IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.1754/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Nandan Associates, Flat No.1, Sl.No.82/2, Nandadeep Apartment, Prabhat Road, Erandwane, Pune 411 004, Maharashtra PAN : AAFFN6713N	Vs.	ITO, Ward-3(1), Pune
Appellant		Respondent

Assessee by Shri C.H. Naniwadekar
Revenue by Shri Piyush Kumar Singh Yadav

Date of hearing 29-06-2022
Date of pronouncement 30-06-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A)-3, Pune on 14-09-2018 in relation to the assessment year 2014-15.

2. The first issue raised in this appeal is against the confirmation of disallowance of Rs.1,13,42,282/-, being, the amount of State Value Added Tax (VAT) paid for earlier years.

3. Succinctly, the facts of the case are that the assessee is engaged in the business as promoter and developer. It maintained

two sets of books of accounts, one, for such projects on which the benefit of deduction under section 80IB(10) of the Income-tax Act, 1961 (hereinafter also called `the Act') is available [80B(10) projects] and the others for such projects on which no benefit of deduction under section 80IB(10) is available [non-80IB(10) projects]. It also made separate Profit and loss accounts and Balance sheets in respect thereof. During the year under consideration, the assessee showed to have paid VAT of Rs.1,13,42,282/- relating to the period 2006 to 2010. Deduction of such an amount was claimed in the Profit and loss account of non-80IB(10) projects. On a specific query, the assessee admitted that the VAT of earlier years paid during the year pertained to 80IB(10) projects. The AO thus observed that the VAT pertaining to 80IB(10) projects was wrongly claimed as deduction in the Profit and loss account of non-80IB(10) project. The Assessing Officer (AO) further held that, in any case, the amount of VAT paid by the assessee relating to the earlier years could not be allowed as deduction in the current year as the same was an expenditure of prior period. Considering all these facts, he made disallowance of Rs.1.13 crore. The AO also invoked section 14A

of the Act and made out a case that disallowance u/s.14A was called for as the assessee's income from 80IB(10) projects was eligible for deduction. The assessee's contention that no such income was earned during the year did not satisfy the AO. He, however, made addition of Rs.1.13 crore only once. The assessee contended before the ld. CIT(A) that it had no business profits from the eligible 80IB(10) projects for the year under consideration and hence, the amount was rightly claimed as deduction under the non-80IB(10) projects' Profit and loss account. The ld. CIT(A) has drawn a chart at page 8 of the impugned order and noted that for the A.Y. 2012-13 there was business profit of Rs.53.86 crore on which deduction of Rs.53.79 crore was claimed u/s 80IB(10); for the A.Y. 2013-14 there was business profit of Rs.6.91 crore on which deduction of Rs.6.72 crore was claimed u/s 80IB(10); and for the A.Y. 2015-16 there was business profit of Rs.3.12 crore on which deduction u/s 80IB(10) of Rs.2.06 crore was claimed. He opined that the amount of VAT could not be allowed as deduction during the year either in the Profit and loss account of 80B(10) projects or non-80IB(10) projects because the liability pertained to earlier years.

The ld. CIT(A) also countenanced the view of the AO on section 14A disallowance.

4. I have heard the rival submissions and gone through the relevant material on record. It is seen as an admitted position that the assessee separately maintained books of account for 80IB(10) projects and non-80IB(10) projects. Corresponding Profit and loss accounts were also drawn accordingly. There is no dispute that the amount of VAT was paid by the assessee during the year under consideration which pertained to earlier years. In fact, the question as to whether the VAT was payable by Builders was ***sub judice*** at the material time. Vide its judgment rendered during the year under consideration, the Hon'ble Supreme Court held that VAT was payable by the builders also. In the hue of this judgment, the assessee became liable to pay VAT for earlier years, which amounted to Rs.1.13 crore. The assessee had not claimed any deduction on account of VAT in the computation of income for earlier years. It was only during the year under consideration that the assessee claimed such deduction on paying the VAT amount of earlier years. In that view of the matter, deduction of such VAT has to be allowed in this year itself.

5. Now the important question is as to whether the deduction of VAT should be allowed against profits from 80IB(10) projects or non-80IB(10) projects. Admittedly, the VAT paid by the assessee pertains to 80IB(10) projects. As such, there is no question of claiming its deduction against non-80IB(10) projects notwithstanding the fact that there was no revenue from 80IB projects for the year under consideration. Non-availability of profits from 80IB projects would not *per se* make the assessee entitled to deduction against profits from non-80IB projects. It is, therefore, held that the VAT should be allowed as deduction only in the Profit and loss account of 80IB(10) projects which would lead to the corresponding increase in the closing work-in-progress thereof as there was no revenue under this stream for the year. Thus, the closing figure of work-in-progress in the 80IB(10) projects would increase by the sum on Rs.1.13 crore. However, income for the year under consideration from non-80IB(10) projects, which is otherwise chargeable to tax and not eligible for the deduction, would increase accordingly as the amount of VAT paid and claimed as deduction therein shall get disallowed on moving to the Profit and loss account of 80IB(10) projects.

6. The alternative view point of the AO for making disallowance u/s.14A cannot be countenanced because deduction is admissible under 80IB(10) projects and the assessee admittedly did not have any income from such projects. Once there is no exempt income, there cannot be any question of making disallowance u/s.14A. This view is fortified by the judgment of the Hon'ble Delhi High Court in *Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Del)* wherein it was held that if there is no exempt income, there can be no question of making any disallowance u/s 14A of the Act. 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. As the assessee in the instant case did not earn any exempt income, respectfully following the precedent, it is held that no disallowance u/s 14A is called for.

