

(150) 4

From:
M/s Gorakhpur Kasia Tollways Private Limited,
306 - 307 Chandani Apartment,
2/2, New Palasia,
Indore

Date: 14.09.2022

To,
The National faceless Assessment Centre,
Delhi

Sir,

Reg:- PAN:AAFCG9609R

Assessment Year: 2020-21

DIN: ITBA/AST/F/142(1)/2022- 23/1045390511(1)

Sub.: Submission during hearing by video-conferencing

- 1] With reference to the hearing through video -conferencing you have asked us to submit the calculation sheet for deriving the initial loss on preference shares of Rs. 20,90,15,065/- and interest income of Rs. 1,10,89,358/-on preference shares as per IND-AS 109. In this connection please find enclosed herewith the calculation sheet for your perusal. Also brief of IND-AS 109 which is applicable in case is explained below: Cfg No 450 to 458

IND -AS 109: Financial Instruments- deals with classification, recognition, de-recognition and measurement requirements for all the financial assets and liabilities. This standard provides guidelines for accounting and reporting of the Financial Instruments (FI) which will enable the stakeholders to assess the timing and uncertainty of a business cash flow in the future. Accordingly Ind AS 109 requires that all investment to be measured at FVTPL i.e. Fair value through Profit and Loss. **Fair value** for this purpose is the value that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date".



(151) 5

In simple terms, the requirement is to discount the value which is to be received or paid in future to the present value and recognize the present value in the books of account by giving effect in P & L Account and charge the interest at the same manner.

Therefore as per the requirement of IND-AS the company has discounted all the investments in preference shares made in the financial year 2019-20 to its present value and recognised the loss on initial recognition of preference shares in the profit and loss statement and similarly credited the interest on preference shares on present value as per the requirement of IND-AS 109.

Sir as per the terms of the issue of preference which were invested during the year the company is entitled to redemption of same at par i.e. same amount as invested after 15 Years with compound dividend of 6.5% per annum. Sir since it is not to pay preference dividend, if no dividend paid to the equity shareholders, such dividend is not considered as firm cash flow under IND-AS. Therefore the dividend amount is not considered while calculation of discounted cash flows. So the value of amount receivable after 15 Years is only considered as firm cash flow and is discounted at present value, it gives the fair value as per IND-AS principals and which is smaller than actual outflow of funds at the time of making the investment. And such difference amount for the year was Rs. 20,90,15,065/-. Hence it was debited to Profit and Loss and credited to investment. Further such amount is required to be reversed over the investment redemption period by charging interest, and hence the interest of Rs. 1,10,89,358/- was charged to profit and loss as income for the year and debited to investment and both of these are notional entries as per income tax and disallowed as income as well as expenses.

Without prejudice to the above:

- 2] We further have to submit that the interest of Rs. 1,10,89,359/- shown on preference shares in the Profit & Loss Account prepared on IND-AS basis is nothing but a notional interest and as per the provisions of Income Tax Act only real income can be assessed to tax. The interest calculated on preference shares is



(152)6

neither accrued nor receivable in future as the same is calculated/worked out on hypothetical basis by adopting the method of accounting by IND-AS. It is settled law that no hypothetical or notional income can be assessed under the Income Tax Act. In the case of Godhra electricity company Ltd. vs CIT (1997), 225 ITR 746 the Lordship supreme Court, elaborated that government circular entitled the assessee to recover consumption charges from its customers at enhanced rates. As this order was the subject matter of protracted litigation, the assessee was unable to recover the enhanced charges. Consequently, it challenged the inclusion of such amount within its assessable income on the ground that no real income had accrued. Reiterating its earlier decision in **Morvi Industries Ltd. V CIT (1971) 82 ITR 835** and **CIT v Birla Gwalior (1973) 89 ITR 260** the court held that tax cannot be imposed on hypothetical accrual of Income. It was observed that the question of real accrual of income must be considered by taking the probability of realisation in a realistic manner.

In the case of **Sir Kikabai Premchand v CIT [1953] 24 ITR 506 (SC) 1954 SCR 214**, the hon'ble apex court held that no man can make a profit out of himself. The issue under consideration was that a person can be assessed on notional income or on hypothetical or a person can make profit out of himself, the decision of Hon'ble court in brief is as under:

Facts of the Case:

- *The assessee dealt in silver and shares and a substantial part of his holding were kept in silver bullion and shares.*
- *His business was run and owned by himself and his accounts were maintained according to the mercantile system.*
- *The stocks of silver bars and shares were valued at cost.*
- *In the course of the year the appellant withdrew some bars and shares from the business and settled them on certain trusts.*



(153)7

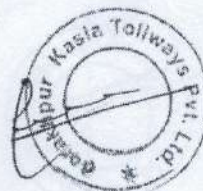
- The assessee credited the business with the cost price of the bars and shares withdrawn.

Contention of Attorney General

- The Attorney-General raised two contentions.
- First, he said that as the bars and shares were brought into the business any withdrawal of them from the business must be dealt with along ordinary and well-known business lines, namely, that if a person withdraws an asset from a business, he must account for it to the business at the market rate prevailing at the date of the withdrawal.
- He said that the mere fact that the appellant was the sole owner of the business can make no difference, for under the Act income is assessable under distinct heads and when we are working out the income of a business the rules applicable to business incomes must be applied whoever is the owner.
- His second contention was that if the act of withdrawal is at a time when the market price is higher than the cost price, then the State is deprived of a potential profit.
- He conceded that had the market rate been lower than the cost price, then the appellant would have been entitled to set off the loss on those transactions against his overall profit on the other transactions and thus obtain the advantage of a lower tax on the overall picture.

Observations of the Supreme Court (SC)

- The act of withdrawing silver bars and shares was not a business transaction and by that act the business made no profit or gain, nor did it sustain a loss, and the appellant derived no income from it.
- The assessee could have stored up a future advantage for himself but as the transactions were not business ones and as the assessee derived no immediate pecuniary gain the State cannot tax them, for under the Income-tax Act



(154)⁸

the State had no power to tax a potential future advantage.

- *The State could tax only income, profits and gains made in the relevant accounting year.*
- *The business was owned and run by the assessee himself.*
- *It was wholly unreal and artificial to separate the business from its owner and treat them as if they were separate entities trading with each other and then by means of a fictional sale introduce a fictional profit which in truth and in fact was non-existent.*

Therefore, it was held that a person cannot make a profit from dealing with himself.

- Also we are relying on the following decisions:

- i) CIT vs Shoorji Vallabhdas & Co. (1962) 46 ITR 144 (SC)
- ii) Sanjeev woolen Mills vs. CIT (279 ITR 434 (SC)
- iii) CIT vs SC Kothari (1971) 82 ITR 794, 801-2 (SC)

In view of above facts and decisions it is prayed that no addition could be made.

21. From the above replies, we note that during the course of assessment proceedings, a notice u/s.142(1) of the Act dated 23.11.2021 was issued by the Assessing Officer asking for the deduction claimed u/s.80IA(4) of the Act to which the assessee has replied that it is an Associate of Agro Infrastructure Developer Pvt. Ltd. which is required to follow Indian Accounting Standards (IND-AS) due to the conditions laid down in Companies (Indian Accounting Standards) (IND-AS) Rules, 2015 effective for the assessee company during A.Y. 2020-21. In the said Indian Accounting Standards, some of the income and expenses recognized in the profit and loss account of the company which being notional or not allowable/deductible as per the provisions of Income Tax Act and hence added back while computing the taxable income. Thereafter, a note was also given about the notional profit/loss in initial recognition of investment and notional unwinding interest on provision for overlay pertaining to