

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.682/DEL/2023
Assessment Year 2018-19

WLD Investments Pvt. Ltd. 108, 3 rd Floor, Madangir Village, New Delhi.	Vs.	DCIT Circle-25(1) Delhi
TAN/PAN: AAACW1081E		
(Appellant)		(Respondent)

Appellant by:	Shri S. Krishnan, Adv.		
Respondent by:	Shri Amit Katoch, Sr.DR		
Date of hearing:	27	12	2023
Date of pronouncement:	08	01	2024

ORDER

PER PRADIP KUMAR KEDIA-A.M. :

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ('CIT(A)' in short) dated 12.01.2023 arising from the assessment order dated 19.04.2021 passed by the Assessing Officer (AO) under Section 143(3) r.w. Section 144B of the Income Tax Act, 1961 (the Act) concerning AY 2018-19.

2. The grounds of appeal raised by the assessee read as under:

"1. The order of the Ld. CIT (A) is wrong on facts and bad in law, and therefore, is illegal.

2. The Ld CIT (A) erred in upholding the action of Ld AO for disallowing a sum of Rs.4,35,92,672/- u/s 40(a)(ia), He fails to

appreciate that these expenses were not claimed by the Appellant as the return filed was belated;

3. The Ld. CIT (A) erred in dismissing the Appeal. The Ld. CIT (A) has not passed the order on the basis of merit.

4. The Ld. CIT (A) erred in passing the said order in haste without giving adequate opportunities of hearing.”

3. When the matter was called for hearing, the ld. counsel for the assessee submits as follows:

(i) The assessee e-filed return of income belatedly under Section 139(4) of the Act showing ‘Nil’ income. The return filed by the assessee was subjected to scrutiny assessment. In the course of the scrutiny assessment, the AO *inter alia* observed that from the details of payment on which tax has been deducted but has not been paid on or before the due date under Section 139(1) of the Act as reported in form 3CD, stands at Rs.14,53,08,907/-. The AO observed that the interest payments on which TDS deducted but not deposited before the due date under Section 139(1) of the Act is liable to be disallowed under Section 40(a)(ia) of the Act. The disallowance was worked out at 30% of the interest payments of Rs.14,53,08,907/- and a disallowance of Rs.4,35,92,672/- was carried out by the AO without appreciating the facts in prospective.

4. In the first appeal, the CIT(A) endorsed the disallowance on the ground that the assessee has not shown as to whether interest expenditure of Rs.14,53,08,907/- is taken into account while determining the taxable income or not, by a cryptic and unreasoned order. The CIT(A) has endorsed the action of the AO.

5. Before the Tribunal, the ld. counsel for the assessee adverted our attention to the return of income and submitted that as per

Row 45 of the return of income, profit to be taxed stands at a loss of Rs.23.01 crore and interest on unsecured loan claimed in Row No.38(4) stands at Rs.23.14 crore. The assessee thereafter adverted to the acknowledgement of the return filed and submitted that no such loss has been claimed by the assessee in the return of income and the return was filed at 'Nil'. The AO has however adopted the loss return of the assessee at Rs.19,43,02,157/- and made an addition of Rs.4,35,92,672/- on account of disallowance under Section 40(a)(ia) due to non-compliance with the provisions of Chapter XVIIB. The Id. Counsel thus determined the total loss at Rs.11,53,15,485/- (including some other disallowance with which we are not concerned at present) as against no loss claimed by the assessee. The Id. Counsel submitted that the Revenue has committed error firstly, that no interest expenditure has been claimed and therefore, none could have been disallowed and secondly, when no loss has been claimed, the AO has committed error in determining the assessed loss. The CIT(A) has not addressed itself to such issue and dismissed the appeal on a flimsy ground that assessee had not been able to show as to whether interest expenditure of Rs.14,53,08,907/- was part of total interest claimed on Rs.23,14,11,524/-. The assessee thus submitted that having regard to the fact that the assessee has neither claimed expenditure on interest amount wherein tax has been deposited on time as well as on the interest amount where the tax has been deposited late, no interest expenditure could be disallowed which has not been claimed at the first instance.

6. The Id. DR for the Revenue, on the other hand, submitted that the assessee has filed belated return and therefore, the loss could not have been claimed for carry forward and set off in the

subsequent year by operation of law. Consequently, and for this reason, the assessee has not claimed the interest expenditure. No facts have been brought on record as to when the interest has been actually claimed and how the action of the AO is erroneous. The Id. DR for the Revenue thus submitted that in the absence of facts, it is difficult to ascertain the true state of affairs.

7. On careful consideration of rival submissions and having regard to the material placed on record, it emerges that the AO has assessed loss on certain amount despite the fact that no such loss has been claimed. The AO as well as the CIT(A) has not examined this aspect of the matter. Both the Authorities have also not taken into account as to whether interest expenditure has been claimed on payment basis in the ensuing years. The relevant facts are not clear. The order of the CIT(A) is brief and cryptic and do not provide any reasoned answer to the issues in question. The CIT(A) has not passed the order on the basis of merit as alleged by the assessee.

8. Under the circumstances, we consider it appropriate to set aside the first appellate order and remit the matter back to the AO for determining the issue afresh on the basis of relevant facts that may be placed by the assessee before the AO. It shall be open to the assessee to place all arguments and adduce all evidences as may be considered expedient for proper adjudication of the issue in accordance with law. Needless to say, reasonable opportunity shall be given to the assessee to present relevant facts and position of law on the point in issue. The matter is thus remitted to the file of the AO for redetermination of the issue in an objective manner in accordance with law.

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

Order pronounced in the open Court on 08/01/2024

Sd/-

**(SAKTIJIT DEY)
VICE PRESIDENT**

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: /01/2024

Prabhat