IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3031/Mum./2023
(Assessment Year : 2012-13)

ITA no.3004/Mum./2023
(Assessment Year : 2013-14)

ITA no.3030/Mum./2023
(Assessment Year : 2014-15)

DCIT-19(3)
Room No. 513, Fifth Floor,
Piramal Chambers, Lalbaug,
Parel, Maharashtra-400012 ……. Appellant

v/s

Shrenik Dheerajmal Siroya
150, Mumba devi Road,
Mumbai-400002 ……. Respondent
PAN- AABPS5177K

Assessee by :Shri Vimal Punmiya/Prakash Bohra
Shri Ketan Jain

Revenue by :Shri Manoj Kumar Singh

Date of Hearing – 21/03/2024	Date of Order – 18/06/2024

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the Revenue challenging the separate impugned orders passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, ["*learned CIT(A)"*], for the assessment years 2012-13, 2013-14 and 2014-15.

2. The present appeals filed by the Revenue are time barred. The appeal for the assessment year 2012-13 is delayed by 90 days, the appeal for the assessment year 2013-14 is delayed by 262 days, and the appeal for the assessment year 2014-15 is delayed by 264 days. Along with the present appeals, the Revenue has filed applications seeking condonation of delay duly signed by the Assessing Officer ("*AO*"), wherein it has been submitted that due to technical glitch the impugned orders passed by the learned CIT(A) were not reflecting in the Income Tax Business Application ("*ITBA*") portal. It was only after raising the ticket on the ITBA helpdesk, the impugned orders were re-uploaded on the ITBA portal on 17/08/2023. Thereafter, necessary steps were taken for filing the present appeal before the Tribunal. It is submitted that due to the aforesaid circumstances the present appeals are delayed.

3. We find that the reasons stated by the AO for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, the Revenue did not stand to benefit by the late filing of the present appeals. In view of the above and having perused the condonation applications filed by the AO, we are of the considered view that there exists sufficient cause for not filing the present appeals within the limitation period and therefore, we condone the delay in

filing the appeals by the Revenue and we proceed to decide the appeals on merits.

4. Since all the appeals pertain to the same assessee involving similar issues arising out of a similar factual matrix, therefore, as a matter of convenience, these appeals were heard together and are being decided by way of this consolidated order. With the consent of the parties, the Revenue's appeal for the assessment year 2012-13 is taken up as a lead case. In all the appeals, the Revenue has raised similar grounds. For reference, the grounds raised by the Revenue in its appeal for the assessment year 2012-13 are reproduced as under:-

> *"1 a. ''Whether on the facts and on the circumstances of the case, The Ld. CIT(A) has erred in deleting the addition made by the AO and allowing the disallowance of Rs. 2,57,43,893/- towards excess interest claimed v/s. 36(1)(iii)/37(1) of the Income; Tax Act ?"*
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> *2 b. "Whether on the facts and on the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by the AO and allowing the disallowance of Rs. 2,57,43,893/- without considering the facts that the assessee diverted interest bearing funds into interest free loans and advances to the related concerns?"*
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> *3. c. "Whether on the facts and on the circumstances of the case, the Ld. CIT(A) was right in ignoring the decision of the Hon'ble Bombay High Court, in the case of Phaltan Sugar Work Ltd. Vs Commissioner of Wealth Tax (Bom) 208 ITR 989, wherein it was held that deduction for payment of interest u/s 36(1)(iii)/37(1) of the Income-Tax Act allowable, only if the assessee borrows capital for its own business ?*
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> *4 d. "Whether on the facts and on the circumstances of the case, The Ld. CIT(A) has erred in deleting he addition made u/s 36(1)(iii)/37(1) of the Income Tax Act, without appreciating the fact that the investments made or creating assets in sister concerns, out of the borrowed funds / loans from the Bank ?*
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> *5 e. "Whether on the facts and on the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made u/s 14A r.w.s Rule 8D of the income Tax Act, towards exempt income of Rs. 69,53,894/-without appreciating the facts that certain indirect expenses are incurred in earning of exempt income has required to be disallowed u/s 14A of the Act. ?'"*

6 f. "Whether on the facts and on the circumstances of the case, the Ld. CIT(A) was right in ignoring the AO's observation that the assessee has failed to establish commercial expediency of the interest bearing loan invested in acquiring assets for projects and income was not generated during the year under consideration?"

7 g. "In this case the CIT(A) order was received in Appeal Module of ITBA portal of Pr.CIT-19, Mumbai on 23.03.2023, however, due to technical glitch the order could not be opened for reading. After raising ticket on ITBA helpdesk, the said order was re-uploaded on ITBA Portal on 17.08.2023. Therefore, the appeal in this case is late by 98 days. The appellant prays that the delay in filing of appeal due to technical glitch may kindly be condoned."

8 h." The appellant prays that the order of the Ld. CIT(A), on the grounds be set-aside and that of the Assessing Officer be restored ?"

9 i. "The appellant craves leave to amend or alter any grounds or odd a new ground which may be necessary during the course of Appellate proceedings?"

5. The first issue that arises for our consideration pertains to deletion of disallowance under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 ("*the Rules*").

6. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and has earned share of profit from various firms, which was claimed as exempt, interest income, and income from other sources. For the assessment year 2012-13, the assessee filed his return of income on 31/08/2012 declaring a total income at Rs. Nil, after adjusting losses of current year of Rs. 2,23,98,954. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, it was observed that the assessee has earned dividend income of Rs.66,114, which was claimed as exempt under section 10(34) of the Act. Accordingly, the assessee was asked to furnish the details of the same and to furnish the details of the expenditure directly

incurred or attributable for earning of this exempt income, in view of the provisions of section 14A read with Rule 8D of the Rules. In response thereto, the assessee submitted that he has not incurred any expenditure, which is attributable to the earning of the exempt income. The AO vide order dated 31/03/2015 passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that it cannot be accepted that the assessee has not incurred any expenditure for earning the exempt income as the assessee has not furnished any evidence to prove that the expenses debited to the profit and loss account are not incurred/attributable for/to earning of exempt income. Accordingly, the AO computed the disallowance of Rs. 69,53,894 under section 14A read with Rule 8D of the Rules, as follows:-

(i) Disallowance under Rule 8D(2)(i) – Nil
(ii) Disallowance under Rule 8D(2)(ii) – Rs.66,80,562
(iii) Disallowance under Rule 8D(2)(iii) – Rs.2,73,332

7. The learned CIT(A), vide impugned order, allowed the ground raised by the assessee on this issue by following the order of its predecessor rendered in assessee's own case for the assessment years 2011-12, 2013-14, and 2014-15. Being aggrieved, the Revenue is in appeal before us.

8. We have considered the submissions of both sides and perused the material available on record. In the present case, it is undisputed that the assessee received dividend income of Rs.66,614, which was claimed as exempt under section 10(34) of the Act. It is the plea of the assessee that investment in shares and mutual funds are made out of own funds, and

therefore, borrowed funds, on which interest was paid by the assessee, was not utilised for the purpose of investment. In support of its submission, the assessee has furnish its capital account and consolidated balance sheet as on 31/03/2012, which forms part of the paper book on page no.12. From the perusal of the details in capital account and consolidated balance sheet, we find that the investment in shares (unquoted) is Rs.5,43,02,835, and investment in shares/debentures (quoted) is Rs.69,97,724. We further find that the assessee own funds are Rs.6,01,97,179 and he received interest-free advances/loan of Rs.24,05,23,708, during the year. From careful perusal of the consolidated balance sheet and capital account of the assessee, it is further pertinent to note that the assessee has also given interest-free loan/advances amounting to Rs.17,60,28,513. However, it is sufficiently evident that the assessee's own funds and interest free funds are more than investments, including the investments for earning exempt income, and interest-free advances given. This factual position is not in dispute. The financial position of the assessee, as per the consolidated capital account and balance-sheet, is summarised as follows:-

Sr. No.	Particulars	Amount
1.	Owned Funds (Capital)	6,01,97,179
2.	Interest-free advances received	24,05,23,708
3.	Total Interest Free/Capital Funds available	30,07,20,887
4.	Investment in Shares and Interest-free advances given	23,51,69,315
5.	Excess available	6,55,51,572

9. In the present case, it is evident from the record that no disallowance was made under Rule 8D(2)(i) of the Rules. Further, the AO made a disallowance of Rs.66,80,562 under Rule 8D(2)(ii) of the Rules in respect of the expenditure incurred by way of interest, during the previous year, which is not directly attributable to any particular income or receipt. We find that the Hon'ble jurisdictional High Court in CIT v/s HDFC Bank Ltd., [2014] 366 ITR 505 (Bom.) held that where assessee's own funds and other non-interest bearing funds were more than the investment in tax-free securities, no disallowance under section 14A of the Act can be made of the part of interest payments. We further find that the Hon'ble Supreme Court in South Indian Bank Ltd. vs CIT, [2021] 438 ITR 001 (SC), observed as follows:-

> *"27. The aforesaid discussion and the cited judgments advise this Court to conclude that the proportionate disallowance of interest is not warranted, under section 14A of Income Tax Act for investments made in tax-free bonds/securities which yield tax-free dividend and interest to Assessee Banks in those situations where, interest free own funds available with the Assessee, exceeded their investments. With this conclusion, we unhesitatingly agree with the view taken by the learned ITAT favouring the assessees."*

10. Therefore, respectfully following the law laid down by the Hon'ble Supreme Court and the Hon'ble jurisdictional High Court in cases cited supra, we find no merit in disallowance of Rs.66,80,562 made by the AO under section 14A read with Rule 8D(2)(ii) of the Rules.

11. As regards the disallowance of Rs.2,73,322 computed under section 14A read with Rule 8D(2)(iii) is concerned, it is pertinent to note that the total dividend income claimed as exempt by the assessee under section 10(34) of the Act is only Rs.66,114. We find that the Hon'ble jurisdictional High Court in

Nirved Traders (P.) Ltd. v/s Dy. CIT, I.T. Appeal No.149 of 2017, vide judgement dated 23/04/2019, has held that disallowance under section 14A of the Act cannot be more than exempt income. We further find that the Special Bench of the Tribunal in the case of ACIT v/s. Vireet Investment (P) Ltd. (2017) 165 ITD 27 (Delhi-Trib.), held that only those investments are to be considered for computing average value of investments, which yield exempt income during the year. Therefore, we direct the AO to recompute the disallowance under section 14A read with Rule 8D(2)(iii) of the Rules in view of the aforesaid decisions, and if the disallowance so computed by applying above said principles works out to be lower than the value of exempt income, then the disallowance under section 14A should be restricted to the lower amount so computed.

12. Accordingly, the impugned order in respect of deletion of disallowance under section 14A read with Rule 8D(2)(ii) of the Rules is upheld. While in respect of disallowance made under section 14A read with Rule 8D(2)(iii) of the Rules, the impugned order is modified, and the AO is directed to compute the disallowance under section 14A read with Rule 8D(2)(iii) of the Rules in view of directions as rendered in the foregoing paragraph. As a result, the grounds raised by the Revenue pertaining to deletion of disallowance under section 14A of the Act are partly allowed for statistical purposes.

13. The next issue that arises for our consideration pertains to deletion of disallowance under section 36(1)(iii) of the Act.

14. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, it was observed that interest expenditure of Rs. 4,99,49,347 has been debited in connection with the loans taken. From the balance sheet of the assessee, it was also observed that the assessee has advanced interest free loan on which interest was not charged by the assessee. Accordingly, the assessee was asked to explain as to why the proportionate interest expenditure should not be disallowed for diversion of interest-bearing borrowed capital towards advancing of interest free loans. In response thereto, the assessee submitted that the said advances are not made out of interest-bearing borrowed funds but the same have been made out of interest free advances available with the assessee. The AO vide order passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that in the absence of any documentary evidence, it cannot be presumed that advances made out of mixed bag created of interest-bearing funds and non-interest bearing funds. Accordingly, the AO computed the disallowance of Rs.2,57,43,893 under section 36(1)(iii) of the Act. The learned CIT(A), vide impugned order, allowed the ground raised by the assessee on this issue by following the decision of its predecessor rendered in assessee's own case for the assessment years 2013-14 and 2014-15. Being aggrieved, the assessee is in appeal before us.

15. We have considered the submissions of both sides and perused the material available on record. It is evident from the record that during the appellate proceedings before the learned CIT(A), the assessee made the following submissions, in respect of interest free loans given during the year:-

"2. From the aforesaid analysis, it is clear beyond doubt that interest free capital of the assessee of Rs.6,01,97,179 is utilized in personal assets including investment in shares and debentures which is Rs.6,41,30,851/-. The amount invested in the shares and securities has been largely made from the capital of the assessee. Accordingly the Dividend income or exempt income as claimed by your honor has been earned from the capital invested by the assessee and no interest or any revenue expenditure is claimed to earn such income. The excess investment over and above from the capital of Rs.39,33,672/- is made from interest free advances received from relatives which was at perusal with the assessee as evident from above balance-sheet.

3. Secondly, the assessee has taken interest free loans aggregating to Rs.24,05,23,708 as against which the assessee has given interest free loans or advances aggregating to Rs.17,38,68,756. Accordingly, further utilizing an amount of Rs.39,33,672, the assessee still had interest free funds available of Rs.6,27,21,280.

4. Thirdly, the assessee has taken interest bearing loans aggregation to Rs.61,85,61,946. As against the same, the assessee has given interest bearing loans of Rs.58,01,29,305 and investment in projects on which interest is not earned of Rs.8,23,10,565. Therefore, the interest bearing funds aggregating to Rs.61,85,61,946 and interest free loans taken remaining with the assessee (AS PER POINT 3 ABOVE) of Rs.6,27,21,280 totalling to Rs.68,12,83,226 in total have been utilized in giving interest bearing loans as well as investment in projects aggregating to Rs.66,24,39,870.

5. Thus the interest bearing loans as well as interest bearing overdrawn capital from the firm taken by the assessee are mainly used for giving interest bearing loans to outsiders and are partly utilized in making investment in projects of Rs.8,23,10,565 from which the assessee is going to earn profits in future on completion of the projects based on "commercial prudency". Therefore, it cannot be said that the assessee has used interest bearing loans for giving interest free loans or for non-business purposes."

16. Further, from the financial position of the assessee, as per the consolidated capital account and balance-sheet, as noted in the foregoing paragraph, it is evident that the assessee's own funds and interest free funds are more than investments, including the investments for earning exempt income, and interest-free advances given. We find that the Hon'ble jurisdictional High Court in CIT v/s Reliance Utilities & Power Ltd., [2009] 313 ITR 340 (Bom.), held that if funds are available with the assessee, which are sufficient to meet the investment, then presumption would arise that the

investment is made out of funds so available with the assessee and, therefore, no disallowance under section 36(1)(iii) can be made. In view of the above, respectfully following the aforesaid decision, we find no infirmity in the impugned order in deleting the disallowance made under section 36(1)(iii) of the Act. As a result, the grounds raised by the Revenue pertaining to deletion of disallowance under section 36(1)(iii) of the Act are dismissed.

17. In the result, the appeal by the Revenue for the assessment year 2012-13 is partly allowed for statistical purposes.

18. Since similar issues have been raised in the appeal for the assessment years 2013-14 and 2014-15, therefore, our aforesaid findings/conclusion shall apply *mutatis mutandis*. In the result, the appeals by the Revenue for the assessment years 2013-14 and 2014-15 are partly allowed for statistical purposes.

19. To sum up, the appeals by the Revenue are partly allowed for statistical purposes.

Order pronounced in the open Court on 18/06/2024

Sd/-	**Sd/-**
PRASHANT MAHARISHI	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 18/06/2024

Vijay Pal Singh, (Sr. PS)
Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The PCIT / CIT (Judicial);

(4) The DR, ITAT, Mumbai; and

(5) Guard file.

True Copy

By Order

Assistant Registrar
ITAT, Mumbai