7. To sum up, the amount of Rs.1.13 crore, being, the VAT paid by the assessee during the year relating to 80IB(10) projects will not be allowed as deduction against the profit of non 80(IB(10) projects, which will consequently increase the total

income for the current year; the closing figure of work-in-progress of the 80IB(10) projects will correspondingly increase; and no disallowance u/s.14A of the Act is called for on this score.

8. The only other issue raised in this appeal is against the confirmation of disallowance of interest amounting to Rs.13,54,461/-.

9. The factual matrix of this ground is that the assessee showed secured loans of Rs.53.32 crore and unsecured loans of Rs.2.23 crore and claimed deduction of the interest expenditure. The assessee had also given certain loans and advances without interest to partners and outsiders. On perusal of such details, the AO observed that the assessee paid advance of Rs.45.00 crore to Mr. S.K. Kotkar, a partner of the assessee firm, for purchase of TDR. The assessee admitted that Mr. S.K. Kotkar was not in possession of TDR at the time when advance was given and further that there was no MOU with Mr. S.K. Kotkar for purchase of TDR. In fact, Mr. S.K. Kotkar received Rs.45.00 crore as advance and re-invested the same into the assessee firm as his capital on the same date. The AO did not accept the theory of `business purpose' for the advance given to the partner and

computed the disallowance of interest at Rs.61,01,315/- towards negative balance in capital account of Mr. S.K. Kotkar. He further computed the disallowance of interest in respect of advances given to other parties, namely, Anuj Developers; Balasaheb Babab Manmode and Vinayak Mahadev Nimhan. In all, the disallowance of interest was computed at Rs.71.47 crore. Such an amount was accordingly reduced from the work-in-progress of Rs.70.50 crore. The ld. CIT(A) took note of clause 9 of the Partnership deed of the assessee-firm regulating the payment of interest providing that if there is debit balance in the account of any partner, interest at the same rate shall be charged as will be paid on the credit balance of the partners. The ld. CIT(A) changed the complexion of disallowance of interest as made by the AO to the amount of interest income which ought to have been earned by the assessee-firm from Mr. S.K. Kotkar on account of debit balance. In view of the fact that the net interest which ought to have been charged by the assessee from Mr. S.K. Kotkar was at Rs.13.54 lakh, he sustained the disallowance at his level. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

10. I have heard the rival submissions and perused the relevant material on record. Clause 9 of the partnership deed stipulates as under :

> "9. Partners Shall be entitled to have simple interest at the rate of 12% p.a. or at such any other rate as may be mutually agreed upon or prescribed u/sec.40(b) of the Income Tax Act, on the amount standing to the credit of Capital, Current Loan A/c. of the partners.
>
> If there is debit balance in the accounts of any partner interest at the same rate shall be payable by him. The partners may change the above rate of interest from time to time as required by the exigencies of business."

11. On going through the above clause of the partnership deed, it is clear that the partners are entitled to simple interest at the rate of 12% per annum on the amount standing to the credit of their capital account etc. If there is debit balance in the account of any partner, interest at the same rate shall be charged by the firm. A copy of capital account of Mr. S.K. Kotkar has been placed at pages 10 to 12 of the paper book along with the respective credit/debit balances on each date with the calculation of interest by applying rate of interest at 13.50%. In this calculation, the gross interest that ought to have been charged by the firm from Mr. S.K. Kotkar has been computed at Rs.61.01 lakh with the

amount of interest that ought to have been paid by the firm to Mr. S.K. Kotkar on his credit balance at Rs.47.46 lakh, with the net balance of Rs.13.54 lakh representing the final amount of interest which ought to have been charged by the assessee-firm in accordance with the above clause of the partnership deed. Here, it is relevant to mention that the assessee firm neither charged nor paid any interest to the partners on their credit/debit balances in the capital accounts. Another partner, namely, Ms. Jyoti Shamkant Kotkar had credit balance throughout the year. A copy of her account has been placed at page 9 of the paper book. On such credit balance of her capital account, the interest at the rate of 13.50%, which would have otherwise become payable by the firm comes to Rs.53.94 lakh. This amount of interest was also not paid by the assessee firm in the same way as it did not charge interest from Mr. S.K. Kotkar. In other words, neither the assessee firm paid nor received any interest to/from the partners. If the amount of interest that ought to have been charged from Mr. S.K. Kotkar at Rs.13.54 lakh is considered as income on hypothetical basis, then the corresponding deduction on account of interest that ought to have been paid by the assessee to Ms.

Jyoti Shamkant Kotkar on hypothetical basis comes at Rs.53.94 lakh. The net effect of both the interest hypothetically charged/paid would tend to reduce the income of the firm by Rs.40.40 lakh (interest of Rs.53.94 lakh payable to Ms. Jyoti Shamkant Kotkar minus interest of Rs.13.54 lakh receivable from Mr. S.K. Kotkar). As neither the firm has charged nor paid any interest to the partners and the partners in their individual capacities have also not shown any such hypothetical interest income or expenditure, there is no logic in sustaining the addition of Rs.13.54 lakh towards the amount of interest that ought to have been earned by the assessee. I, therefore, order to delete this addition.

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

Order pronounced in the Open Court on 30th June, 2022.

Sd/-
(R.S.SYAL)
उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 30th June, 2022
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-3, Pune
4. The Pr.CIT-2, Pune
5. DR, ITAT, 'SMC' Bench, Pune
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	29-06-2022	Sr.PS
2.	Draft placed before author	30-06-2022	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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