IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'A' BENCHES :: PUNE

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

ITA No.351/PUN/2023
(A.Y. 2013-14)

Electronica Machine Tools Ltd., Gate No.55, Krushnakunj Bungalow, Saswad Kondwa Road, A/P Hirve, Tal Purandhar, Pune. PAN: AAACE 4196 L	vs	DCIT, Central Circle-1(1), Pune.
Appellant		Respondent

Assessee by	:	Shri Suhas B Bora, CA
Revenue by	:	Shri Keyur Patel, CIT-DR
Date of hearing	:	08/09/2023
Date of pronouncement	:	/09/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of Commissioner of Income Tax (Appeals)-11, Pune (for short, 'CIT(A)'), dated 30.01.2023 for A.Y.2013-14 as per the following grounds of appeal:-

"1. The order of the Ld CIT(A)-11, Pune in the case of the appellant is opposed to established law and the judicial pronouncement.

2. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming disallowance u/sec. 14A of the Act disregarding the contention of the appellant that addition u/sec. 14A deserves to be restricted to the extent of exempt income earned amounting to 1,01,500/- and remaining amount be deleted.

3. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming the disallowance of

the amount of Rs.6,58,81,508/- and Rs.2,93,22,475/- debited to the P&L A/ c under the heads-investment written off and irrecoverable loans advances written disregarding the contention of the appellant that they are deduction allowed u/s 37 of the Act as amount paid by the appellant company are the nature of advances made in the course of carrying on the business with commercial necessity and business expediency.

4. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming the disallowance of the amount of Rs.1,12,13,764/- claimed by the appellant company u/s 35(1) of the Act on account of research expenses incurred disregarding the evidences submitted by the appellant in support of said expenditure.

5. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in confirming addition of Rs.30,500/– u/s 37(1) of the Act on account of donation debited to Profit and loss incurred disregarding the fact that said donations were made wholly and exclusively for the purposes of appellant's business.

6. The appellant may kindly be permitted to add to or alter any of grounds of appeal, if deemed necessary."

2. At the outset, ld.AR for the assessee submitted that they are not pressing ground No.5. Having heard his submission, ground No.5 is dismissed as not pressed. Ground Nos. 1 & 6 are general in nature.

3. In ground No.2, the assessee is contending that the addition u/sec. 14A has to be restricted to the extent of exempt income earned. We observe that this issue is no more *res-integra* and has been answered in favour of the assessee in various decisions of the Hon'ble High Courts as well as the Tribunal. The Hon'ble Delhi High Court in *Cheminvest Ltd. v. 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/sec. 14A of the Act. Similar view has been taken by

the Hon'ble Delhi High Court in the case of *CIT v. Holcim India P. Ltd*. [2014] 90 CCH 81 (Del. HC). Meaning thereby, the disallowance u/sec. 14A has to be restricted to the exempt income earned during the year. This situation has been analyzed by recent decision of this Tribunal in the case of *Prime Centre and Developers P. Ltd. v. ACIT* in ITA Nos. 784 & 785/PUN/2023, dated 04/08/2023. The relevant parts are extracted as follows:-

> *"5. 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.*
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> *6. It is seen that an amendment has been carried out to section 14A by the Finance Act, 2022 providing that the disallowance u/s 14A would be called for notwithstanding no receipt of exempt income during the year. The Hon'ble Delhi High Court in Pr.CIT Vs. Era Infrastructure (India) Ltd. (2022) 448 ITR 674 (Delhi) has held such amendment to be not retrospective. In that view of the matter, the case pertaining to the A.Y. 2014-15 under consideration, having earned tax free dividend of Rs.1,25,000/-, will be governed by the ruling in Cheminvest (supra). Respectfully following the precedent, we order to restrict the disallowance to Rs.1,25,000/-."*

That, following the same parity of reasoning as enshrined in the aforesaid judicial pronouncements, we direct the AO to restrict the disallowance u/sec. 14A to the extent of exempt income earned only as this is the case for A.Y. 2013-14 and the remaining amount should be deleted. Ground No.2 stands allowed.

4. In ground No.3, the assessee is aggrieved with the decision of the ld. CIT(A) confirming the disallowance of Rs. 6,58,81,508/- and Rs.2,93,22,475/- debited to the profit & loss account under the heads

investment written off and irrecoverable loans/advances written. The ld. CIT(A) on this has held as follows:-

1.

"I have considered the facts of the case and the submissions made by the appellant. The issue to be decided is whether the amount of investment of Rs. 6,58,81,508/- made in the subsidiary company and the loans/advances amounting to Rs. 2,93,22,475/- given to the subsidiary company which were written off during the year can be claimed as business expenditure u/s 37 or section 36(1)(vii)of the Act. It is an undisputed fact that the amount of Rs.6,58,81,508/- corresponds to investment written off by the appellant company. The appellant made this investment in its 100% subsidiary company based in Switzwerland. The appellant has given a very general answer that this investment was made out of business exigencies, however, the appellant has not substantiated such business exigency by way of documentary evidences. In any case, an investment in shares of a subsidiary company is of capital in nature and whenever any such investment goes bad, the same can only be claimed as capital loss and cannot be claimed as business deduction u/s 37 of the Act for the simple reason that neither it is of revenue nature nor it is an expenditure incurred wholly and exclusively for business purposes.

12. Regarding the second item of Rs. 2,93,22,475/- corresponding to loans and advances written off during the year, it may be mentioned that the said amount cannot be categorised as expenditure because it was a loan given by the appellant company to its subsidiary company for running the business of subsidiary company which is a separate entity. The appellant has not substantiated the commercial / business expediency of such loans as claimed. Moreover, the provisions of the Act provides that no deduction towards bad debts shall be allowed unless the said debt has been considered as income in an earlier year."

The ld. CIT(A) has relied on the judgment of the Hon'ble Supreme Court in the case of *PCIT v. Khyati Realtors P. Ltd*. [2022] 141 taxmann.com 461 (SC) wherein the Hon'ble Apex Court has held that where the assessee failed to prove that amount paid to a developer as advance for booking commercial space was in its ordinary course of business, the said amount being written off as bad debt could not be allowed. Accordingly, the ld. CIT(A) held that the amount

of Rs. 6,58,81,508/- and Rs. 2,93,22,475/- debited to the profit & loss account under the heads investment written off and irrecoverable loans advances written off were not allowable as deduction as business expenditure u/sec. 37 of the Act.

5. We have carefully observed the findings of AO as well as ld.CIT(A) on this issue. It is seen that the assessee had invested certain amount in its subsidiary company and out of those loans/ advances, certain amount were written off during the year, and whether that can be claimed as business expenditure u/sec. 37 of the Act, is the issue. In this case, the assessee has made investment in its 100% subsidiary company based in Switzerland. The assessee has not explained substantially what was the business expediency and need for making this investment and has also not filed any documentary evidences substantiating such commercial expediency. Therefore, in this case, the assessee has failed to establish commercial and business expediency for investment of Rs. 6,58,81,508/- made in the subsidiary company and also the loans/advances amounting to Rs.2,93,22,475/- given to the subsidiary company which were written off. Ld.DR has fairly demonstrated from the books of account submitted by the assessee-company that, the assessee itself is in loss, then in what circumstances it can give loans to the other subsidiary concerned. Ld.DR reiterated that in the entire transaction, there is no financial justification and neither any business expediency. The

assessee has relied on the decision of the Hon'ble Karnataka High Court in the case of *M/s. ACE Designers Ltd. v. Addl. CIT (LTU), Bangalore* [202] TaxCorp (DT) 83385 (HC − Kar.). However, this case is substantially different on facts from the case of the assessee, since in the referred judgment, it is noted by the Hon'ble Court that the assessee had made investment for business purpose i.e. for enhancement of business activity of the assessee in global market. *Per contra*, in the present case of the assessee before us, the assessee has not at all established any business or commercial expediency regarding investment in the subsidiary company and written off of the loss. No documentary evidence is filed in support of the assessee's case. The facts brought on record by the Revenue stands unaltered. The assessee has also relied on the judgment of the Hon'ble Bombay High Court in the case of *CIT v. Colgate Palmolive (India) Ltd.* [2015] 370 ITR 728. This decision is also substantially different in facts from the case of the assessee since in this referred judgment, the facts are that AO noted that the assessee claimed deduction on account of loss on sale of shares. However, in the case at hand, it is not the case of sale of shares, hence, this decision cannot be applied to the facts of the assessee's case before us. The assessee also relied on the decision of the coordinate Chennai Bench in the case of *REFEX Industries Ltd. v. DCIT* in ITA Nos. 2938 & 2939/CHNY/2017, order dated 07/02/2022. This case is also substantially different in facts with the case of the assessee as evident at para 10 of the Tribunal's

order wherein it has been observed that investments in subsidiaries were made in the normal course of assessee's business to make business more profitable. In the present case before us, the assessee has failed to establish any business expediency regarding the transaction, hence, all these cases cannot be applied to the present facts and circumstances of the assessee's case. Considering the totality of the facts and circumstances, we do not find any infirmity with the findings of the ld. CIT(A) which is hereby upheld. Ground No.3 is dismissed.

6. In ground No.4, the assessee is contending against the confirmation of disallowance of Rs. 1,12,13,764/- claimed by the assessee-company u/sec. 35(1) of the Act for research expenses. However, no details of such expenses were filed during the assessment proceedings. At the first appellate stage, the assessee had filed certain details of research expenditures and in order to comply with Rule 46A(3) of the I.T. Rules, 1962, these additional evidences were forwarded to the AO and remand report was called for by the ld. CIT(A). Considering all these documents especially the remand report, the ld. CIT(A) had observed that the assessee till date has not clarified as to under which clause of sec.35(1), it had claimed the said deductions. The ld.CIT(A) had precisely extracted the parameters under which deduction can be claimed as per sec. 35(1) of the Act, however, there is no clear claim by the assessee as per this

provision. Accordingly, such claim was disallowed.

7. At the time of hearing, ld.AR submitted a tabulation form regarding deduction of expenses as claimed u/sec. 35(1) of the Act. He prayed that this tabulation may be verified by the AO.

8. *Per contra*, ld.DR strongly opposed for sending the issue back to the file of AO. Ld.DR submitted that till date, assessee has not made its claim clearly as to under which clause of sec.35(1), deductions are claimed.

9. We have heard the parties herein and have considered the facts on record. In this issue, the assessee is claiming deductions of expenses on scientific research. The said provision specifies the heads for claiming deduction. So far before the revenue authorities the assessee has not specifically demonstrated under which head they are claiming deduction in the said provision. However, a tabulation regarding deduction u/sec. 35(1) of the Act has been placed on record by the ld.AR for the assessee. We are of the considered view that in any case, if assessee is not entitled for deduction, the Revenue shall deny such deduction to the assessee. However, the fact remains that we are at the second appellate stage and before us the assessee had submitted certain tabulation in this regard and the true facts needs to be verified at the level of the AO, therefore, in the interest of justice,

we find it prudent and judicious to let this document be verified and examined by the AO. In view thereof, this issue is remanded to the file of the AO for adjudication as per law while complying with the principles of natural justice. Ground No.4 is allowed for statistical purposes.

10. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in open Court on 20th September, 2023.

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

Dated : 20th September, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "A" Bench Pune.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.