

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" B " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

ITA No.237/Ahd/2018
Assessment Year : 2013-14

The Income Tax Officer Ward-3(1)(1) Ahmedabad	Vs	M/s.Poggen AMP Nagarsheth Powertronics Pvt.Ltd. C-1/B, 4402, GIDC Estage Phase-IV, Vatva Ahmedabad - 382 445, Gujarat
PAN: AAACP 9130 B		

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Tushar Hemani, Sr. Adv. & Shri Parimalsinh B. Parmar, AR
Revenue by :	Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 10/06/2024
घोषणा की तारीख /Date of Pronouncement: 13/06/2024

आदेश/ORDER

PER SHRI MAKARAND V. MAHADEOKAR, AM:

This appeal by the Revenue is directed against the order of the Ld.Commissioner of Income Tax (Appeals)-9, Ahmedabad [hereinafter as "the Ld.CIT(A)"] dated 28-11-2017 in relation to the assessment order passed by the Assessing Officer (hereinafter as "the AO") under section 143(3) of the Income Tax Act, 1961 (hereinafter as "the Act") for the Assessment Year (AY) 2013-14.

Facts of the Case:

2. The assessee is engaged in the business of manufacturing, trading, buying, selling, dealing, exporting, importing, acting as an agent and distributor, wholesaling, and retailing of electrical stamping, transformers and their accessories, rotors, laminations, and ferrous and silicon steel/coils/strips, including HR/CR steel. The Assessee filed its return of income for the year under consideration on 30-11-2013 declaring loss of Rs.3,91,59,525/- and the return was processed u/s 143(1) of the Act as per the returned income. Later on, the case was selected for scrutiny. The AO completed the assessment making an addition of Rs.15,10,05,722/- The addition was made on account of under valuation of closing stock, disallowance u/s 14A of the Act, disallowance in respect of ESI, disallowance on account of interest on unpaid purchase price and disallowance towards insurance expenses.

3. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld.CIT(A), who partly allowed the appeal. Hence, the Revenue is in appeal before us with the following grounds of appeal:

- “1. The CIT(A) has erred in law and on facts of the case in deleting the Addition of Rs.13,23,88,046/- without appreciating the fact that the decision of CIT(A) in the case of Riddhi Steels & Tubes Ltd. was not accepted and a SLP was proposed against the order of the Hon'ble High Court of Gujarat.*
- 2. The CIT(A) has erred in law and on facts of the case in deleting the disallowance of Rs.34,57,503/- u/s 14A towards investment made in shares.*
- 3. The CIT(A) has erred in law and on facts of the case in deleting the disallowance of Rs.60,98,247/- towards interest on unpaid purchase price.*
- 4. The CIT(A) has erred in law and on facts of the case in deleting the disallowance of Rs.24,66,506/- towards insurance expenses.*

5. *On the facts and Circumstances of the case, the Ld. Commissioner of Income-tax (A) ought to have upheld the order of the Assessing Officer in respect of above issues.*
6. *It is, therefore, prayed that the order of the Ld. Commissioner of Income-tax (A) may be set-aside and that of the Assessing Officer be restored."*

On Ground No.1:

4. The Ld. Departmental Representative (DR) relied on the order of AO and stated that the Ld. CIT(A) has not considered all aspects of the replies of the assessee. He relied on the judgement of Hon'ble High Court of Madhya Pradesh in the case of Suraj Bhan Oil (P.) Ltd. v. Deputy Commissioner of Income-tax reported in [2022] 138 taxmann.com 19 (MP).

5. The Ld.Counsel for the assessee, on the other hand, put before us the facts that in response to the show-cause notice of the AO regarding the discrepancy in valuation of closing stock, the assessee furnished detailed explanations reconciling the difference. The following points of explanation were stated by the Ld.Counsel for the assessee:

- a. Difference in valuation of "closing stock" as of 31.03.2013 as per "books of accounts" and as per "stock statement furnished to bank for credit facilities". Such difference was in respect of various items forming part of closing stock and the same were explained in detail during the course of the assessment proceedings.
- b. The AO failed to appreciate the fact that the difference in closing stock as per stock statement and as per books of accounts was fully reconciled and as a matter of fact, book stock was higher as compared to stock as per statement submitted to bank. The issue was merely of misclassification.

- c. The company is having dies, jigs and tools which are part of the fixed assets but the same was included in the statement of stock provided to the bank.
- d. In case of raw material, the difference between books stock and stock as per bank statement was not on account of quantity of the material but due to adopting market value for submitting to the bank.
- e. In case of work-in-progress and finished goods also the difference was not account of quantity but due to difference in value adopted for valuation. In case of valuation for bank the value including excise duty and other elements were considered, whereas for the purpose of valuation for accounts the consistent method of valuation was adopted.
- f. In case of goods in transit the difference between stock as per books of accounts and as per stock statements submitted to bank was on account of ad hoc value adopted for submission to the bank.
- g. The AO has not found any defect in purchases, consumption and sales of stock.
- h. The stock statement submitted to bank is prepared on estimated and ad-hoc basis. As against that, book stock is accounted for in accordance with the accounting standards and also certified by Chartered Accountant.

