

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C”, NEW DELHI
BEFORE SHRI P. M. JAGTAP, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.3717/Del/2015
Assessment Year : 2010-11**

Technico Agri Sciences Ltd., SCO- 835, 2 nd Floor, NAC, Manimajra, Chandigarh.	Vs.	ITO, Ward- 16(2), New Delhi.
PAN : AAACC9811G		
(Appellant)		(Respondent)

Assessee by : Shri Rohit Jain, Adv.,
Shri Deepesh Jain, Adv.
Department by : Shri Arun Kumar Yadav, Sr.DR
Date of hearing : 13-07-2018
Date of pronouncement : 13-07-2018

ORDER

PER P. M. JAGTAP, AM :

This appeal filed by the assessee is directed against the order of the Id. CIT(A)- 9, New Delhi dated 27.03.2015.

2. The ground no.1 raised by the assessee in this appeal is general.
3. The ground no.2 involves the issue relating to disallowance of Rs.5,39,582/- made by the Assessing Officer and confirmed by the Id. CIT(A) u/s 14A of the I.T. Act, 1961 read with Rule 8D of the Income Tax Rules, 1962.
4. The assessee in the present case is a company which is engaged in the business of growing TECHNITUBER® seed potatoes. The return of income for the year under consideration was filed by it on 27.09.2010 declaring total

income at Nil. In the said return, the total income of Rs.41,42,455/- received during the year under consideration was claimed to be exempt by the assessee u/s 10(34) of the Act. However, the expenditure incurred in relation to the earning of the said exempt income was not disallowed by the assessee as required by the provisions of section 14A of the Act. In this regard, the contention raised by the assessee before the Assessing Officer was that the dividend income received by it had already suffered dividend distribution tax and the same, therefore, could not be treated as an exempt income warranting any disallowance u/s 14A. This contention of the assessee was not found acceptable by the Assessing Officer. He accordingly proceeded to work out the expenditure incurred by the assessee in relation to the earning of exempt income as per Rule 8D at Rs.5,39,582/- and disallowance to that extent was made by him u/s 14A of the Act.

5. The disallowance made by the Assessing Officer u/s 14A was challenged by the assessee in the appeal filed by the assessee before the Id. CIT(A) and although a specific ground was raised by the assessee in the appeal filed before the Id. CIT(A) on this issue, the same was not decided by the Id. CIT(A) vide his impugned order.

6. We have heard the arguments of both the sides and also perused the relevant material available on record. Ld. counsel for the assessee has invited our attention to the computation of total income (copy placed at page no.2 of the

Paper Book) and pointed out that no deduction on account of any expenditure was claimed by the assessee against taxable income. He has contended that in the absence of any such deduction claimed by the assessee, the disallowance made by the Assessing Officer u/s 14A and confirmed by the Id. CIT(A) is not sustainable. Ld. DR on the other hand has contended that this new contention raised by the Id. counsel for the assessee for the first time before the Tribunal required verification by the Assessing Officer. We find merit in the contention of the Id. DR. This issue is accordingly restored to the file of the Assessing Officer for deciding the same afresh after verifying the claim of the assessee that no deduction whatsoever was claimed by the assessee on account of any expenditure against the taxable income. The ground no.2 of the assessee's appeal is accordingly treated as allowed for statistical purposes.

7. The issue raised in ground no.3 relates to the addition of Rs.5,03,765/- made by the Assessing Officer and confirmed by the Id. CIT(A) on account of amounts claimed to be received by the assessee from customers by treating the same as unexplained.

8. During the year under consideration, the assessee had credited in his books of account the following three amounts received in cash :-

(i)	13.10.2009	-	Rs.1,71,600/-
(ii)	24.11.2009	-	Rs.1,74,355/-
(iii)	15.05.2009	-	<u>Rs.1,57,810/-</u>
	Total	-	<u>Rs.5,03,765/-</u>

9. When the assessee was called upon by the Assessing Officer to explain the above cash receipts, it was submitted on behalf of the assessee that the said amounts were deposited by the farmers/customers against the purchase of seeds potatoes/potatoes. The details of such farmers/customers were also furnished by the assessee. In order to verify the claim of the assessee notices u/s 133(6) were issued by the Assessing Officer to the said parties at the address given by the assessee. The said notices, however, were returned back undelivered by the postal authorities. When this position was confronted by the Assessing Officer to the assessee seeking the later's explanation, there was no compliance on the part of the assessee. The Assessing Officer, therefore, treated the cash receipts of Rs.5,03,765/- as unexplained and added the said amount to the total income of the assessee. On appeal, the Id. CIT(A) confirmed the said addition made by the Assessing Officer.

10. We have heard the arguments of both the sides and also perused the relevant material available on record. Ld. counsel for the assessee has submitted that the position regarding the returning back of the notices issued to the concerned farmers/customers by the postal authorities undelivered was confronted by the Assessing Officer to the assessee vide letter dated 13.03.2013 and the matter was fixed for hearing on 18.03.2013. He has submitted that the said letter dated 13.03.2013, however, was received by the assessee only on 20.03.2013 and the assessee, therefore, could not comply with the requirement

of the Assessing Officer. He has contended that the Assessing Officer meanwhile proceeded to complete the assessment vide an order dated 21.03.2013 drawing an adverse inference against the assessee on this issue without giving proper and sufficient opportunity of being heard. He has contended that the assessee, however, obtained the confirmation/affidavit of the concerned farmers/customers for the amounts in question paid/deposited in cash and filed the same before the Id. CIT(A). He has contended that the Id. CIT(A), however, did not entertain this additional evidence and confirmed the addition made by the Assessing Officer on this issue. He has invited our attention to the copies of the said confirmation/affidavit of the concerned creditors filed in his Paper Book and contended that the addition made by the Assessing Officer and confirmed by the Id. CIT(A) on this issue is liable to be deleted in the light of the said confirmation/affidavit. The Id. DR, on the other hand, has contended that this issue also should be sent back to the Assessing Officer for giving him an opportunity to verify the affidavit/confirmation filed by the assessee/concerned creditors as the said evidence was admittedly not filed before the Assessing Officer. We find merit in this contention of the Id. DR. The impugned order of the Id. CIT(A) on this issue is accordingly set-aside and the matter is restored to the file of the Assessing Officer for deciding the same afresh after verifying the evidence filed by the assessee in the form of affidavit/confirmation of the concerned creditors. Needless to observe that the

Assessing Officer shall offer proper and sufficient opportunity to the assessee before deciding the issue afresh. The ground no.3 of the assessee's appeal is accordingly treated as allowed for statistical purposes.

11. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on this 13th day of July, 2018.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(P. M. JAGTAP)
ACCOUNTANT MEMBER

Dated: 13-07-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi