

*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "D" KOLKATA*

Before **Shri P.M.Jagtap, Accountant Member** and  
**Shri S.S.Godara, Judicial Member**

**ITA No.1651/Kol/2017**  
Assessment Year:2012-13

Gemini Overseas Ltd., 19, R.N. Mukherjee Road, Kolkata-001 [PAN No.AABCG 0658 E]	बनाम/ V/s.	DCIT, Circle-6(1), Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Shri A. Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	24-07-2-18
घोषणा की तारीख/Date of Pronouncement	31-07-2018

**आदेश /O R D E R**

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2012-13 arises against Commissioner of Income Tax (Appeals)-2, Kolkata's order dated 05.05.2017 passed in case No.1671/CIT(A)-2/14-15 upholding Assessing Officer's action *inter alia* disallowing / adding an amount of ₹2,15,912/- u/s 14A r.w. Rule 8D as well as repair and maintenance disallowance of ₹48,284/-; respectively in assessment order dated 31.03.2014, involving proceedings u/s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

2. We come to the former issue of section 14A r.w. 8D disallowance of ₹2,15,912/-made in assessment as upheld in lower appellate proceedings to the tune of ₹2,15,912/-. There is no dispute about the assessee having derived exempt income

from dividends amounting to ₹1,576/- in the relevant previous year. It had *suo motu* disallowed administrative expenditure of ₹1,35,585/- @ 0.5% of average value of investments under Rule 8D(2)(iii). The Assessing Officer increased the same to the extent proportionate interest expenditure disallowance under Rule 8D(2)(ii) to the extent of ₹1,34,585/- thereby computing the total disallowance to ₹2,15,912/- as upheld in the CIT(A)'s order under challenge.

3. Learned Departmental Representative strongly supports both the lower authorities action making the impugned proportionate expenditure disallowance. He fails to dispute the assessee having incurred total interest expenditure of ₹19,29,949/- on term loan and cash credit in case of banks involving respective figures of ₹6,05,182/- and ₹13,24,759/- nexus between the assessee's interest expenditure vis-à-vis its exempt income exists therefore as stipulated u/s 14A(2) r.w.s Rule 8D of the Income Tax Rules. We therefore direct the Assessing Officer to delete the said proportionate interest expenditure disallowance of ₹1,34,585/-. Needless to say, the above *suo motu* disallowance of administrative expenditure is affirmed. This former substantive ground is partly accepted.

4. Next comes the assessee's latter grievance challenging repair and maintenance disallowance of ₹48,284/- made in both the lower appellate proceedings. The Assessing Officer simply observes in his assessment order that no details were filed during the course of scrutiny. The assessee strongly contested the same in lower appellate proceedings and filed written statements specifically averring therein that Assessing Officer's show cause notice u/s 142(1) of the Act dated 14.02.2014 nowhere raised any specific query regarding the impugned repair and maintenance. It then referred to Note 24 of its audited accounts indicating the expenditure in question to be of revenue nature since incurred on repairs and maintenance, plant and machinery, furniture, computer, vehicle etc. Relevant ledger accounts had also been placed on record. We find that CIT(A) has nowhere discussed the same in his lower appellate adjudication whilst affirming Assessing Officer's action. We therefore conclude that there is no material on record suggesting the assessee's repair and maintenance to have been hit by the specific embargo u/s 31 Explanation of the Act. We reject Learned Departmental Representative's vehement contentions supportive of

the impugned disallowance. It is made clear that our instant adjudication shall not be treated as a precedent in any preceding or succeeding assessment year in assessee's case.

5. This assessee's appeal is partly allowed.

Order pronounced in open court on 31/07/2018

Sd/-  
(लेखा सदस्य)  
(P.M.Jagtap)  
Accountant Member

Sd/-  
(न्यायिक सदस्य)  
(S.S.Godara)  
Judicial Member

\*Dkp-Sr.PS

दिनांक:- 31/07/2018 कोलकाता / Kolkata

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

1. अपीलार्थी/Appellant-Gemini Overseas Ltd., 19, R.N. Mukherjee Road, Kolkata-001
2. प्रत्यर्थी/Respondent-DCIT, Cir-6(1), Aaykar Bhawan, P-7, Chowringhee Sq. Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

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