

IN THE INCOME TAX APPELLATE TRIBUNALz3wsx

“SMC” BENCH, MUMBAI

BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER

ITA No.5113/M/2024

Assessment Year: 2012-13

Arkis Enterprises Pvt. Ltd. 101, Milestone Complex, Near Drive in Cinema, Thaltej, Ahmedabad, Gujarat- 380054. PAN: CXHPS3226A	Vs.	ITO Ward 1(1)(3) 3 rd Floor, A Block, Pratyaksh Kar Bhavan, Ambawadi, Ahmedabad, Gujarat- 380015.
Appellant	:	Respondent

Present for:

Assessee by

: Shri Mehul K. Patil (Virtually Present)

Revenue by

: Ms. Pradnya Gholap (Sr. DR)

Date of Hearing

: 04.12.2024

Date of Pronouncement

: 11.12.2024

ORDER

Per Beena Pillai, JM:

Present appeal filed by the assessee arises out of order dated 02/11/2023 passed by NFAC Delhi for assessment year 2012-13 on following grounds of appeal:

1. *“That the issue of notices manually by the CIT (A) 10, Mumbai appeal No. 10/11273/2015-16 (Manual Appeal Register Number 352) and thereafter without informing to the appellant in email, passing of order u/s. 250 of the Act by Commissioner of Income-tax Appeals Unit-3, Coimbatore and National Faceless Appeal Centre (NFAC) Delhi and put on income-tax portal were without jurisdiction and hence deserve to be quashed as such as the appellant has informed by the submissions 23-10-2019, 20-12-2019 and again on*



- 20-12-2019 that the jurisdiction of case falls at Ahmedabad and PANo. is also falls at Ahmedabad jurisdiction and subsequent returns were filed at address of Ahmedabad jurisdiction and subsequent assessments were also passed by the AO at Ahmedabad.
2. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in disposing off the appeal ex-parte without granting any fair opportunity of being heard to the appellant and without taking note in the appellate order and without taking into consideration the submissions filed on portal during the course of appellate hearing and finally without informing the appellant about passing of appellate order u/s. 250 of the Act.
 3. That even otherwise, an order passed in limini without effectively disposing of the grounds raised by the appellant and filed on 15-5-2021 on the e-portal is in infraction of section 250(6) of the Act and as such, order so made is otherwise too illegal, invalid and a vitiated order.
 4. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the disallowance of Rs. 118981/- made by learned AO U/S. 14A and also upholding addition of Rs. 3962564/-u/s. 41(1) for outstanding sundry creditors.
 5. The appellant craves liberty to add, alter, amend any of the grounds of appeal.”

Brief facts of the case are as under:

2. The assessee is a private limited company and filed its return of income for the year under consideration on 28/09/2012 declaring total income of Rs. Nil after claiming brought forward loss of Rs.43,454/-. The return was processed under section 143 (1) of the act, and the case was selected for scrutiny. Statutory notices under section 143 (2) along with notice under section 142 (1) was issued to the assessee, calling upon to furnish various details.

2.1. In response to the statutory notices, representative of the assessee appeared before the Ld. AO and filed requisite details as called for.



2.2. The Ld. AO from the details filed noted that assessee is engaged in the business of trading in commodities, chemicals, capital feed etc., and has declared business income there from.

2.2.1. The Ld.AR noted that, the assessee made investment in shares/mutual funds, and earned dividend of Rs.1,81,244/- claimed to be exempt. The Ld.AR noted that, the assessee claimed interest expenses in the P&L account of Rs.22, 62, 510/-.

2.3. The Ld. AO called upon assessee to justify why disallowance under section 14A should not be made. The assessee in response submitted that, neither any direct expenses were incurred nor any loan was taken for earning exempt income, and therefore, there was no justification to make any disallowance under section 14A of the act in the hands of the assessee.

2.4. The Ld.AO after considering the submissions of the assessee disallowed under Rule 8D(2)(ii) all finance cost claimed amounting to Rs.22,62,510/-, debited to the profit and loss account. In respect of the disallowance under section Rule 8D(2)(iii) of Income tax Rules, the Ld. AO disallowed 0.5% of the average value of investments amounting to ₹ 60,636/-. The Ld. AO further included the disallowance made under section 14 A read with Rule 8D, while computing book profits of the assessee under section 115JB of the act.

2.5. The Ld.AO noted that, the assessee had loan creditors amounting to Rs.39,62,546/-. The assessee was called upon to

furnish details of creditors like KYC details and confirmation. In response, the assessee furnish details however, according to the Ld.AO, in respect of certain creditors the payment was long overdue, and the assessee neither furnished any confirmation or the addresses. Accordingly, addition of Rs.39,60,564/- was added in the hands of the assessee under section 41(1) of the act.

Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.NFAC/CIT(A).

3. The Ld.NFAC/CIT(A) after considering the submissions of the assessee confirmed the additions made by the Ld.AO.

Aggrieved by the order of the Ld.NFAC/CIT(A) assessee filed appeal before this *Tribunal*.

4. At the outset, the Ld.AR submitted that **Ground No.1-3** are general in nature and therefore do not require any adjudication.

5. It is submitted that **Ground No.4** is on disallowance upheld under section 14A read with Rule 8D of the Income tax Rules, and disallowance under section 41(1) of the act.

5.1. The Ld.AR submitted that, assessee did not make any *suo moto* disallowance under section 14A r.w Rule 8D of Income tax Rules. He submitted that, the direct expenses considered by the Ld.AO could not be attributed towards earning of exempt income. It is submitted by the Ld.AR that, the interest expenditure is incurred by the assessee for the purposes of business and not for making any



investment to earn exempt income. He thus submitted that, bank charges, LC discounting charges and interest expenditure of Rs.13,821/- pertain to the business activity carried on by the assessee. It is submitted that the interest expenditures are incurred for the meeting the working capital requirements of assessee's business and not for making any investments.

5.2. The Ld.AR submitted that assessing officer considered total Finance cost for disallowance under Rule 8D (ii) which is not in accordance with the provisions of the act. He placed reliance on following decision of *Hon'ble Chennai Tribunal* and *Calcutta Tribunal* in support of the contention:-

- i. Decision of Chennai I.T.A.T in case of ACIT v/s Best & Crompton Engineering Limited (ITA no 1603/Mds/2012) dated 16th July 2012 36 taxman.com 555.
- ii. Decision of Kolkata I.T.A.T in case of REI Agro Limited Vs DCIT 35 Taxman.com 404.

5.3. Without prejudice to the above submissions, the Ld.AR submitted that, the assessing officer failed to appreciate that the assessee has offered to tax the interest earned amounting to Rs.32,252/-and hence this amount is required to be reduced from the interest expenses claimed in the P&L account. He placed reliance on the decision of coordinate bench of this tribunal in case of *Morgan Stanley India Securities Pvt. Ltd.* in ITA Nos. 5072/Mum/2005 and 6774/Mum/2008.

5.4. On the contrary, the Ld.DR placed reliance on the orders passed by the authorities below. It is submitted by the Ld.DR that, from assessment year 2008-09, disallowance under section 14 A read with Rule 8D of Income tax Rule is mandatory as per section 14A(2) of the Act and therefore the assessee cannot escape from the clutches of provisions under Rule 8D.

We have perused the submissions advanced by both sides in light of records

6. It is noted from the computation of disallowance u/s. 14A by the Ld. AO that, entire Finance cost debited to the profit and loss account has been considered rule 8D(2)(ii). On analysing the nature of these expenses it is noted that LC discounting charges cannot be considered towards earning of exempt income. However Bank charges amounting to ₹10,578/- can be attributed in the ratio exempt income earned to the total income.

