IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 1757/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

ACIT, Circle-6, Pune	Vs.	Silver Jubilee Motors Ltd., 12, Moledina Road, Camp, Pune 411001 PAN : AAHCS8736P
Appellant		Respondent

Assessee by	Shri Kishor Phadke
Revenue by	Shri Subhakant Sahu
Date of hearing	27-01-2022
Date of pronouncement	28-01-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the Revenue arises out of the order dated 01-03-2017 passed by the CIT(A)-4, Pune in relation to the assessment year 2013-14.

2. Revised grounds have been filed, which have not been objected to on behalf of the assessee.

3. The first issue raised through Ground Nos.2, 6 and 7 is against deleting the disallowance of Rs.4,12,59,525/- made by the Assessing Officer by invoking the provisions of section 40(a)(ia) of the Income-tax Act, 1961 (hereinafter also called 'the Act').

4. Succinctly, the facts of the case are that the assessee claimed deduction of interest amounting to Rs.11,56,59,011/-. During the course of assessment proceedings, the AO observed that a sum of Rs.4,12,59,525/- was paid by the assessee to non-banking financial companies without deduction of tax at source. On being called upon to explain the reasons for non-deduction of tax at source, the assessee tendered certain explanation. After considering the same, the AO disallowed Rs.4.12 crore u/s.40(a)(ia) of the Act. The ld. CIT(A) deleted the disallowance.

5. We have heard the rival submissions in Virtual Court and perused the relevant material on record. It is an admitted position that the assessee did not deduct tax at source from interest paid to the tune of Rs.4,12,59,525/-, detailed as under :

Sr.No.	Particulars	Amt (Rs.)
1	Interest paid to Cholamangalam Inv. & Fin.	28,22,737
2	Interest paid to Aditya Birla Finance	17,47,396
3	Interest paid to Reliance (1)	37,71,538
4	Interest paid to Reliance (2)	37,91,399
5	ABN Amro Bank	55,05,280
6	Interest paid to Mahindra & Mahindra	2,30,01,080
7	Interest paid to India Bulls	97,054
8	Interest paid to Magma Finance	5,23,041
	Total	4,12,59,525

6. The ld. CIT(A) deleted the disallowance by observing that the case was covered by the first proviso to section 201(1) read with second proviso to section 40(a)(ia) of the Act. Section 201(1) provides that where an assessee fails to deduct tax at source, or after deducting, fails to pay, he will be treated as an assessee in default. First proviso to this sub-section provides that where a person who is otherwise liable to deduct, fails to deduct tax partly or wholly, shall not be deemed to be an assessee in default, if the payee (i) has furnished its return of income u/s.139; (ii) has taken into account such sum for computing income in his return of income; and (iii) has paid the tax due on the income declared by him in the return of income and furnishes a certificate to this effect from a Chartered Accountant in the prescribed form. Such a certificate has to be issued in Form No. 26A by a Chartered Accountant. Thus, it is manifest that in order to be covered by the proviso, not only the above referred three conditions should be simultaneously fulfilled, but a certificate in the requisite form issued by a Chartered Accountant also needs to be furnished. It is only on fulfillment of the above conditions cumulatively that an assessee who has otherwise failed to deduct tax at source wholly or partly gets immunity from being treated as

an assessee in default. Now turning to the language of section 40(a)(ia) of the Act at the material time, it provides for making disallowance of the expenditure on which the assessee failed to deduct tax or pay after deduction of tax at source before the stipulated date. Second proviso to section 40(a)(ia) states that where an assessee fails to deduct the whole or any part of the tax at source, but is not deemed to be an assessee in default under the first proviso to section 201(1), then for the purposes of this provision, it shall be deemed that he has deducted and paid the tax on such sum, thereby not attracting the disallowance. On a conjoint reading of the second proviso to section 40(a)(ia) and the first proviso to section 201(1), it clearly emerges that on failure to deduct tax at source or payment after deduction, the disallowance which is otherwise required to be made, shall not be made, if the payee has furnished his return taking into account such sum in his total income and paid tax due thereon along with furnishing a certificate in the prescribed form in this regard. Ergo, in order to be covered within the second proviso to section 40(a)(ia), furnishing of a certificate in the prescribed form proving the existence of the three conditions stated in the first proviso to section 201(1) of the Act, is *sine qua non*.

7. Turning to the facts of the extant case, we find that the assessee paid Rs.4.12 crore as interest without deduction of tax at source. Though certificates from some of the payees in non-prescribed form were furnished, but the assessee did not furnish the relevant certificate in the prescribed form from all the payees so as to qualify for the benefit conferred by the second proviso to section 40(a)(ia). Despite that, the ld. CIT(A) deleted the disallowance by taking into account the certificates received from two or three parties confirming that the interest was offered to tax. Not only the certificates from all the payees were not furnished but such certificates were also not in the prescribed form or issued by a Chartered Accountant in terms of the first proviso to section 201(1). This being a case of violation of a procedural provision, we are of the considered opinion that it would be in the fitness of the things if the impugned order on this score is set-aside and the matter is restored to the file of AO for deciding it afresh as per law. Needless to say, the assessee will be allowed an adequate opportunity of hearing and to put forth necessary documents in this regard.

8. The second issue is against the deletion of addition of Rs.2,86,89,546/-. The facts apropos this issue are that the

assessee had shown addition to capital work-in-progress on account of property at Bhosari to the tune of Rs.14,43,42,327/- and Hadapsar Rs.50,32,519/-. The amount of capital work-in-progress at the end of the year stood at Rs.23,90,79,554/-. The AO observed that the assessee had taken loan from ICICI bank and from various other parties. Since the capital work-in-progress was not put to use during the year, the AO opined that the amount of interest to that extent was not allowable u/s.36(1)(iii) of the Act. On being show-caused, the assessee submitted that it took loan from ICICI bank for purchase and development of Bhosari showroom project and interest on the said loan was approximately Rs.72.00 lakh, which, by mistake was debited to the Profit and loss account instead of capitalizing the same. The AO observed that the assessee did not submit the completion certificate of the said projects. As the assessee failed to submit the exact amount and offered approximately Rs.72.00 lakh for disallowance by means of capitalization, the AO held that interest on entire closing balance of capital work-in-progress at Rs.23.90 crore was liable to be capitalized. Applying interest rate @12%, he made disallowance of interest at Rs.2,86,89,546/-. The ld. CIT(A) deleted the addition by directing the AO to restrict such

disallowance to Rs.72.00 lakh after verification, being, the amount *suo motu* offered by the assessee during the course of assessment proceedings towards loan of Rs.6.25 crore taken from ICICI bank for this project.

9. Having heard both the sides and gone through the relevant material on record, it is seen that the assessee has work-in-progress in respect of property at Bhosari and property at Hadapsar with closing balance at Rs.23.90 crore. Admittedly, these two properties were not put to use during the year. Proviso to section 36(1)(iii) states that any amount of interest paid in respect of capital borrowed for acquisition of an asset shall not be allowed as deduction for any period beginning from the date on which capital was borrowed for acquisition till the date on which such asset is first put to use. Since the assessee did not put to use the two projects under consideration, the interest thereon was required to be capitalized, which was not eligible for deduction u/s. 36(1)(iii). The assessee also admitted this fact before the AO and offered disallowance at Rs.72.00 lakh. However, no detail was filed either before the AO or before the ld. CIT(A) to show which of the total borrowings were utilized in respect of these two projects. The ld. AR accentuated on the availability of sufficient

shareholder' funds for canvassing a view that no interference in the impugned order on this score was called for. In our considered opinion, the argument of the availability of shareholders' fund does not apply on loans specifically taken for the purposes of acquisition of an asset which has still not been put to use during the year. In other words, if a specific loan has been taken for purchasing an asset, notwithstanding the fact that the assessee has sufficient interest-free funds, interest on such loan has to be disallowed within the ambit of proviso to section 36(1)(iii). It is only after exhausting the specific loans taken for the purpose of acquisition of an asset that the proposition of availability of shareholders' fund can be invoked for the balance amount of investment. The ld. CIT(A) was swayed by the assessee's submission that only a sum of Rs.6.25 crore was taken as loan from ICICI bank for these two projects without actually examining the details and purpose of other loans. In view of these facts, we are unable to sustain the finding returned by the ld. CIT(A) in deleting the addition. The impugned order is, ergo, set-aside and the matter is remitted to the file of the AO for considering this issue afresh in terms of our discussion made

above. Needless to say, the assessee will be allowed reasonable opportunity of hearing.

10. The next issue raised by the Revenue is against restricting the disallowance made u/s.14A of the Act to Rs.2,48,167/- as against Rs.67,74,102/- made by the AO. Succinctly, the facts of this issue are that the assessee received exempt dividend of Rs.2,48,176/-. In the absence of the assessee having offered any disallowance u/s.14A of the Act, the AO computed such disallowance at Rs.67,74,102/-. The ld. CIT(A) restricted the disallowance to the extent of exempt income, against which the Revenue has approached the Tribunal.

11. Having heard the rival submissions and gone through the relevant material on record, we find that the Hon'ble Delhi High Court in *Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Del)* has held that if there is no exempt income, there can be no question of making any disallowance u/s 14A of the Act. Similar view has been taken by the Hon'ble Delhi High Court in *CIT vs. Holcim India P. Ltd. (2014) 90CCH 081-Del-HC*. More recently the Hon'ble jurisdictional High Court in *Pr. CIT VS. Kohinoor Projects Pvt. Ltd. (2020) 425 ITR 700 (Bom)* has also held that in the absence of any exempt income, there cannot be any

disallowance of expenses u/s 14A of the Act. Since the assessee in the instant case earned exempt dividend income of Rs.2,48,167/- and the ld. CIT(A) restricted the disallowance u/s.14A to that extent, we uphold the same.

12. The only other issue left in this appeal is against the deletion of addition of Rs.61,372/- on account of mismatch in TDS. The AO observed from Form No.26AS that a sum of Rs.61,372/- was not offered to tax and the same was not reconciled by the assessee. He, therefore, made an addition for such sum. The ld. CIT(A), after perusing the details of the income and the amount of tax deducted at source, accepted the assessee's claim.

13. Having heard both the sides and gone through the relevant material on record, it is seen that the assessee furnished details of the amounts received and TDS thereon. Some amount of TDS in Form No.26AS was not claimed by the assessee, which fact was also brought to the notice of the AO. Anent to the five parties listed on page 17 of the impugned order, though the income was declared but no TDS claim was made. The ld. DR was fair enough to accept the reconciliation taken note of by the ld. CIT(A). We, therefore, countenance the action of the ld. first appellate authority on this count.

14. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 28th January, 2022.

Sd/-	Sd/-
(PARTHA SARATHI CHAUDHURY)	**(R.S.SYAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 28th January, 2022
Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-4, Pune
4. The Pr.CIT-3, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" / DR 'B', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

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Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	27-01-2022	Sr.PS
2.	Draft placed before author	28-01-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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