

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

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 5254/Mum/2024
Assessment Year : 2018-19

Asst. Commissioner of Income Tax-6(1)(1), 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai.	vs.	M/s. Alok Infrastructure Private Limited, 2 nd and 3 rd Floor, Tower-B, Peninsula Business Park, G.K. Marg, Lower Parel, Mumbai. PAN : AAGCA1949P
(Appellant)		(Respondent)

For Assessee :	Shri Nimesh Vora & Ms. Moksha Mehta
For Revenue :	Shri Akshay Tapdiya, Sr.DR

Date of Hearing :	21-11-2024
Date of Pronouncement :	04-12-2024

ORDER

PER B.R. BASKARAN, A.M :

The Revenue has filed this appeal challenging the order dated 09-08-2024 passed by Ld.CIT(A)-NFAC, Delhi and it relates to the Assessment Year (AY) 2018-19. The Revenue is challenging the relief granted by the Ld.CIT(A) in respect of following additions made by the Assessing Officer (AO):-

- (a) Addition made u/s 14A of the Income Tax Act, 1961 ('the Act');
- (b) Disallowance of expenses related to the assets sold;
- (c) Disallowance of claim of write off of cement bags.

2. The assessee is engaged in real estate and textile business. The first issue relates to the addition made u/s 14A of the Act. The AO noticed that the assessee has held investments to the tune of Rs.92.43 crores, but did not make any disallowance u/s 14A of the Act. When questioned about the same, the assessee replied that it did not earn any exempt income during the year under consideration and hence no disallowance u/s 14A is called for. The AO did not accept the above said contentions of the assessee. Accordingly, he computed the disallowance as per Rule 8D of the Income Tax Rules, 1962 ('the Rules') at 1% of the average value of investments and added a sum of Rs.92,43,000/- to the total income u/s 14A of the Act.

2.1. The Ld.CIT(A) noticed that the assessee has not earned any exempt income. Accordingly, by placing reliance on the decisions rendered in the cases of Novell Software Development India (P.) Ltd [2021] 126 taxmann.com 29 (Karnataka) and Delhi International Airport (P.) Ltd. [2022] 138 taxmann.com 112 (Kar.), the Ld.CIT(A) held that no disallowance u/s 14A of the Act is required to be made. Accordingly, he deleted the disallowance made by the AO u/s 14A of the Act.

2.2. We heard the parties and perused the record. The settled proposition is that no disallowance u/s 14A is called for, when the assessee has not earned any exempt income. In support of this proposition, we rely on the decision rendered by the Hon'ble Delhi High Court in the case of Delhi International Airport (P) Ltd (supra), wherein the Hon'ble Delhi High Court held as under:-

"8. In the opinion of this Court, the present case is covered by the Division Bench judgment in Cheminvest Ltd. vs. CIT, [2015] 61 com 118 (Delhi), wherein this Court has held that the expression 'does not form part of the total income' in Section 14A of the Act means that there should be an actual receipt of income which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

9. Furthermore, this Court in *Commissioner of Income Tax (Central)-2 Vs. M/s Era Infrastructure (India) Ltd.* in ITA No.204/2022 vide judgment and order dated 20th July, 2022 has dealt with the issue of amendment made by the Finance Act, 2022 to Section 14A of the Act. The relevant portion of the said judgment is reproduced hereinbelow: “8. Consequently, this Court is of the view that the amendment of Section 14A, which is “for removal of doubts” cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood.”

10. Consequently, this Court is of the view that no substantial question of law arises for consideration in the present appeal. Accordingly, the same is dismissed.”

2.3. Since the Ld.CIT(A) has rendered his decision on this issue following the decision of the Hon’ble Delhi & Karnataka High Courts, we do not find any reason to interfere with it.

3. The next issue relates to the disallowance of expenses holding the same as related to the assets sold by the assessee. The AO noticed that the assessee has sold assets for a sum of Rs.41.99 crores. Initially, the assessee filed a letter dated 08-01-2020 before the AO, stating that the expenses to the tune of Rs.97,80,024/- claimed in the Profit and Loss Account are related to the above said sale of assets and accordingly prayed that the above said same may be disallowed by the AO. However, the assessee changed its above said stand and filed another letter dated 26-03-2021 before the AO objecting to the above said addition. The AO rejected subsequent letter filed by the assessee and accordingly disallowed the above said expenditure.

3.1. Before the Ld.CIT(A), the assessee offered following explanations:-

“On this issue, the submissions made by the appellant during these appeal proceedings are summarized below: (i) The reply dated 08/01/2020 filed during the assessment proceedings was filed mistakenly without verification of details. Subsequently, when the AO proposed disallowance of Rs. 97,80,024/- in draft assessment order dated 20/04/2021 stating that the expense of Repairs and maintenance belong to fixed assets and investment sold by the appellant during assessment year under consideration, the appellant realized its mistake, verified the details of expenses and submitted reply dated 26/04/2021 before the AO opposing the said

disallowances stating that as these expense of Repairs and Maintenance belonged to the asset held as Inventory and the same should not be disallowed. The AO disallowed the same holding merely that these expenses of repairs and maintenance belonged to fixed assets and investment sold by the appellant without appreciating the fact that the same did not belong to 'fixed assets' but pertained to 'inventory' ready for sale. (ii) These expenses belonged to 'Office premises at Peninsula Business Park' which was held by the appellant as Inventory and was in the nature of common area maintenance charges paid to Peninsula Land Limited. It was stated that Note 8 of financial statement for the financial year under consideration should be referred wherein 'Office premises at Peninsula Business Park' held by the appellant as 'Inventory' is duly mentioned."

3.2. In view of the above said submissions, the Ld.CIT(A) called for the copies of maintenance agreement, ledger extract and sample invoices related to the impugned expenses so as to verify as to whether they are related to the premises not sold by the assessee. After verification of the relevant details, the Ld.CIT(A) held as under:-

"From such details, it is clear that the impugned expenses were incurred by the appellant towards common area repair & maintenance of 'Office premises', situated at Peninsula Business Park which had been held by the appellant, a real estate company/builder/developer, as 'inventory'. I also note that the AO had disallowed and added back this sum under the mistaken view that the same pertained to fixed assets & investments sold during the year. As has been clarified by the appellant and is also reflected in balance sheet, depreciation chart and computation of income, the fixed assets sold by the appellant during the year were not the 'office premises at Peninsula Business Park, but the same was other fixed assets (immovable property at Silvassa & Dadra & Nagar Haveli) and investments (equity/preference shares). Since the above facts are clear from the record, I am of the considered opinion that the impugned expenses pertaining to the common area maintenance of premises held by the appellant as 'inventory' ready for sale, should not have been disallowed. The AO is hereby directed to delete the said addition of Rs. 97,80,024/-. Ground no. 5 of appeal is allowed."

3.3. We heard the parties on this issue. We notice that the Ld.CIT(A) himself has called for relevant documents from the assessee and after verifying them, has given a finding that these expenses are not related to the assets sold by the assessee, i.e., these expenses have been incurred for the purpose of existing assets/inventory. Before us, the

Revenue did not submit any material to contradict the factual findings given by the Ld.CIT(A). Accordingly, we uphold the order passed by the Ld.CIT(A) on this issue.

4. The last issue relates to the disallowance of write off of goods amounting to Rs.3.14 crores. The AO noticed that the assessee has written off opening stock of materials and claimed the same as deduction. When enquired about the same, the assessee submitted that the stock consisted of cement bags and they were purchased in the earlier years for using it in real estate development activity. However, those stocks got damaged due to rains and became unusable. Further, there was no realisable value to it. Hence, the assessee has written off those stock after carrying out inspection and management's approval. The AO noticed that the assessee did not make any insurance claim for the damage of stock. Further, the assessee did not furnish any break-up of the stock into cement stock and other materials. Further, the AO took the view that the assessee has not discharged its onus to show as to how the stock got damaged and did not furnish any evidence to show how the damaged stock was disposed of. Accordingly, the AO rejected the claim of write off of stock value and disallowed the claim of Rs. 3.14 crores.

4.1. In the appellate proceedings, the Ld.CIT(A) held that the non-availability of insurance on the stock cannot be a ground to disallow the claim. He further called for accounting vouchers, copies of WIP account and management note. Based on those documents, the Ld.CIT(A) deleted the disallowance with the following observations:-

“From the details filed by the appellant during the assessment proceedings and the details and submissions filed during these appeal proceedings, it is noted that the appellant has explained nature and status of the stock which was cement bags, lying in premises at Silvassa, Dadra & Nagar haveli, damaged by rains. The appellant has also explained that since the holding company of appellant had gone into insolvency proceedings, construction at the site could not be

continued and it was due to this reason that the stock of cement, kept for long and damaged due to rains, had to be written off.”

4.2. We heard the parties and perused the record. We agree with the observation of the Ld.CIT(A) that the non-availability of insurance on the stock cannot be a ground to disallow the claim. The Ld.AR submitted before us that the majority of stock consisted of cement bags and due to passage of time, loose cement was converted into lumps, which cannot be used in construction. Hence, the management decided to write it off. Accordingly, he contended that the Ld.CIT(A) has rightly allowed the deduction.

4.3. From the financial statements, we notice that the assessee was having opening stock of materials of Rs.3.14 crores, which have been fully written off during the current year. We notice that the Ld.CIT(A) has examined the copies of ledger accounts, accounting vouchers and management note and deleted the disallowance on the basis of those documents. However, as observed by the AO, all those documents are internal documents. The assessee could not furnish any other material to substantiate the claim of damage of construction materials.

4.4. The assessee has claimed that the construction materials consisted of cement bags only. It placed approval of the management at page 58 of the paper book. In that approval note, it is stated that the quantity of physical stock and book stock of cement has been reconciled and it is about 2217 tons. It is stated that the value of 2217 tons of cement is Rs.3.14 crores. There appears to be mistake in the above said note. One tonne is equivalent to 1000 Kgs. The cement bags weigh 50 kgs each. Hence, one ton of cement will consist of 20 bags. As per the approval note, the average cost of cement bag will work out to approximately Rs.700/- per bag (3,14,00,000/44,340 bags). It appears to be on higher side, as the cement price was not prevailing at that level in the year 2017 and prior to that. Hence, the opening stock as on

01-04-2017 should consist of not only cement bags, but also other materials. The explanation of the assessee with regard to cement bags is acceptable. However, in the absence of details of other construction materials, it will not be possible to appreciate the claim made by the assessee. Accordingly, we are of the view that the AO has rightly observed that the details of construction materials are required, which apparently the assessee has failed to furnish. We notice that the approval note, an internal document, also did not contain break-up details of construction materials that were available in stock as on 01-04-2017, except stating that cement stock was 2217 tons.

4.5. In view of the discussions made above, we are of the view that the break-up details of construction materials are required to examine the claim of write off of stock made by the assessee. Accordingly, in the interest of natural justice, the assessee may be provided with one more opportunity to furnish break-up details and substantiate its claim of damage. Accordingly, we are of the view that this issue requires fresh examination at the end of the AO. Accordingly, we set aside the order passed by the Ld.CIT(A) on this issue and restore the same to the file of the AO for examining it afresh. We also direct the assessee to furnish all the necessary details that are required to support the claim of the assessee.

5. In the result, the appeal filed by the Revenue is partly allowed.

Order pronounced in the open court on 04-12-2024

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, Date: 04-12-2024

TNMM

Copy to :

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

By Order

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