

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 573/Bang/2018
Assessment Year : 2013-14

M/s. Gowrishankar & Company, No. 263/42, “Sanklap”, 5 th Main, 4 th Block, Jayanagar, Bangalore – 560 011. PAN: AACFG7571Q	Vs.	The Assistant Commissioner of Income Tax, Circle – 7 (2) (1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Narendra Kumar Jayantilal Jain, Advocate
Respondent by	:	Shri L.V. Bhaskar Reddy, Addl. CIT (DR)

Date of hearing	:	20.03.2018
Date of Pronouncement	:	23.03.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee which is directed against the order of Id. CIT(A) – 7, Bangalore dated 02.01.2018 for Assessment Year 2013-14.

2. At the very outset, it was submitted by Id. AR of assessee that only ground no. 7 of appeal is pressed and other grounds are not pressed and accordingly all grounds except ground no. 7 are rejected as not pressed. Ground no. 7 reads as under.

“7. Without prejudice, the lower authorities have erred in not appreciating the fact that disallowance u/s 14A of the Act cannot exceed the exempt income.”

3. Regarding ground no. 7, it was submitted by Id. AR of assessee that as per the Tribunal order rendered in the case of Pest Control India Pvt. Ltd. Vs. DCIT in ITA No. 5048/Mum/2016 dated 31.10.2017, it was held that disallowance u/s. 14A r.w. Rule 8D cannot exceed the amount of exempt income of the relevant

year. He also submitted that while holding so the Tribunal has followed the judgment of Hon'ble Delhi High Court rendered in the case of Joint Investments Pvt. Ltd. Vs. CIT as reported in 59 taxmann.com 295 (Delhi). He submitted copy of this judgment of Hon'ble Delhi High Court also. In reply it was submitted by Id. AR of assessee that present addition is the agreed addition and in support of the contention he drawn my attention to para no. 4 of the assessment order where the AO has noted that AR of assessee appeared and furnished revised computation after computing the expenses as per section 14A r.w. Rule 8D and as per the same the disallowance u/s. 14A is quantifying as Rs. 22,50,616/-. He further pointed out that the AO disallowed the same amount for which the Id. AR of assessee has agreed. He submitted that against the agreed addition, no peak can be filed by the assessee before the CIT(A) or the Tribunal.

4. I have considered the rival submissions. Regarding the contention of Id. DR of revenue that against agreed addition, no appeal can be filed by the assessee before CIT(A) or the Tribunal, I would like to observe that the position in such if it is found that because the assessee has agreed same addition before AO and it has resulted in carrying out any further enquiry, the assessee cannot file the appeal against such addition. But in the present case the Id. AR of assessee has agreed for addition of Rs. 22,50,616/- as per the computation u/s. 14A r.w. Rule 8D.
5. Before me also this is not the argument of Id. AR of assessee that no argument should be made u/s. 14A r.w. Rule 8D before CIT(A) or this is the argument that such disallowance should not exceed the quantum of exempt income of the present year and in support of his contention reliance has been placed on the Tribunal order. The assessment order is dated 29.02.2016 that is before the date of Tribunal order. Under these facts in my considered opinion, it cannot be said that only because the computation for disallowance was made by the Id. AR of assessee without holding of any judicial decision and later on some judicial decision comes as per which computation of such disallowance has to be restricted to some extent, then it cannot be said that because Id. AR of assessee has agreed to such disallowance as per such computation, the assessee should

not get benefit of subsequent judicial decision restricting the disallowance to some extent. Hence I respectfully follow the Tribunal order rendered in the case of Pest Control India Pvt. Ltd. Vs. DCIT (supra) and decide the issue in favour of the assessee. Ground no. 7 is allowed.

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

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 23rd March, 2018.
/MS/

Copy to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.