

**THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH MUMBAI**

**SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
&
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA NO.965/MUM/2018
(A.Y. 2013-14)**

M/s. VKS Projects Limited 507, Sai Sangam, B Wing, Sector-15, Pal Beach Road, CBD Belapur, Navi Mumbai-400 614 PAN No.AAACC9164E	V/s	Income Tax Officer-15 (3)(4), Aayakar Bhavan, M.K. Road, Churchgate Mumbai-400 020
Appellant		Respondent

Assessee by	None
Department by	Ms. Vranda U. Matkari Sr. AR
Date of Hearing	08.08.2022
Date of Pronouncement	04.11.2022

ORDER

PER KAVITHA RAJAGOPAL:

This appeal has been filed by the assessee as against the order of learned Commissioner of Income Tax (Appeals)-24, Mumbai [hereinafter referred to as “CIT(A)”] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) pertaining to assessment year 2013-14. The assessee has challenged the addition amounting to Rs.1,56,00,000/- on account of excess deduction u/s 35D of



the Act pertaining to IPO related expenses, addition of Rs.1,51,83,347/- as disallowance u/s 43B and an addition of Rs.2,32,776/- as disallowance of interest on late payment of TDS, addition of Rs.1,00,000/- as disallowance u/s 40a(ia) and addition of Rs.1,42,500/- on staff welfare expenses. As there was no representation on behalf of the assessee inspite of several opportunities, we hereby proceed to decide the appeal by hearing the learned Departmental Representative (DR) and on perusal of the available materials on record.

2. The brief facts are that the assessee is a company engaged in business of providing Engineering Services and EPC Solutions. The assessee company has filed his return of income dated 30.09.2013 declaring total income of Rs.1,56,10,903/-. The assessee's case was selected for scrutiny and assessment order u/s 143(3) of the Act was passed on 29.03.2016 determining total income of Rs.4,68,69,526/- by making the impugned additions/disallowances. The assessee was in appeal before the learned CIT(A) as against the said additions/disallowances. The learned CIT(A) confirmed the additions made by the Assessing Officer (AO). The assessee is in appeal before us challenging the order of the learned CIT(A).



3. Ground No. 1, 2 and 3 are general in nature and needs no adjudication.

4. Ground No. 4

It is observed that the assessee has claimed expenses of Rs.2,03,45,678/- alleged to be IPO related expenses and that the assessee company has incurred expenses of Rs.1,95,00,000/- during the impugned year where, the assessee company has made IPO and also assessee has received of Rs.55,00,0000/- which are utilised as under:

1. Investment in capital equipment	Rs.1006 lakhs
2. Working capital requirement	Rs.4299 lakhs
3. IPO expenses	Rs.195 lakhs
4. Total	Rs.5500 lakhs

It is observed that the assessee had claimed the entire amount of IPO related expenses as deduction. The AO has restricted the same to 1/5th of the said expenditure as per provisions of section 35D. The assessee is said to have raised funds for Primary Securities Market and has submitted that the main object of raising the funds was to meet the working capital requirements and to procure new machinery to reduce the overheads and other costs. The assessee has also claimed that 80% of the funds were utilised to meet the working capital requirements. The AO as well as the learned CIT(A) has held that the objectives of the IPO as per the



prospectus of the assessee company was for long term and the working capital requirement of the assessee seems to be for a long term. Further, to this the learned CIT(A) has stated that the assessee has raised funds for extension of business as per the provisions of section 35D(1)(ii) of the Act and whether, the impugned expenses pertaining to IPO are covered u/s 35D and whether the same has to be amortized over a period of 5 years was the issue before the lower authorities and not the nature and quantum of IPO expenses was disputed. The learned CIT(A) held that the IPO expenses are covered under the provision of section 35D(2)(c)(iv) of the Act and further, the funds raised by the assessee are for long term objectives and that the assessee is eligible to claim the deduction u/s 35D of the Act over a period of 5 years. The assessee's claim of the entire expenses amounting to Rs.1,95,00,000/- was rejected by the AO and the CIT(A) as excess claim u/s 35D related to the IPO expenses and the assessee was allowed to claim only 1/5th of the IPO expenses u/s 35D and the remaining amount was to be amortised in subsequent years.

4. From the above observations, we are of the considered opinion that the addition amounting to Rs. 1,56,00,000/- as excess deduction u/s 35D is justified by the lower authorities and the assessee has failed to substantiate its



claim before us. In the result, this ground of appeal filed by the assessee is dismissed.

5. Ground No. 5

The next ground pertains to the disallowance of Rs.1,51,83,347/- u/s 43B. The AO has disallowed the impugned amount on the ground that the assessee has failed to pay the said amount before the due date and the same is reflected in the tax audit report of the assessee in Form 3CD. The AO has disallowed the following statutory liabilities:

1. Service Tax	Rs.1,49,65,382/-
2. Gratuity	Rs.2,17,965/-
3. Total	Rs.1,51,83,347/-

The above mentioned statutory liabilities were found to be outstanding before filing the return of income and the same was disallowed on the ground that the assessee has failed to furnish the details pertaining to the payment of the impugned amount before the lower authorities. The assessee has stated that it has turn NPA in August 2013 and the same was the reason for not paying the statutory dues. We find no infirmity in the order of the learned CIT(A) as the assessee has failed to furnish particulars of its claim before us. In the result, this ground of appeal filed by the assessee is dismissed.



6. Ground No. 6,7 and 8 pertaining to disallowance of interest on late payments of TDS, disallowance u/s 40a(ia) and addition on staff welfare expenses were not raised before the learned CIT(A) and the assessee has challenged these grounds before us for the first time. It is pertinent to point out that the assessee has not raised these grounds as additional grounds which were not adjudicated by the learned CIT(A). The assessee has also failed to furnish documents/evidences pertaining to these claims and therefore, we deem it fit to dismiss these grounds of appeal filed by the assessee.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 04.11.2022.

Sd/-

Sd/-

(S RIFAUH RAHMAN)

(KAVITHA RAJAGOPAL)

ACCOUNTNANT MEMBER

JUDICIAL MEMBER

Mumbai:

Dated: 04/11/2022

MAHESH SONAVANE (P.S)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent



3. The CIT(A)
4. DR, ITAT, Mumbai
5. Guard File.

//True COPY//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai