

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.1644/Del/2019
Assessment Year: 2015-16

Vis-à-vis India Pvt. Ltd.,
90, New Mangla Puri,
MG Road,
New Delhi.

Vs. ITO,
Ward 26(4),
New Delhi.

PAN: AAACV8740P

(Appellant)

(Respondent)

Assessee by : Shri Naresh Samkaria, CA
Revenue by : Shri Ramesh Kumar
Date of Hearing : 23.08.2021
Date of Pronouncement : 13.10.2021

ORDER

This appeal filed by the assessee is directed against the order of the CIT(A)-9, Delhi, relating to Assessment Year 2015-16.

2 Facts of the case, in brief, are that the assessee is a company engaged in the business of trading of imported and domestic designer products and lights of all kinds and description used for commercial as well as domestic purposes. It filed its return of income on 30th September, 2015 declaring nil income. During the course of assessment proceedings, the assessee provided item-wise valuation of opening stock and closing stock of Delhi and Mumbai. From the perusal of the

said details, the AO noted that in many items quantity of the goods has been increased in closing stock in comparison to opening stock. However, the total value of these goods remained the same even after increasing the quantity. In such case, the AO noted that the itemwise value of the closing stock has been decreased. The total decreased value of such item of Delhi stock was Rs.6,16,012.15 and Mumbai stock was of Rs.5,74,901.01. He, therefore, asked the assessee to explain the same. The assessee submitted that these are petty stock like screws, bulbs, holder, switches, etc., which have negligible value. Rejecting the various explanations given by the assessee and observing that the assessee is not able to provide sufficient evidence in support of increase in goods in closing stock, the AO made addition of Rs.11,90,913/- u/s 69B of the Act.

3. Similarly, the AO noted that the assessee has purchased kitchen of Rs.5,98,955/- excluding VAT on 31.03.2015 and claimed depreciation @ 10% amounting to Rs.29,948/- for the second half of the year. He issued a notice u/s 133(6) of the Act to the vendor of kitchen M/s Grandeur Interiors Pvt. Ltd. who stated in their reply that the kitchen was installed on 27th April, 2015 which is after completion of the financial year 2014-15. The AO, therefore, disallowed the claim of depreciation of Rs.29,948/-.

3.1 The AO noted that the assessee has claimed fine and penalty of Rs.3,83,831/- the details of which are as follows:-

1	Interest on Service Tax	5850/-
2	Interest on TDS Mumbai	37894/-
3	Interest on TDS Delhi	136252/-
4	Interest on VAT	37894/-
5	Interest on CST	12552/-
6	Interest on CST/Vat Mumbai	148495/-

Rejecting the various explanations given by the assessee, the AO made addition of the same to the total income of the assessee.

4. The AO also noted that the assessee has shown investment of Rs.12,50,000/- and has borrowed fund of Rs.5,43,27,453/-. The company has paid interest on borrowed term loan of Rs.67,97,682/-. He, therefore, asked the assessee to explain as to why disallowance u/s 14A r.w.r. 8D should not be made. Rejecting the various explanations given by the assessee and applying the provisions of section 14A r w r. 8D, the AO made addition of Rs.67,97,682/- to the total income of the assessee. Similarly, he also disallowed TDS of Rs.526/-. The AO accordingly determined the total income of the assessee at Rs.11,90,910/-.

4.1 In appeal, the Id.CIT(A) gave part relief to the assessee.

5. Aggrieved with such order of the CIT(A), the assessee in appeal before the Tribunal by raising the following grounds:-

01. That on the facts and circumstances of the case, the learned Assessing Officer was not justified in adding a sum of Rs. 1 1,90,913/- being unexplained investment u/s 69B of Income Tax Act, 1961. Further he was not justified in not allowing deducting carry forward losses against the

addition made u/s 69B without appreciating the facts that restriction for not deducting carry forward losses from addition made u/s 69B was inserted by Finance Act, 2016 effective from 01-04-2017.

2. That on the facts and circumstances of the case, the learned Assessing Officer was not justified in disallowing a sum of Rs. 29,948/- being on account of depreciation on kitchen purchased by the assessee.

3. That on the facts and circumstances of the case, the learned Assessing Officer was not justified in disallowing a sum of Rs. 3,83,831/- being on account of interest on delayed payment of VAT/CST/Service tax and TDS.

Rs. 2,04,791/- interest on VAT/CST/Service tax is deleted by learned CIT(A).

4. That on the facts and circumstances of the case, the learned Assessing Officer was not justified in disallowing a sum of Rs. 67233/- being on account of disallowance u/s 14A of Income Tax Act, 1961. The same has been deleted by learned CIT(A).

6. The ld. Counsel for the assessee did not press grounds No.2 and 4 in his written submission filed for which the ld. DR has no objection. Accordingly, the above two grounds are dismissed as not pressed.

7. So far as grounds No.1 and 3 are concerned, the ld. Counsel submitted that the CBDT Circular No.11/2019 clarifying non-allowability of set off of losses against the deemed income under section 115BBE of the IT Act, 1961 prior to A.Y. 2017-18 was issued on 19th June, 2019 which is after the order passed by the AO and the CIT(A). Similarly, the disallowance of interest on delayed payment of VAT/CST/Service Tax and TDS amounting to Rs.3,83,831/- has not been properly adjudicated by the lower authorities in the light of the various decisions submitted before them. He accordingly submitted that he has no objection if the matter is restored to the file of AO or CIT(A) as the case may be.

8. The ld. DR strongly relied on the orders of the AO and the CIT(A).

9. I have heard the rival arguments made both the sides and perused the record. I find, the AO made addition of Rs.11,90,913/- u/s 69B of the Act as unexplained investment in kitchen items which has been upheld by the CIT(A). it is the submission of the ld. Counsel that the CBDT Circular No.11/2019 issued on 19th June, 2019 clarifying the non-allowability of set off of losses against the deemed income u/s 115BBE of the Act prior to A.Y. 2017-18 is after the decision of the order of the CIT(A). Further, I find some force in the argument of the ld. Counsel for the assessee that this being a factual matter, the lower authorities have not properly appreciated the issue. Similarly, the disallowance of Rs.1,74,136/- on account of interest on delayed payment of VAT/CST/Service Tax, etc., have not been properly appreciated in view of the various decisions cited by the ld. Counsel for the assessee. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the AO with a direction to adjudicate the issue keeping in mind the CBDT Circular No.11/2019 clarifying on set off of losses against the deemed income u/s 115BBE of the Act. Similarly, he shall decide the issue of interest on delayed payment of VAT/CST/Service Tax, etc. keeping in mind the various decisions according to which these are compensatory in nature. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the

assessee. I hold and direct accordingly. This ground raised by the assessee is allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is partly allowed.

The decision was pronounced in the open court on 13.10.2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 13th October, 2021

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi