

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "SMC" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No. 1435/Mum/2024
Assessment Year : 2016-17

Prakash Udyog Limited, 10, Sajan Nagar, Indore PAN : AABCP7261J	vs.	Income Tax Officer, Ward-2(2)(4), Aayakar Bhavan, M.K. Road, Mumbai
(Appellant)		(Respondent)

Assessee by : Shri Milind Wadhwani,
(virtually appeared)

Revenue by : Shri Umesh Chandra Sinha

Date of Hearing : 11/11/2024

Date of Pronouncement : 14/11/2024

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dt.14-02-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’] and it relates to AY. 2016-17. The following two issues are urged before us:-

- a) Error committed in the assessment order while computing total income;
- b) Addition made u/s. 14A of the Act;

2. The assessee-company is engaged in the business of trading in agro commodities. The assessment for the year under consideration was completed u/s. 143(3) of the Act. Since the AO has varied the total income, the assessee filed appeal before the Ld.CIT(A) and the same was partly allowed. Still aggrieved, the assessee has filed this appeal.

3. The first issue relates to error in the computation of total income in the Computation Sheet attached with the assessment order. The Ld.AR invited our attention to pg. No. 4 of the assessment order, wherein the total income was determined by the AO at Rs. 16,82,668/-. However, in the computation sheet, the total income was taken by the AO at Rs.36,69,406/-. The Ld.AR submitted that the Ld.CIT(A) did not give relief with regard to the above said error made in the computation sheet.

4. We heard the parties and perused the record. We notice from the assessment order that the total income was determined by the AO at Rs. 16,82,668/-. However, in the computation sheet, the total income has been taken as Rs.36,69,410/-. We also find that the AO has not given any explanation for the income so adopted in the computation sheet. Hence, there is some merit in the submission of the Ld.AR that there was an error in adopting the figure of total income by the AO in the computation sheet. However, we are of the view that this plea of the assessee requires verification at the end of AO. Accordingly, we set aside the order passed by the Ld.CIT(A) on this issue and restore the same to the file of AO for examining this plea of the assessee. If it is an error as pointed out by the assessee, then the AO may correct the same.

5. The next issue relates to addition made u/s. 14A of the Act. The assessee had earned share income from partnership firm and claimed same as exempt. However, the assessee did not make any disallowance

u/s. 14A of the Act. The AO noticed that the assessee has incurred interest expenditure of Rs. 26,27,659/-. Accordingly, he disallowed a sum of Rs. 14,42,073/- under Rule 8D(2)(ii) of the Income Tax Rules, 1962 ('the Rules'). The AO also added a sum of Rs. 2,28,219/- under Rule 8D(2)(iii) of the Rules out of expenses, which was computed at 0.5% of the average value of the investment. Accordingly, he disallowed a sum of Rs. 16,70,192/- in aggregate u/s. 14A of the Act.

5.1. In the appellate proceedings, the assessee submitted before the Ld.CIT(A) that the interest free funds available with the assessee is more than the value of the investment and hence, no disallowance out of interest is called for. It was also submitted that the assessee has availed bank Over Draft for meeting its day-to-day working capital requirements and the said amount was not utilized for making investments. It was also submitted that the loan was availed from the bank in the year 2014; whereas investments were made by the assessee much earlier i.e., in the year 2000-01 and accordingly no part of loan could have been used for making investments. The Ld CIT(A) did not accept these contentions of the assessee. With regard to the claim of availability of interest free funds, the Ld.CIT(A) noticed that the own funds available with the assessee was around Rs. 2.82 crores and the assessee has included net trade payables also as interest free funds. The Ld.CIT(A) took the view that the relief can be granted to the extent of own funds available with the assessee. Accordingly, he directed the AO to reduce the interest disallowance proportionate to the own funds available with the assessee. The Ld.CIT(A) did not disturb the disallowance made under Rule 8D(2)(iii) out of general expenses. Accordingly, he granted partial relief to the assessee.

5.2. We heard the parties and perused the record on this issue. The Ld.AR submitted that the investments in partnership firm and certain

other companies have been made in the year 2000-01; whereas the Over Draft facility has been availed from ICICI bank only in November, 2014. Thus, we notice that the assessee has availed Over Draft facility almost after 14 years from the date of investment. The Ld.AR submitted that the Over Draft facility has been used for day-to-day funds requirements and the said funds could not have been utilized for making investments in the year 2000-01. Accordingly, by placing reliance on the decision rendered by the Hon'ble Gujarat High Court in the case of CIT vs. Gujarat Narmada Valley Fertilizers Company Ltd., [221 TAXMAN 479], the Ld.AR submitted that the disallowance out of interest expenditure is not required to be made. Alternatively, the Ld.AR submitted that the interest free funds available with the assessee consisting of own funds and net trade payable is in excess of the value of investment and hence with that count also no disallowance out of interest expenditure is called-for.

5.3. With regard to disallowance made under Rule 8D(2)(iii), the Ld.AR submitted that there is mistake in the computation of average value of investment by the AO and if the said mistake is corrected, the disallowance would come down to Rs. 1,98,699/-.

5.4. We heard Ld.DR on this issue and perused the record. We notice that the investment have been made by the assessee in the year 2000-01 and Over Draft facility has been obtained from ICICI Bank in November, 2014. Hence, there is merit in the contentions of the Ld A.R that the assessee could not have utilized loan funds for making investments. It is also stated that the overdraft facility availed from ICICI Bank was used for day to day activities. Hence, as per the decision rendered by the Hon'ble Gujarat High Court in the case of Gujarat Narmada Valley Fertilizers Company Ltd., (supra), no disallowance out of interest expenditure is called-for. Accordingly, we

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set aside the order of the Ld.CIT(A) on this issue and direct the AO to delete the disallowance made under Rule 8D(2)(ii).

5.5. With regard to the disallowance made under Rule 8D(2)(iii), the Ld.AR submitted that there is an error in computing average value of investment. Since this plea of the assessee requires verification, we restore this issue to the file of the AO for examining the same afresh. After affording adequate opportunity of being heard to the assessee, the AO may take appropriate decision in accordance with law.

6. In the result, the appeal of the assessee is treated as allowed.

Order pronounced in the open court on 14-11-2024

Sd/-
[RAJ KUMAR CHAUHAN]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 14-11-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "SMC" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai