

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

I.T.A.No.269 & 270/Ind/2023
A.Ys. 2012-13 & 2013-14

M/s. Som Distilleries Private Limited, Som House, 23 Zone II, M.P. Nagar, Bhopal PAN: AACCSO397P (Assessee/Appellant)	बनाम/ Vs.	Dy. CIT, 1(1), Bhopal (Revenue/Respondent)
--	---------------------	---

Assessee by	Shri Sumit Nema, Sr. Adv. & Shri Gagan Tiwari, Adv.
Revenue by	Shri Ram Kumar Yadav, CIT DR

Date of Hearing	11.07.2024
Date of Pronouncement	31.07.2024

आदेश / ORDER

Per Bench:

The captioned two appeals are filed by assessee, the details are as under:

- (a) ***I.T.A. Nos. 269/Ind/2023*** is an appeal by assessee against appeal-order dated 05.06.2023 passed by learned Commissioner of Income-tax (Appeals)-3, Bhopal ["CIT(A)"] which in turn arises out of assessment-order dated 27.03.2015 passed by Dy. CIT, 1(1), Bhopal ["AO"] u/s 143(3) of the Income-tax Act, 1961 ["the Act"] for assessment-year ["AY"] 2012-13.

(b) ***I.T.A. Nos. 270/Ind/2023*** is an appeal by assessee against appeal-order dated 30.05.2023 passed by same CIT(A) which in turn arises out of assessment-order dated 22.03.2016 passed by ITO, 1(1), Bhopal ["AO"] u/s 143(3) read with section 263 of the Act for AY 2013-14.

2. Since these appeals are related to same assessee, argued by same counsels and involve certain identical grounds, they were heard together and are being disposed of by this consolidated order for the sake of clarity, brevity and convenience.

Assessee's I.T.A. Nos. 269/Ind/2023 for AY 2012-13:

3. The grounds raised in this appeal are as under:

1. *That on the facts and in the circumstances of the case and in law, the findings and the decision of the Ld. CIT(A) in sustaining the disallowance of Rs. 1,55,060/- u/s 14A are neither justified nor lawful and therefore that said disallowances of Rs. 1,55,060/- be kindly deleted.*
2. *That on the facts and in the circumstances of the case and in law, the findings and the decision of the Ld. CIT(A) in sustaining the disallowance of Rs. 4,41,500/- out of donation expenses are neither justified nor lawful and therefore that said disallowance of Rs. 4,41,500/- be kindly deleted.*
3. *That on the facts and in the circumstances of the case and in law the levy of interest u/s 234A, 234B & 234C are unlawful and without jurisdiction, hence the said levies be kindly cancelled.*

Ground No. 1:

4. In this ground, the assessee challenges the disallowance of Rs. 1,55,060/- u/s 14A made by AO.

5. After hearing submissions of learned Representatives of both sides and on perusal of orders of lower-authorities, we find that the AO has made the impugned disallowance @ 0.50% of the average investments of Rs. 3,10,12,000/- made by assessee in the shares yielding the exempted dividend. This disallowance is as per statutory provision of Rule 8D(2)(iii) read with section 14A. On perusal of P&L A/c of assessee filed in Paper-Book, it is also found that the assessee has incurred administrative and general expenses, like Postage, Telephone, Misc. Expenses to name a few, which are incurred for all activities and it is not possible to segregate the portion for taxable and exempted segment. Therefore the application of Rule 8D(2)(iii) by AO is justified. Ld. AR for assessee though advanced the grievance of assessee yet could not demonstrate how it can be termed as a wrong action of AO. Faced with this situation, we do not find any merit in the ground of assessee, the same is hereby rejected.

Ground No. 2:

6. In this ground, the assessee challenges the disallowance of Rs. 4,41,500/- upheld by CIT(A) on account of donation expenses.

7. Ld. AR drew us to the orders of lower-authorities and submitted that the assessee debited a donation expenditure of Rs. 23,33,352/- to P&L A/c and claimed deduction as business expenditure u/s 37(1). However, while framing assessment, the AO did not accept assessee's claim and made

disallowance. During first-appeal, the CIT(A) considered assessee's submission and deleted disallowance partly to the extent of Rs. 18,91,852/- accepting the same as business expenditure allowable u/s 37(1). However, the CIT(A) did not accept assessee's claim of allowability u/s 37(1) for rest of the amount and accordingly upheld disallowance of Rs. 4,41,500/-. The details of donations for which the disallowance has been upheld by CIT(A) are given in Para 3.4.4. of CIT(A)'s order as under:

<i>Donation paid to</i>	<i>Amount</i>
<i>Vivekanand Kendra, Bhopal</i>	<i>50000</i>
<i>The Noronha Foundation, Bhopal</i>	<i>100000</i>
<i>Sewa Bharti Anand Dham, Bhopal</i>	<i>68600</i>
<i>Sai Mandir Sansthan</i>	<i>101000</i>
<i>Prerna Sewa Trust</i>	<i>22000</i>
<i>Shri Anandpur Charitable Trust</i>	<i>79800</i>
<i>M.P. Nagar Vyapari Utsav Samiti</i>	<i>2100</i>
<i>AIM for Seva</i>	<i>18000</i>
<i>TOTAL</i>	<i>441500</i>

8. Ld. AR prayed that these donations even if not allowable u/s 37(1), the assessee is entitled for deduction u/s 80G of the Act. Therefore, he made a limited prayer to remand this issue to AO for giving deduction u/s 80G after factual verification. We agree that the deduction u/s 80G is a legal claim of assessee and can be allowed even if deduction u/s 37(1) has been denied. Therefore, the Ld. AR's plea that the issue should be remanded back to AO for factual examination is meritorious. We accept the same and remand this ground to AO for necessary factual examination and thereafter giving deduction of appropriate amount u/s 80G. This ground is allowed for statistical purpose.

Ground No. 3:

9. In this ground, the assessee has challenged the levy of interest u/s 234A, 234B and 234C. The levy of interest u/s 234A, 234B and 234C is statutory as per provisions of Act. Further, no submission has been made by either side qua this ground. Being so, this ground is rejected.

Assessee's I.T.A. Nos. 270/Ind/2023 for AY 2013-14:

10. The grounds raised in this appeal are as under:

- 1. That on the facts and in the circumstances of the case and in law, the findings and the decision of the Ld. CIT(A) in sustaining the disallowance of Rs. 77,493/- for the employee's contribution to PF is neither justified nor lawful and therefore the said disallowance of Rs. 77,493/- be kindly deleted.*
- 2. That on the facts and in the circumstances of the case and in law, the findings and the decision of the Ld. CIT(A) in sustaining the disallowance of Rs. 5,37,000/- out of donation expenses are neither justified nor lawful and therefore the said disallowance of Rs. 5,37,000/- be kindly deleted.*
- 3. That on the facts and in the circumstances of the case and in law, the findings and the decision of the Ld. CIT(A) in sustaining the disallowance of Rs. 2,22,730/- u/s 14A are neither justified nor lawful and therefore that said disallowance of Rs. 2,22,730/- be kindly deleted.*
- 4. That on the facts and in the circumstances of the case and in law, the levy of interest u/s 234A, 234B & 234C are unlawful and without jurisdiction hence the said levies be kindly cancelled."*

Ground No. 1:

11. In this ground, the assessee challenges the disallowance of Rs. 77,493/- made by AO u/s 36(1)(va) r.w.s. 2(24)(x) on account of non-

payment of employees' contribution to Provident Fund till the due dates under Provident Fund law.

12. Ld. Representatives of both sides agree that the disallowance made by AO is very much legal and valid as per decision of Hon'ble Supreme Court in ***Checkmate Services (P) Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC)***. Faced with situation, we do not find any merit in the ground raised by assessee, the same is hereby rejected.

Ground No. 2:

13. In this ground, the assessee challenges the disallowance of Rs. 5,37,000/- upheld by CIT(A) on account of donation expenses.

14. Ld. AR drew us to the orders of lower-authorities and submitted that the assessee debited a donation expenditure of Rs. 26,87,845/- to P&L A/c and claimed deduction as business expenditure u/s 37(1). However, while framing assessment, the AO did not accept assessee's claim and made disallowance. During first-appeal, the CIT(A) considered assessee's submission and allowed deduction of Rs. 21,50,845/- in two parts under different sections. Firstly, vide Para 3.4.3 of his order, the CIT(A) allowed deduction of Rs. 20,13,345/- donated by assessee to 'Asha Mohan Foundation Society' u/s 37(1) after a vehement discussion on business expediency as well as following the decision of ITAT, Indore on the same issue in the case of assessee's sister concern ***M/s Som Distilleries &***

Breweries Ltd. ITA No. 720/Ind/2006 dated 27.03.2009. Secondly, vide Para 3.4.5 of his order, the CIT(A) allowed deduction of Rs. 1,37,500/- (50% of donation of Rs. 2,75,000/-) in terms of statutory provision of section 80G. However, the CIT(A) did not accept rest of the claim and upheld disallowance qua the remaining donation of Rs. 3,99,500/-. The details of donations for which the disallowance has been upheld by CIT(A) are given in Para 3.4.5(ii) of CIT(A)'s order as under:

Donation paid to	Amount
<i>Sewa Bharti</i>	78000
<i>The Collector & Chairman, IRCS, District Branch, Khorda</i>	10000
<i>Shri Krishna Prakartik Yog Samiti</i>	102000
<i>Shri Anandpur Charitable Trust</i>	13200
<i>Prerna Sewa Trust</i>	13200
<i>Jan Samvedna Kalyan Samiti</i>	14000
<i>Punjab National Bank Employees Association</i>	5000
<i>M.P. Nagar Vyapari Utsav Samiti</i>	2100
<i>Gram Payajal Evam Swachhta Samiti, Gram Panchayat, Sehatganj</i>	105000
<i>M.P. Sanskritik Samaj, Bhopal</i>	11000
<i>Shri Ram Leela Samiti</i>	25000
<i>Aadhar Natya Samaroh</i>	11000
<i>District Cricket Association</i>	10000
TOTAL	399500

15. Ld. AR made the same prayer as made by him in Ground No. 2 of AY 2012-13 i.e. even if these donations are not allowable u/s 37(1), the assessee is entitled for deduction u/s 80G of the Act and hence this issue should be remanded back to AO for giving deduction u/s 80G after factual verification. Therefore, we adopt our earlier adjudication in Ground No. 2 of AY 2012-13 and accordingly this issue is remanded to AO in the very same terms. This ground is allowed for statistical purpose.

Ground No. 3:

16. In this ground, the assessee challenges the disallowance of Rs. 2,22,730/- u/s 14A made by AO.

17. After hearing submissions of learned Representatives of both sides and on perusal of orders of lower-authorities, we find that the AO has made the impugned disallowance consisting of two elements in terms of Rule 8D, viz. (i) Interest disallowance under Rule 8D(2)(ii) computed at Rs. 17,834/- and (ii) standard disallowance @ 0.50% of the average investments of Rs. 4,19,79,341/- made by assessee in the shares yielding the exempted dividend computed at Rs. 2,04,896/- under Rule 8D(2)(iii). On perusal, we find that the assessee has incurred interest expenditure on borrowed funds and also incurred administrative and general expenses for all activities and it is not possible to segregate the portion for taxable and exempted segment. Therefore the application of Rule 8D(2)(ii)/(iii) by AO is justified. Ld. AR for assessee though advanced the grievance of assessee yet could not demonstrate how it can be termed as a wrong action of AO. Faced with this situation, we do not find any merit in the ground of assessee, the same is hereby rejected.

Ground No. 4:

18. In this ground, the assessee has challenged the levy of interest u/s 234A, 234B and 234C. The levy of interest u/s 234A, 234B and 234C is

statutory as per provisions of Act. Further, no submission has been made by either side qua this ground. Being so, this ground is rejected.

19. Resultantly, both of these appeals are partly allowed for statistical purposes.

Order pronounced in open court on 31.07.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/ Dated : 31.07.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore