आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL, VISAKHAPATNAM BENCH, VISAKHAPATNAM (through web-based video conferencing platform)

श्री एन के चौधरी,न्यायिक सदस्य एवं श्री डि.एस.सुन्दर सिंह, लेखा सदस्य के समक्ष BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER & SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER

> आयकर अपील सं./I.T.A.No.79/Viz/2021 (निर्धारण वर्ष/Assessment Year:2012-13)

Dy.Commissioner of Income Tax

Circle-1

Kakinada

Vs. M/s East Coast Imports &

Exports

D.No.67-15-32, Office No.1 Nagamallithota Junction

Kakinada

[PAN : AACFE2078A] (प्रत्यर्थी/ Respondent)

(अपीलार्थी/ Appellant)

Cross Objection No.49/Viz/2021 (Arising out of I.T.A. No.79/Viz/2021)

M/s East Coast Imports & Exports

D.No.67-15-32, Office No.1 Nagamallithota Junction

Kakinada

[PAN : AACFE2078A] (अपीलार्थी/ Appellant) Vs. Dy.Commissioner of Income Tax

Circle-1 Kakinada

(प्रत्यर्थी/ Respondent)

राजस्व की ओर से /Revenue by : Shri V.Srinivasa Rao, DR

निर्धारिती की ओरसे / Assessee by : Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing : 08.09.2021 घोषणा की तारीख/Date of Pronouncement : 17.09.2021

<u> आदेश / ORDER</u>

Per Bench:

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-2, Visakhapatnam in ITA

No.10310/2015-16/ACIT,C-1, KKD/VSP/2019-20 dated 28.01.2020 for the Assessment Year (A.Y.) 2012-13 and the Cross Objections are filed by the assessee.

- 2. Ground No. (i), (vi) and (vii) are general in nature which does not require specific adjudication.
- 3. Ground No. (ii) and (iii) are related to the disallowance of interest for diversion of interest bearing funds for non-business purposes. During the assessment proceedings, the Assessing Officer(AO) found that the assessee has advanced the loans and advances to the tune of Rs.7,16,46,145/- under the head 'loans & advances' to the following persons:

S.No.		Debit
1.	Aiswarya Infrastructure & Services	8401630
2.	Andhra Prabha Publications	1001650
3.	East Coast Gases	818620
4.	Emgeek Logistics Pvt. Ltd.	28067360
5.	Emmel Infra Properties Pvt. Ltd.	100000
6.	Emmel Infrastructure & Services	207865502
7.	Emmel Infrastructure Pvt. Ltd.	3492000
8.	Hi Life Towers	680665
9.	Vijay Associates	8353475

The AO further observed that a sum of Rs.3,95,00,000/- was advanced to Emgeek Logistics Pvt Ltd. on 18.04.2011 from Cosmos Bank A/c No.0171001012698 (current account) which is interest bearing

The AO also found that the assessee has not offered interest account. income representing the loans and advances given to various persons/ entities mentioned above. Therefore, the AO issued show cause notice calling for explanation of the assessee as to why the interest representing the funds diverted for non-business purposes should not be disallowed. In response to the notice, the assessee filed explanation stating that it has capital to the extent of 4.80 crores and made the turnover of 25.87 crores out of which interest bearing heads were Rs.4.81 crores and total payments were Rs.23.67 crores. Thus, argued that there is no case for disallowance of interest, hence requested to drop the proposal for disallowance of interest. However, not being satisfied with the explanation of the assessee, the AO held that the entire investment made amounting to Rs.7.16 crores under loans and advances to related parties on which the assessee did not get any interest income required to disallowed and accordingly, estimated the disallowance @12.5% per annum on outstanding balances and disallowed the interest of Rs.1,46,28,960/- and added to the total income.

4. Against which the assessee went on appeal before the CIT(A) and the Ld.CIT(A) observed that out of total interest debited to Profit & Loss account amounting to Rs.3,26,53,868/-, the sum of Rs.2,59,86,116/- was interest claimed under the head 'income from house property'. Only the

balance amount was claimed under the head 'income from business'. Out of

the balance interest of Rs.66,67,752/-, the sum of Rs.21,62,408/- was paid

on partner's capital account and a sum of Rs.20,46,346/- was the interest

relating to loan utilised for acquiring water plant. Thus the balance amount

of Rs.24,58,998/- was held to be relatable to the diversion of interest

bearing funds to non-business persons and accordingly, restricted the

disallowance to the extent of Rs.24,58,998/- and partly allowed the appeal

of the assessee.

5. Against which the department is in appeal before this Tribunal.

During the appeal hearing, the Ld.DR supported the order of the AO and the

Ld.AR relied on the order of the Ld.CIT(A).

6. We have heard both the parties and perused the material placed on

record. The Ld.CIT(A) has given the details of total interest debited to the

Profit & Loss account under various heads as follows:

i) Interest on loans - Rs.2,59,86,116

ii) Interest on CC loan - Rs.24,58,998

iii) Interest on capital - Rs.21,62,408

iv) Interest on water plant loan - Rs.20,46,346

Total - Rs.3,01,94,870/-

The AO disallowed the interest but not identified each loan and date of advance with interest bearing funds. The assessee is having capital account balance to the extent of Rs.4,80,00,000/- and sundry creditors to the extent of Rs.2,27,00,000/- which are non interest bearing and the assessee is permitted to use the sum for purpose of business. The assessee also explained that the sum of Rs.3.95 crores given to Emgeek Logistics Pvt.Ltd credited to Cosmos bank account for business purposes. Further the assessee contends that all the loans and advances utilized for business purposes and the department did not controvert the submission of the assessee. The CIT(A) has given a finding that disallowance of interest is only to the extent Rs.24,58,998/- on facts which was relatable to diversion of funds. During the appeal hearing, no other material was placed by the Ld.DR to controvert the finding given by the Ld.CIT(A). Therefore, taking into consideration of the explanation offered by the assessee and the clear finding given by the Ld.CIT(A), we find no reason to interfere with the order of the CIT(A) and the same is upheld.

7. Ground No.(iv)and (v) are related to the disallowance made by the AO u/s 14A r.w.s. 8D of the IT Rules relating to exempt income. The AO found that the assessee made investments in various companies to the extent of Rs.4,83,42,600/- which yield dividend income and the same is

exempt from taxation under section 14A of the Act. Since, the assessee has not made any disallowance relatable to exempt income, the AO invoked Rule 8D of IT Rules and made the disallowance of Rs.43,81,908/- u/s 14A r.w.Rule 8D of IT Rules. On appeal, the Ld.CIT(A) observed that the assessee did not derive any exempt income u/s 14A of the Act. Therefore, following the decision of this Tribunal in the case of D.Veerabhadra Reddy (HUF) in I.T.A. 263/Viz/2014 dated 23.06.2017, held that in the absence of exempt income, there is no case for making the disallowance u/s 14A of the Act and accordingly deleted the addition and allowed the appeal of the assessee.

- 8. Against which the department is in appeal before this Tribunal.
- 9. We have heard both the parties and perused the material placed on record. There is no dispute that the assessee did not earn any exempt income during the year under consideration. This Tribunal has taken consistent view that in the absence of exempt income, there is no case for making disallowance u/s 14A of the Act. This Tribunal has followed the decision of Hon'ble Madras High Court in the case of Redington India Ltd. Vs. Addl.Commissioner of Income Tax 77 taxmann.com 257 and the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs.CIT, 61 taxmann.com 118 and the decision of Hon'ble Gujarat High Court in the

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case of Pr.CIT Vs. Sintex Industries Ltd., 82 taxmann.com 171. Since the

Ld.CIT(A) has followed the order of this Tribunal and allowed the appeal of

the assessee, we find no reason to interfere with the order of the Ld.CIT(A)

and the same is upheld. The appeal of the revenue is dismissed.

The assessee filed cross objections and during the appeal hearing, the 10.

Ld.AR withdrawn the cross objection, therefore, the cross objections filed

by the assessee is dismissed as withdrawn.

In the result, appeal of the revenue as well as the cross objections of 11.

the assessee are dismissed.

Order pronounced in the open court on 17th September, 2021.

Sd/-(एन के चौधरी)

(N.K.CHOUDHRY)

Sd/-(डि.एस.सुन्दर सिंह) (D.S.SUNDER SINGH)

न्यायिक सदस्य/ JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

Dated: 17.09.2021

L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

- 1. राजस्व/The Revenue Dy.Commissioner of Income Tax, Circle-1,Kakinada
- 2. निर्धारिती/ The Assessee M/s East Coast Imports & Exports, D.No.67-15-
- 32, Office No.1, Nagamallithota Junction, Kakinada
- 3. The Pr.Commissioner of Income Tax-2, Visakhapatnam
- 4. The Commissioner of Income Tax (Appeals)-2, Visakhapatnam
- 5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary ITAT, Visakhapatnam