6.1. As regards the entire interest expenditure, a query was raised by the bench, regarding the availability of own funds vis-à-vis borrowed funds and investment made during the year. The Ld.AR drew the attention to page 30 and 35 the paper book wherein, own funds available with the assessee was ₹13,86,466/- and borrowed funds amounted to Rs.17,61,997/-. Referring to page 35 of the paper book, the Ld.AR submitted that, investments made during the year was Rs.1,49,45,812/-.



6.1.1. From the above, it is clear that assessee do not have sufficient funds for making investments during the year under consideration. The principal thus stated by *Hon'ble jurisdictional High Court* in case of *CIT vs Reliance Utilities and Power Ltd.*, reported in 313 ITR 340 will not come to any assistance. Thus proportionate disallowance is to be made in respect of interest expenditure, in the hands of assessee. However, the Ld.AO is directed to first reduce the interest income earned by the assessee that is offer to tax before computing proportionate disallowance which will be in the ratio exempt income earned to the total income of assessee.

6.2. In respect of the disallowance that is to be made under the 3rd limb of Rule 8D, we direct the Ld.AO to consider only such investments that yielded exempt income for the year under consideration. In support reliance was placed on the decision of *Hon'ble Delhi High Court* in case of *Cheminvest Ltd vs CIT* reported (2015) 378 ITR 33 and decision of *Hon'ble Gujrat High Court* in case of *CIT vs Corrtch Eergy Ltd.*, reported in (2015) 372 ITR 97 .

6.3. Further we note that there is no relation of disallowance under Section 14A while computing the book profit under section 115JB. The reason is that explanation (1) of Section 115JB adjustment is to be worked out as clause (f) where the amount of expenditure in relation to any exempt income other than specified income is required to be added to the book profit.

6.3.1. Therefore, there is a separate mechanism provided for adjustment to the book profit of this kind of expenditure. Accordingly, lower authorities were not correct in adding notional expenditure as computed under section 14A and increasing the book profit by that sum under Section 115JB. This issue is also covered by *Hon'ble Special Bench of this Tribunal* in the case of *ACIT vs. Vireet Investment Pvt. Ltd.*, reported in (2017) 58 ITR 313.

6.4. In respect of the disallowance made under section 41 (1) of the act, the Ld.AR submitted that, the creditors remain outstanding in the books of the assessee during the year under consideration. He submitted that the assessee neither paid the said amount nor received any benefit by way of cessation remission of the liabilities. Referring to pages 23 to 24 being the audited financials for financial year 2011-12 to financial year 2016-17, the Ld.AR submitted that, the impugned amounts still reflect in the books of the assessee. The Ld.AR submitted that, there were ultimately squared up during assessment year relevant financial year 2016-17 and 2017-18 by making payments to alleged creditors.

6.5. The Ld.DR contrary relied on orders passed by authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.



7. No doubt the onus is on the assessee to prove that the liability did not cease during the year under consideration. In the present facts of the case, it is verifiable from paper book page 40 being the audited accounts for the year under consideration. It is noted that, these creditors are reflected under the trade payables. Further in the subsequent assessment years 2013-14 at Page 75 and assessment year 2014-15 at page 115, these parties stand under the head trade payables. It is noted that, these parties remain to be outstanding creditors up to assessment year 2016-17 the details of which are placed at page 142 and 165 of the paper book.

7.1. In the subsequent assessment year being 2017-18 and 2018-19 these parties has been paid the outstanding balance has become nil. Under such circumstances we find no reason to confirm the addition made by the authorities below to hold that the assessee just continued it has an entry the books of account without any intention to pay back the same is directed to be deleted.

Accordingly ground no.4 raised by the assessee stands partly allowed.

In the result appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 11-12-2024.

**Sd/-
BEENA PILLAI
JUDICIAL MEMBER**



Place: Mumbai,

Dated: 11-12-2024

Snehal C. Ayare, Stenographer/ Dragon

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. Ld.DR, ITAT, Mumbai
4. Guard File
5. CIT

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai