assessment Year: 2017-18

Highpoint Properties Pvt. Ltd. 41-44, Sp Centre, Minoo Desai Marg, Colaba, Mumbai- 400005. PAN: AABCH6197D	Vs.	Assistant Commissioner of Income -tax Cir. No. 1(1)(2), Room No. 533, 5 th Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai- 400020.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rahul Hakani, A.R.
Revenue by : Shri P. D. Chougule, Addl. CIT, Sr. D.R.

Date of Hearing : 15 . 05 . 2024

Date of Pronouncement : 29 . 05 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1057510282(1) Dated 30/10/2023 for the Assessment Year 2017-18.

2. The following grounds of appeal have been raised by the appellant:

“INTEREST EXPENDITURE :

1. The learned Commissioner of Income Tax (Appeals) erred in confirming the order of Assessing Officer disallowing the interest expense of Rs. 42,71,24,908/- incurred on Non-convertible debentures on the ground that no business is done during the year without giving proper opportunity of hearing and without appreciating that the business is set-up and had commenced in earlier year and said interest expense is incurred wholly and exclusively for business purposes and hence, the interest expense of Rs 42,71,24,908/- may be directed to be allowed as a deduction u/s. 37(1) of the Income- tax Act, 1961.

OTHER EXPENSES

2) The learned Commissioner of Income Tax (Appeals) erred in confirming the order of Assessing Officer disallowing the other expense of Rs 1,00,836/- on the ground that no business is done during the year without giving proper opportunity of hearing and without appreciating that the business is set-up and had commenced in earlier year and said expense is incurred wholly and exclusively for business purposes and are necessary for maintaining the corporate structure and hence, the other expense of Rs 1,00,836/- may be allowed as a deduction u/s. 37(1) of the Income - tax Act, 1961.

2.1) Without prejudice to above the learned Commissioner of Income Tax (Appeals) failed to appreciate that other expense of Rs 1,00,836/- may alternatively be allowed as a deduction u/s. 57 of the Act.

DISALLOWANCE UNDER SECTION 14A OF THE ACT.

3) The learned Commissioner of Income Tax (Appeals) failed to appreciate that Assessee has suo-moto made disallowance u/s 14A and no further disallowance u/s 14A is required to be made in the facts and circumstances of the case.

4) The learned commissioner of Income Tax (Appeals) and the learned AO erred in not allowing set-off of brought forward losses.

5) The Appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.”

3. The facts of the case, in brief, are that the assessee is a company engaged in acquiring, by way of purchases or otherwise, properties, estates, land, building, flats, etc. and to build construct, demolish structures, etc. During the assessment year under consideration, the assessee company e-filed the return of income declaring a loss of Rs.36,44,86,304/-. Book profit u/s.115JB was declared at the loss of Rs.38,00,91,193/-. The case was selected for scrutiny assessment through CASS for complete scrutiny and accordingly statutory notices u/s. 143(2) and 142(1) were issued from time to time for compliance.
4. It was noticed by the Ld. assessing officer that the profit and loss account of the assessee company was credited with a sum of Rs.8,16,53,230/-, the details of which are given as under:

Sr. No.	Particulars	Amount(Rs.)
1.	Interest on bank deposit	83,25,000
2.	Interest received on ICDs	7,32,46,336
3.	Dividend on Mutual Funds	63,969

4.	Unclaimed liability written back	16,925
Total		8,16,52,230

However, except interest income and dividend income, no other credit was found to have been made out of the business activities. The Ld. assessing officer, therefore, asked the assessee to explain why the loss under the head “business” amounting to Rs.36,44,87,743/- should not be denied for the preceding assessment year 2016-17 considering the facts that the company was not engaged in any business activities?

In response to that, the assessee submitted as under:

"With respect to your above query, we would like to submit that the company is registered with the Registrar of Companies, Mumbai with the main object of acquiring by way of purchase or otherwise own properties, estates, land, building, flats, etc. and to build, construct, demolish, structures etc.

We submit that to fulfill these objectives, we had incurred expenses mainly interest cost as the company has issued debentures in the past and also taken ICD for business purpose. The company is in constant search of good deals of land and other projects and therefore it is inherent that we had to incur the necessary expenses. Due to good investment opportunity the company has invested in an LLP in the

normal course of business. We submit that this activity was just a part of our business besides other objects carried out.