5.1. He further stated that the AO, however, was not convinced with the assessee's submissions and proceeded to make an addition of Rs.13,23,88,046/- on account of under-valuation of closing stock. The AO rejected the value of closing stock disclosed in the books of accounts under section 145(3) of the Act and adopted the value shown in the stock statement furnished to the bank, with certain adjustments. Upon appeal, the Ld.CIT(A) deleted the impugned addition, noting that the stock statement supplied to the bank was primarily for securing higher borrowing

facilities and did not necessarily reflect the actual stock position. The Ld.CIT(A) followed the jurisdictional High Court's decisions which consistently held that stock statements furnished to banks for credit purposes do not represent the true value of closing stock as per the books of accounts. The Ld.CIT(A) also observed that the difference in closing stock as per the books and the stock statement was fully reconciled, and no defects were found in the documents maintained by the assessee, including the purchase register, sales register, stock register, and records of raw material consumption.

6. We have heard the arguments of both parties and perused the material on record. The key-points for consideration are:

- a. The assessee has consistently followed the same method of valuation of closing stock year after year, which has been accepted by the Department.
- b. The stock statement given to the bank is prepared on an estimated and ad-hoc basis for availing higher credit facilities. This practice is well recognized and has been acknowledged in various judicial pronouncements.
- c. The stock has not been physically verified by the bank and is hypothecated, not pledged. This indicates that the stock statement does not necessarily reflect the actual stock held by the assessee.
- d. The CIT(A) rightly relied on several decisions of the Gujarat High Court which held that the stock statement provided to banks is primarily for obtaining higher borrowing limits and does not depict the true position of closing stock as per the books of accounts. Notable decisions include:
 - i. CIT vs. Riddhi Steel & Tube Pvt. Ltd. - 40 taxmann.com 177 (Guj).

- ii. CIT vs. Arrow Exim Pvt. Ltd. - 230 CTR 293 (Guj).
- iii. CIT vs. Patel Proteins Pvt. Ltd. - 393 ITR 274 (Guj).
- iv. CIT vs. Nangalia Impex - 54 taxmann.com 225 (Guj).
- v. CIT vs. Vrundavan Floor Mills - 72 taxmann.com 250 (Guj).

The judgement relied upon by the Ld.DR deals with different facts. In the case of Suraj Bhan (Supra), the assessee could not explain the difference in the stock valuation. Also, no evidence was produced by the assessee of sale and purchase of raw material and finished goods.

- e. The difference between the book stock and the stock statement was duly reconciled, and the AO did not find any defects in the books of accounts.
 - f. The addition for under-valuation of closing stock was made only for AY 2013-14, while in previous years no such additions were made despite similar differences. The principle of consistency demands that such an addition should not be made in isolation for one year.
 - g. Auditor of the company has not given any adverse comments on such discrepancies.
- 6.1. While respecting the judgment of Hon'ble High Court of Gujarat in case of Riddhi Steel & Tube Pvt. Ltd. (Supra), for the sake of clarity, we reproduce the relevant part of the judgement -

"9.1 Again, the Court cannot be oblivious of the fact that the assessee had been subjected to statutory audit under the Companies Act, 1956 and also tax audit under the Income-tax Act. No errors were found at any stage in the report submitted by these auditors and for the past eight years, the assessee had been following continuously/consistently the method of accounting, as provided under section 145 of the Act, valuing the closing

stock and inventory, as provided under section 145A of the Act. The assessee was also subjected to Excise and VAT and the books of account were found genuine and no discrepancies were found even by the Excise Audit report for the period January 2009 to December 2009 which was carried out by the Excise Revenue Audit Team, wherein the Excise Department, after a detailed scrutiny of the books of account, stock register, excise records, accepted the books of account and other records maintained by the assessee to be true, correct; except finding few discrepancies in so far as inventory is concerned.

9.2 It is a settled law, as rightly held by the Tribunal, that only on account of inflated statements furnished to the banking authorities for the purpose of availing of larger credit facilities, no addition can be made if there appears to be a difference between the stock shown in the books of account and the statement furnished to the banking authorities. If, for the purpose of fulfilling the margin requirements of the bank purely on inflated estimate basis, when the stock statement had reflected inflated value of the stock, in wake of otherwise satisfactory explanation, both - for the purpose of value as well as quantity, we find no reason to interfere with the order of the Tribunal."

6.2. In light of the above observations, it is clear that the stock statement furnished to the bank cannot be the sole basis for determining the closing stock value for tax purposes unless supported by any independent verified evidence. The Ld.CIT(A) has rightly deleted the addition made by the AO, and the same is upheld. Therefore, the Ground No.1 of the Revenue is dismissed.

On Ground No. 2:

7. The addition/disallowance made by the AO comprised of an amount of Rs.31,84,027/- out of interest expenses and Rs.2,73,476/- towards administrative expenses. The Ld.Counsel for the assessee narrated the facts that during the course of assessment, the AO made an addition u/s 14A of the Act for an amount of Rs.34,57,503/- with respect to the investment of Rs.10,90,49,400/- in shares and securities. The total investment as on

31-03-2013 stood at Rs.10,90,49,400/-. Out of this, an amount of Rs.10,90,14,400/- relates to investments in equity shares of Posco-Poggen Amp Electrical Steel Pvt. Ltd. The appellant-company was holding 5750 equity shares of Rs.100/- each of Poggen-Amp Nagarsheth Electricals Pvt. Ltd. This company was amalgamated with Posco-Poggen Amp Electrical Pvt. Ltd and the assessee received 30,18,750 Equity Shares of Rs.10/- each against the 5,750 Equity Shares of Rs.100/- each held by the company earlier.

7.1 The Ld.Counsel for the assessee contented that there was no fresh investment made by the assessee-company in equity shares. The Ld.Counsel further submitted that the addition is made out of expenses which are incurred wholly and exclusively for the purpose of earning the income which is chargeable to tax. He further submitted that during the year under consideration, the assessee has not earned any exempt income and the assessee has not claimed exemption in respect of any part of income earned by it. The assessee-company has neither incurred any expenditure, nor has it claimed any expenditure in relation to any exempt income. The Ld.Counsel for the assessee explained that the company has not incurred any expenditure or financial cost with respect to the investment made by it and, in fact, the investment was made out of the assessee's own fund, the share capital and reserves & surpluses of the appellant-company as on 01-04-2012 stood at Rs.26.82 Crores, which was much more than the total investment of Rs.12.22 Crores.

7.2. The assessee placed reliance on the decision of Hon'ble Jurisdictional High Court of Gujarat in the case of CIT vs. Corrtch Energy Limited (in ITA No. 239 of 2014).

7.3. The Ld.Counsel for the assessee stated that the Ld.CIT(A) has deleted the disallowance agreeing to the contention of the assessee. He reiterated that in assessee's own case for AY 2012-13, disallowance u/s 14A of the Act was deleted after following the same decision of Corrttech Energy Ltd. (Supra). This decision of Ld.CIT(A) was upheld by the Co-ordinate Bench as per ITA No.2446/Ahd/2016 dated 24-01-2019.

8. The Ld.DR relied on the order of AO and did not raise any objection to the contention of the assessee.

9. We have heard the contentions of both the parties. Section 14A of the Act is not a provision which empowers the Assessing Officer to disallow expenditure which has been incurred for earning income chargeable to tax in each and every case where there is an investment which is capable of earning exempted income. Section 14A of the Act will come into play only in such cases where there is a claim by the assessee that particular income is exempt u/s.10 of the Act or is not liable to be included in the total income of the assessee, and the assessee had incurred expenditure in relation to such exempted income.

10. In the present case, it is evident that there is no claim of any exempted income. When there is no claim of exemption in respect of any income during the year, provisions of Section 14A of the Act has no applicability, particularly so when the appellant has not incurred any expenditure whatsoever for making the investments. The Hon'ble Jurisdictional High Court of Gujarat in the case of CIT vs. Corrttech Energy Limited (in ITA No.

239 of 2014) has held that in a case where there is no income which is not chargeable to tax, provisions of Section 14A of the I.T. Act is not applicable.

10.1 It is also evident that the company has sufficient interest free funds. The details of such interest free funds are:

Particulars	Balance as on 31-3-2013 (Rs.)	Balance as on 31-3-2012 (Rs.)
A. Shareholders Funds	27,98,83,070	26,82,45,607
B. Investments	10,80,49,400	13,06,000
C. Ratio of Interest free Funds and Investments (A/B)	2.59 times	205.39 times

10.2 It is also a settled law that when assessee has substantial interest free funds disallowance u/s.14A of the Act is unwarranted. We reproduce the relevant part of the judgment of Hon'ble High Court of Gujarat in the case of CIT Vs. Suzlon Energy Ltd. reported at [2013] 354 ITR 630 (Guj.).

"3. Question (2) pertains to disallowances made by the assessing officer under section 14A of the Act in respect of interest expenses incurred for investments made in subsidiaries and administrative expenses. Commissioner (Appeals) deleted such disallowances, upon which, Revenue approached the Tribunal. The Tribunal rejected Revenues appeal, making following observations: -

"3.5 We have considered the rival submissions, perused the material on record and have gone through the orders of authorities below. Regarding the grounds raised by the revenue in respect of disallowance of interest expenditure made by the assessing officer under section 14A and deletion made by learned Commissioner (Appeals), we find that no interference is called for in the order of learned Commissioner (Appeals). We hold so because we find that with regard to the investment of Rs.5907.18 lac in foreign subsidiaries, no disallowance can be made under section 14A because dividend income from foreign subsidiaries is taxable in India. Regarding balance investment of ` 38 crore approximately in Indian subsidiaries, we find that interest free own funds of the assessee is many time more than this investment because interest free funds available with the assessee as on 31-3-2005 as per the balance sheet as on that date is of ` 929.57 crore. There is no finding given by the assessing

officer regarding any direct nexus between interest bearing borrowed funds and investment in Indian subsidiaries. Hence, in our considered opinion, no disallowance under section 14A can be made out of interest expenditure in the facts of the present case. Accordingly, grounds no. 2 & 3 of the Revenues appeal are rejected."

3.1 From the above portion, we noticed that the Tribunal has bifurcated the expenditure in two parts - first related to investment of ` 5907.18 lakh in foreign subsidiaries, it was held that the dividend income from such subsidiaries is taxable in India and that therefore, section 14A would have no applicability. The remaining amount pertain to investment of ` 38 crore (rounded off) made in Indian subsidiaries. In this respect, the Tribunal noted that the assessee had to its disposal, own interest free funds many times over the investment in question. As per the balance sheet as on 31-3-2005, the assessee had interest free fund of ` 929.57 crore.

3.2 Such being the facts, the Tribunal, in our opinion, committed no error. No question of law, therefore, arises."

10.3. Considering the facts of the case, material available on records and respectfully following the judicial pronouncements as relied upon by the assessee, we dismiss the Ground No. 2 of the Revenue.

On Ground No.3:

11. The ground relates to addition of Rs. 60,98,247/- made by AO and deleted by the Ld.CIT(A) related to interest paid by assessee to POSCO India Pure Processing Centre (POSCO) on amount of unpaid purchase price of raw material.

12. The Ld.DR relied on the order of AO in this regard.

13. On the other hand, the Ld.Counsel for the assessee stated that assessee purchased raw-material from POSCO and as none of the vendors of the said raw-material used to give credit for purchase of said material

and POSCO allowed the credit facility for purchase of raw material (but charged interest at the rate of 6% per annum), material was purchased from POSCO. Since there was a delay in payment to POSCO, assessee paid interest to POSCO. He further submitted that POSCO is not a related party. Such interest was paid to POSCO in earlier years also. Such interest was paid on account of contractual obligation at 6% per annum when interest paid to bank was at the rate of 15% or more per annum. POSCO is enjoying monopoly among suppliers of electrical steel coils and importantly purchases from POSCO have not been doubted by the AO.

13.1. The Ld.Counsel stated that the Ld.CIT(A) has deleted the addition considering these points and relying on the decision of co-ordinate bench in case of assessee itself in AY 2012-13. The ITAT had decided the issue in favour of assessee in AY 2012-13 in ITA No. 2446/Ahd/2016 dated 24-01-2019.

13.2. Considering the facts and the decision of Co-ordinate Bench, we dismiss this ground by upholding order passed by the Ld.CIT(A).

On Ground No. 4:

14. The assessee incurred insurance expenses of Rs.24,66,506/- in relation to Keyman Insurance Policy, where the beneficiary of such policies was assessee company and not the individual directors. The AO disallowed this expenditure concluding that the same were incurred towards personal expenses. This was deleted by the Ld.CIT(A) as the same issue was decided

by the Ld.CIT(A) for AY 2012-13 and later upheld by the ITAT in ITA No. 2446/Ahd/2016 dated 24-01-2019.

15. The Ld.DR relied on the order of AO and counsel for the assessee on the order of the Ld.CIT(A). While relying on the order of the Ld.CIT(A), the Ld.Counsel for the assessee stated that Rs.19,216/- was not related with Keyman Insurance Policy and to that extent the disallowance be confirmed. He further stated that the Ld.CIT(A) has corrected deleted the disallowance of Rs.24,47,380/- (Rs.24,66,506 less Rs. 19,126/-).

16. Considering the fact that the insurable interest is held in the company in case of Key Insurance Policies and the decision of Co-ordinate Bench, we dismiss the appeal of the Revenue.

17. Ground Nos.5 and 6 are general in nature, hence not adjudicated.

18. In the combined result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 13th June, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

Ahmedabad, Dated 13/06/2024

टी.सी.नायर, व.नि.स.।T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-9, Ahmedabad
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
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