

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA**

Before **Shri Aby T. Varkey, Judicial Member** and
Dr.A.L. Saini, Accountant Member

ITA No.2196-2197/Kol/2016
Assessment Years :2012-13 & 2013-14

ACIT, Circle-12(2), Aayakar Bhawan, P-7, 6 th Floor, Chowringhee Square, Kolkata-69	V/s.	M/s Selvel Advertising Pvt. Ltd., 10/1G,DiamondHarbour Road, Kolkta-700 027 [PAN No.AAECS 8398 C]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

C.O.No.97/Kol/2016
(a/o ITA No.2197/Kol/2016)
Assessment Year: 2013-14

M/s Selvel Advertising Pvt. Ltd., 10/1G,DiamondHarbour Road, Kolkta-700 027 [PAN No.AAECS 8398 C]	V/s.	ACIT, Circle-12(2), Aayakar Bhawan, P-7, 6 th Floor, Chowringhee Square, Kolkata-69
Co-objector	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri Arindam Bhattacharjee, Addl. CIT-DR
राजस्व की ओर से/By Respondent	Shri Pritam Chowdhury, AR
सुनवाई की तारीख/Date of Hearing	08-03-2018
घोषणा की तारीख/Date of Pronouncement	04-05-2018

आदेश/O R D E R

PER Dr. A.L. Saini, Accountant Member:-

The caption two appeals filed by the Revenue, pertaining to Assessment Years 2012-13 and 2013-14 and Cross Objection (CO) filed by assessee pertaining to AY 2013-14, are directed against the orders passed by the Ld. Commissioner of Income Tax (Appeals)-4, Kolkata, which in turn arise out of assessment orders passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. Since, the issues involved in all the appeals and cross objections are common and identical; therefore, these appeals and cross objections have been heard altogether and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA.No.2196/Kol/2016, for assessment Year 2012-13, have been taken into consideration for deciding the above appeals and cross objections *en masse*.

3. The Grievances raised by the Revenue in ITA No.2196/Kol/2016, for A.Y. 2012-13 are as follows: -

"1. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in his order restricting the disallowances u/s. 14A r.w rule 8D to 0.5% of investments which yield exempt income sue-moto disallowed by the assessee of Rs.8,332/- instead of Rs.8,37,942/- as computed by the AO in his order u/s.143(3) for disallowance u/s.14A read with Rule 8D.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing depreciation @ 100% on hoarding structures which were used for 180 days or more and @ 50% on hoarding structures which were used less than 180 days without appreciating the proper observations made by the AO in his order u/s.143(3).

3. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing the amount of Rs.37,62,447/- disallowed by AO in his

order u/s. 143(3) on account of delayed deposits in respect of PF & ESI accounts as per the respective statues by invoking the provisions of section 36(1)(va) r.w section 2(24)(x) of the IT Act.”

4. The Grievances raised by the assessee in Cross Objection No.97/Kol/2016, are as follows:

“For that the Assessment order u/s. 143(3) dated 31-3-2016 carrying a demand of Rs.1,07,78,270/- served on the assessee company on 28-4-2016 i.e. 28 days after period of limitation prescribed in Section 153 of the Income Tax Act, 1961 is invalid and bad in law.”

5. At the outset, itself, Ld. counsel for the assessee has pointed out that all the grounds raised by Revenue in its two appeals viz: in ITA No.2196/Kol/2016 and ITA No.2197/Kol/2016 are squarely covered by the order of this Co-ordinate Bench of this Tribunal in assessee’s own case in ITA No.657 to 659/Kol/2011, AYs. 2006-07 to 2008-09, order dated 01.01.2015. The Ld. counsel for the assessee submitted that ground No.1 raised by the Revenue in ITA No.2196/Kol/2016 and ground No. 1 raised by Revenue in ITA No. 2197/Kol/2016 are squarely covered by the order of the Co-ordinate Bench of this Tribunal in assessee’s own case cited (supra) in para 34 to 35 of the said order which are reproduced below:-

“34. The next issue in CO No. 128/Kol/2013 arising out of ITA No. 2115/Kol/2013 is against the order of CIT(A) confirming the action of AO in making disallowance of expenses for earning exempted income by invoking the provisions of section 14A of the Act read with Rule 8D of the I. T. Rule, 1962. For this, assessee has raised following ground:

"For that the Ld. AO has materially erred in law and on the facts of the case in disallowing an account of Rs. 2,51,945/-, u/s. 14A of the I.T. Act,1961”

35. We have heard rival submissions and gone through facts and circumstances of the case. Ld. counsel for the assessee stated that the assessee has earned dividend at Rs.44,100/- and share of profit from partnership firm at Rs.15,56,664/- as income which does not form part of the total income. The AO disallowed a sum of Rs.2,51,495/- being expenses incurred for earning exempted income by invoking section 14A of the Act read with Rule 8D of I.T Rules. 1962. Aggrieved, assessee preferred appeal before CIT(A), who also confirmed the action of AO, Aggrieved, now assessee is in cross objection. Ld. counsel for the assessee drew our

attention to paper book page 7 wherein complete detail of investment is reflected at Rs.6,06,37,186/-. According to Ld, counsel, the first 6 parties are assessee's sister concerns and party nos. 7 to 9 viz., Godrej Consumer Product Ltd. UTI Mutual Growth Fund and Investment in SelvelEnkon Projects are outside parties. He stated that in respect to sister concerns for holding controlling stake the provisions of section 14A of the Act will not apply and for rest he agreed that yes the disallowance is to be made. For this proposition, he relied on the decision of Coordinate Bench of this Tribunal of Mumbai Bench-G in the case of Garware Wall Ropes Ltd. Vs. Addl, CIT (2014) 65 SOT 86, wherein it is held as under:

"We find merit and substance in the contention of the assessee that no expenditure had been incurred by the assessee for earning the exempt income on this point because the investment has been made by the assessee in the group concern and not in the shares of any unrelated party. Therefore, the primary object of investment is holding and controlling stake in the group concern and not earning any income out of investment. Further, the investments were made long back and not in the year under consideration. Therefore, in view of the fact that the investment are in the group concern we do not find any reason to believe that the assessee would have incurred any administrative expenses in holding these investments. The AO has not brought on record any material to show that the assessee has incurred any expenditure in relation to the income which does not form part of the total income. Section 14A has within it implicit the notion of apportionment in the cases where the expenditure is incurred for composite/indivisible activities in which taxable and non taxable income is received but when no expenditure has been incurred in relation to the exempt income then principle of apportionment embedded in section 14A has no application. The object of section 14A is not allowing to reduce tax payable on the non exempt income by deducting the expenditure incurred to earn the exempt income. In the case in hand it is not the case of the revenue that the assessee has incurred any direct expenditure or any interest expenditure for earning the exempt income or keeping the investment in question. If there is expenditure directly or indirectly incurred in relation to exempt income the same cannot be claimed against the income which is taxable. For attracting the provisions of section 14A- "there should be proximate cause for disallowance which has relationship with the tax exempt income as held by the Hon'ble Supreme Court in case of CIT Vs. Walfort Share and Stock Brokers P. Ltd. (2010) 326 ITR 1). Therefore, there should be a proximate relationship between the expenditure and the income which does not form part of the total income. In the case in hand the assessee has claimed that no expenditure has been incurred for earning the exempt income, therefore, it was incumbent on the AO to find out as to whether the assessee has incurred any expenditure in relation to income which does not form part of the total income and if so to quantify the expenditure of disallowance. The AO has not brought on record any fact or material to show that any expenditure has been incurred on the

activity which has resulted into both taxable and non taxable income. Therefore, in our view when the assessee has prima facie brought out a case that no expenditure has been incurred for earning the income which does not form part of the total income then in the absence of any finding that expenditure has been incurred for earning the exempt income the provisions of section 14A cannot be applied. Accordingly, we delete the addition / disallowance made by AO u/s 14A r.w. Rule 8D). "

In view of the above, and respectfully following the coordinate bench decision in the case of Garware Wall Ropes Ltd. supra, we are also of the view that where the primary object of investment is for holding controlling stake in group concerns and not for earning an income out of that investment. then the provisions of section 14A cannot be invoked. Accordingly, we direct the AO to recompute the disallowance u/s. 14A of the Act read with rule 8D of the I.T. Rules, 1962 qua the non-related parties i.e, parties no, 6 to 8 as narrated above. Accordingly, the proportionate disallowance will be made. This issue of assessee`s CO is partly allowed as indicated above."

We note that as the issue is squarely covered in favour of assessee by the order of Co-ordinate Bench of this Tribunal, cited (supra), in assessee`s own case and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings, and Ld. CIT(A) has granted relief to the assessee by following decision of the Tribunal in assessee`s own case (supra) for assessment years 2006-07 to 2008-09. We find no reasons to interfere in the said order of Ld. CIT(A) and same is hereby upheld. Therefore, ground No. 1 of Revenue`s appeal in ITA No.2196 and ground No. 1 in ITA No.2197/Kol/2016 are dismissed.

6.Ground No.2 raised by Revenue in ITA No.2196/Kol/2016 and 2197/Kol/2016 are identical which is given below:-

"2.That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing depreciation @ 100% on hoarding structures which were used for 180 days or more and @ 50% on hoarding structures which were used less than 180 days without appreciating the proper observations made by the AO in his order u/s.143(3)."

7.The Ld. Counsel for the assessee has pointed out that Ground No.2 raised by Revenue in ITA No.2196/Kol/2016 and ground No. 1 in ITA

No.2197/Kol/2016 are identical and squarely covered by the order of Co-ordinate Bench of this Tribunal in assessee's own case cited (supra) wherein the Tribunal adjudicated the issue, in favour of assessee, on the same identical facts, vide paras 27 and 28 of the said order which is reproduced below:-

"27. The next common issue in ITA No.1094/Kol/2012 and ITA No.2115/Kol/2013 is against the order of CIT(A) deleting the disallowance of depreciation @ 100% on hoardings treated as temporary structures as against the treatment given by AO as plant and machinery allowing depreciation at 15%. The facts and circumstances in both the year are exactly identical i.e. AY 2008-2010 and 2010-11, hence we will take up the facts from A.Y.2009-10.

28. We find that the CIT(A) deleted the disallowance of depreciation for the reason that the issue is covered in the assessment year 2005-06. For this CIT(A) observed in para 4 as under:-

'Ground Nos. 1 to 5 of the appeal are related to the addition made by denying 100% depreciation on hoarding structure. I have considered the findings of the AO on this issue and the submission made by the AR. In fact this issue has been considered by my predecessor the Ld. CIT(A) for AY 2005-06 Appeal No.518/XII/DCIT-12/07-08, dated 26.02.2008. The Hon'ble ITAT has also considered this issue for AY 2005-06 (ITA 820/Kol/2008 dt. 11.12.2009 when the department had gone in appeal. Since this issue is covered I don't find any reason to interfere in it. Therefore, addition made on this ground is deleted. As a result, the appeal is allowed.'

We find that this issue is now covered by the decision of this Tribunal in AY 2005-06 in ITA No.820/Kol/2008 of revenue's appeal, wherein 100% depreciation on hoarding structure was claimed under the head temporary erections and Tribunal vide order dated 11.12.2009 vide para 13 directed the AO to allow depreciation and held as under:-

*"13. In view of the above submissions of both the parties, we reverse the order of the Ld. CIT(A) on this point and restore that of the AO. However, we direct the AO to work out the written down value of the temporary structure from the cost of the temporary structure, the depreciation allowed in the year under consideration will be reduced and the remaining amount would be written down value under the head '**temporary structure**' upon which the AO will allow the depreciation in the succeeding year as*

per provisions of the Act. Subject to the above direction, ground no.2 of the department's appeal for AY 2005-06 is allowed."

In view of the above, we are of the view that the assessee is entitled for depreciation on hoardings, which are temporary structures, and CIT(A) has rightly allowed the same. This common issue of both the appeals of revenue is dismissed."

We note that as the issue is squarely covered in favour of assessee by the order of Co-ordinate Bench of this Tribunal cited (supra) and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid finding and the Ld. CIT(A) has allowed the appeal of the assessee by following the judgment of the coordinate Bench of this Tribunal, in assessee's own case. We find no reasons to interfere in the said order of Ld. CIT(A) and same is hereby upheld. Therefore, ground No. 2 of Revenue's appeal in ITA No.2196 and ground No. 2 in ITA No. 2197/Kol/2016 are dismissed.

8. Ground No.3 raised by the Revenue in appeal Nos. 2196/Kol/2016 and 2197/Kol/2016 are identical which is reproduced below:-

"3. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing the amount of Rs.37,62,447/- disallowed by AO in his order u/s. 143(3) on account of delayed deposits in respect of PF & ESI accounts as per the respective statutes by invoking the provisions of section 36(1)(va) r.w section 2(24)(x) of the IT Act."

9. At the time of hearing, Ld. counsel for the assessee submitted before us that Ground No.3 raised by Revenue in ITA Nos.2196/Kol/2016 and 2197/Kol/2016 are Common and identical and on the same identical issue the Co-ordinate Bench of this Tribunal has adjudicated the issue in assessee's own case in ITA No.657-659/Kol/2012 for AYs 2006-07 to 2008-09 wherein the Hon'ble Tribunal has dealt with the said issue in para-18 to 20 of the order, which is reproduced below:-

"18, The next issue in this appeal of revenue is against the order of CIT(A) deleting the disallowance made by AO on delayed deposit of

employees contribution towards Provident Fund. For this, revenue has raised following ground no.5:

“5. Ld. CIT(A) erred in deleting the disallowance u/s. 36(i)(va) for delayed deposit of employees Contribution towards PF without appreciating the facts and circumstances of the case.”

19. We have heard rival submissions and gone through facts and circumstances of the case. We find that the issue is covered in favour of assessee and against the revenue by the decision of Hon'ble jurisdictional High Court in the case of CIT Vs.M/s Vijay Shree Limited vide ITAT No. 245 of 2011 in GA No.2607 of 201 dated 7th September, 2011, wherein it has been held as under:

“After hearing Mr. Sinha, learned advocate, appearing on behalf of the appellant and after going through the decision of the Supreme Court in the case of Commissioner of Income Tax vs. Alom Extrusion Ltd. we find that the Supreme Court in the aforesaid case has held that the amendment to the second proviso to the Sec. 43(B) of the Income Tax Act, as introduced by Finance Act, 2003, was curative in nature and is required to be applied retrospectively with effect from 1st April, 1988.

Such being the position, the deletion of the amount paid by the Employees; contribution beyond due date was deductible by invoking the aforesaid amended provisions of Section 43(B) of the Act.

We, therefore, find that no substantial question of law is involved in this appeal and consequently, we dismiss this appeal.’

20. One the issue is decided by Hon'ble jurisdictional High Court in the case of Vijay Shree Ltd. Supra, where in it is held that the PF & ES are paid on or before the due date of filing of return u/s.139(1) of the Act, deduction in respect to the amount on which PF & ESI is so paid, is allowable. In the present case the assessee has paid the PF deducted on account of employees contribution before due date of filing of return u/s. 139(1) of the Act by the assessee and the details are available in the written submission of assessee, hence, we dismiss this ground of appeal of revenue.”

We note that as the issue is squarely covered in favour of assessee by the order of Co-ordinate Bench of this Tribunal in assessee's own case cited (supra) and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid finding of Ld. CIT(A) and the Ld CIT(A) has allowed the appeal following the judgment of the coordinate

Bench in assessee`s own case. We find no reason to interfere in the order of Ld. CIT(A) and same is hereby upheld. Therefore, ground No.3 raised by Revenue in ITA Nos .2196/Kol/2016 and 2197/Kol/2016 are dismissed.

10.In the result, appeals filed by Revenue in ITA No.2196/Kol/2016 and ITA No.2197/Kol/2016 are dismissed.

11. Assessee has raised ground in its Cross Objection No.97/Kol2016, which is reproduced below:-

“For that the Assessment order u/s. 143(3) dated 31-3-2016 carrying a demand of Rs.1,07,78,270/- served on the assessee company on 28-4-2016 i.e. 28 days after period of limitation prescribed in Section 153 of the Income Tax Act, 1961 is invalid and bad in law.”

12. The Ld. Counsel for the assessee at the time of hearing expressed his desire not to press the Cross Objection filed by the assessee. Therefore, we dismiss the CO filed by assessee as not pressed.

13. In the result, Cross Objection filed by the assessee is dismissed as not pressed.

Order pronounced in the open court 04/05/2018.

Sd/-
(न्यायिक सदस्य)
(Aby. T. Varkey)
(Judicial Member)

Sd/-
(लेखा सदस्य)
(Dr. A.L. Saini)
(Accountant Member)

कोलकाता |Kolkata,
*Dkp, Sr.P.S
दिनांक:- 04/05/2018

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee- M/s Selvel Advertising Pvt. Ltd., 10/1G, Diamod Harbour Rd. Kol-27
2. राजस्व/Revenue-ACIT, Circle-12(2), Aayakar Bhawan,P-7, 6th Fl, Chowringhee Sq. Kol-69
3. संबंधित आयकर आयुक्त/ Concerned CIT Kolkata
- 4.आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण,कोलकाता/ DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।