We submit that expenses claimed are in respect of the business carried on by the company and are wholly and exclusively expended for the purpose of our business. These expenditures were incurred during the year under consideration and are revenue in nature. The condition of section allowable expenses.

As the company is expecting business revenue in future years arising from these activities involving various expenditure, the same should be allowed. We respectfully submit that these expenses should not be disallowed solely on the reason that the company has not earned taxable profit during the year under consideration. As the condition of section 37(1) are satisfied, the expenditure should be allowed if these are for purpose of business. In the instant case, the expenses are for the purpose of business. The tax was duly deducted on the expenses with applicable rates. There is no revenue leakage since the recipient companies have already offered the same to tax in their computation.

Once it is established that there was a nexus between the expenditure and the purpose of the business, it should be allowed. In view of above justification, we submit that the expenses debited to P & L account should be allowed u/s 37(1). Without prejudice to above, your good self may allow the expenses in any other provision of the Income Tax Act, 1961".

5. After considering the above explanation made by the assessee, the Ld. assessing officer concluded that since the assessee company was not engaged in any business activities during the year under consideration, it was not eligible for any deduction as specified in Chapter VIA of the Income Tax Act and as a consequences, following the statutory dictum, the assessee was denied any deduction under the head “business” including interest etc. As a result, no income or loss was considered under the head “business”, because it clearly shows that the assessee company borrowed funds with anticipation that it will do the business but it did not succeed and funds so borrowed were invested in the ICDs etc in the form of short term investment which fetched interest income to the assessee company to the tune of Rs.8,15,71,336/- as evident from Note 18 of the P & L A/c. Thus, this case squarely falls within the ambit of the law laid down by the Hon'ble Supreme Court in the case of Tuticorin Alkali Chemicals & Fertilisers Ltd. (227 ITR 172) (SC). Therefore, the interest so earned by the assessee company calls for taxation under the head “income from other sources” without allowing any deduction.

6. Further, the claim of the allowance u/s.14A r.w. rule 8D was also disallowed on the ground that the company's investment in shares yielded exempted income only.
7. Aggrieved by the order of the Assessing officer, the appeal was filed before the Commissioner of Income Tax (Appeals) who decided the issue against the assessee on the ground that neither any compliance was made nor any details were submitted before the Ld. CIT (A) to explain and substantiate the claim of interest expenses.
8. The appellant, therefore, has preferred this appeal before us against the order of the Ld. CIT, Appeal. The Authorized Representative of the appellant submitted during the course of hearing before us that:

“The aforesaid appeal was heard on 15/5/2024. The present Appeal pertains to A.Y. 2017-18. Appeals for earlier Assessment Year i.e. A.Y. 2016-2017 and subsequent A.Y. i.e. 2018-2019, involving similar issues, are pending before the NFAC/CIT (A). The notices for hearing for all the three Assessment years i.e. A.Y. 2016-2017, 2017-2018 and 2018-2019 were issued simultaneously. However, the Assessee was under the impression that details for the impugned A.Y. 2017-2018 were also filed along with details of A.Y. 2016-17

and A.Y. 2018-2019. But, in fact, no details were filed for the Assessment Year under question. Thus, due to this inadvertence, the assessee couldn't comply with the Notices issued by the Ld. CIT (A)/NFAC who simply confirmed the order of Assessing Officer. Hence, it is humbly prayed that the present appeal be remanded to CIT (Appeals)/NFAC to decide the issue afresh."

9. We have considered the above submission of the appellant and found that the reasons for non-compliance given by the appellant appear to be genuine and *bona fide*. Thus, we remand the issue to the file of Ld. CIT Appeal to decide the issue afresh after providing adequate opportunity of being heard to the appellant. The appellant is also directed to submit all the details before the Ld. CIT, Appeal to substantiate the genuineness of the interest expenditure and other expenses claimed u/s. 37(1) of the IT Act.

10. In the result, the appeal is allowed in the aforesaid terms.

Order pronounced in the open court on 29.05.2024.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

Mumbai, Dated: 29.05.2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.