

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Shri M.Balaganesh, AM & Hon’ble Shri S.S.Viswanethra Ravi, JM]

I.T.A No. 2155/Kol/2017

Assessment Year : 2014-15

ACIT, CC-1(1), Kolkata

-vs-

M/s Adhunik Alloys & Powers Ltd.

[PAN: AAECA 5290 R]

(Appellant)

(Respondent)

For the Appellant : Shri A. Bhattacharyya, Addl. CIT

For the Respondent : Ms. S. Agarwal, ACA

Date of Hearing : 20.08.2018

Date of Pronouncement : 29. 08.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the revenue arises out of the order of the Learned Commissioner of Income Tax(Appeals)-20, Kolkata [in short the Id CIT(A)] in Appeal No.746/CC-1(1)/CIT(A)-20/16-17 dated 27.07.2017 against the order passed by the ACIT, CC-1(1), Kolkata [in short the Id AO] under section 143(3) read with Section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 30.12.2016 for the Assessment Year 2014-15.

2. The first issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in deleting the addition of Rs. 36,39,849/- on account of employees contribution to provident fund , in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee for certain months remitted employee's contribution to provident fund belatedly but the same were duly paid before the due date of filing of return of income u/s 139(1) of the Act. From the details of payments made for each month it is found that the assessee had made the entire remittance of the said provident fund dues before the end of financial year but with minor delay in several months. The details of the same are tabulated in pages 2 and 3 of the order of the Ld. CIT(A). The ld. AO proceeded to bring to tax the same u/s 2(24)(x) of the Act on the ground that the said provident fund dues were not remitted within the due dates prescribed under the respective Provident Fund Act and hence not allowable as deduction u/s 36(1)(va) of the Act. The Ld. CIT(A) by placing reliance on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. M/s Coal India Pvt. Ltd. in I.T.A. No. 12/Kol/2015 dated 12.08.2015 deleted the said disallowance. The Ld. CIT(A) also placed reliance on several other decisions of Hon'ble Jurisdictional High Court, Hon'ble Delhi High Court, Hon'ble Madras High Court and the decision of this Tribunal among others in support of his contention. Aggrieved the revenue is in appeal before us.

4. We have heard the rival submissions. The ld. DR placed heavy reliance on the decision of Kerala High Court in the case of CIT vs. Merchem Ltd. reported in 378 ITR 443 which supported the case of the revenue. The ld. DR also placed reliance on the circular issued by CBDT vide Circular No. 22/2015 dated 17.12.2015 wherein it was clearly mentioned that the various decisions of Hon'ble High courts shall not apply to claim of deduction relating to employees' contribution to welfare funds which are covered by section 36(1)(va) of the Act. We find that the issue has been decided in favour of the assessee by the Hon'ble Jurisdictional High Court which has been rightly relied upon by the Ld. CIT(A) and it is well settled that the decision of the Hon'ble Jurisdictional High Court will prevail over the decision of non-jurisdictional High court. Hence the decision of Hon'ble Kerala High court does not come to the rescue of the

revenue in the instant case. We also find that the circular issued by CBDT are binding only on the revenue authorities and hence cannot be binding on the assessee if it is not beneficial to the assessee. In view of this, we find no infirmity in the order of the Ld. CIT(A) granting relief to the assessee by following decision of the Hon'ble Jurisdictional High Court. Accordingly ground nos. 1 to 4 raised by the revenue are dismissed.

5. The last issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in deleting the disallowance u/s 14A of the Act read with Rule 8D of the Rules, in the facts and circumstances of the case.

6. The brief facts of this issue is that the assessee had made certain investments in various companies from which it had not derived any dividend income. In other words, there was no exempt income claimed by the assessee in the return. Accordingly, it was pleaded that there is no expenditure that is required to be disallowed u/s 14A of the Act. The Id. AO however disregarded this contention of the assessee and proceeded to make disallowance by applying the computation mechanism provided in rule 8D of the Rules and sought to disallow Rs. 59,76,473/- and Rs 25,54,515/- under second and third limb of Rule 8D(2) of the Rules respectively. Accordingly the total disallowance u/s 14A of the Act in the sum of Rs. 85,30,988/- was made by the Id. AO both under normal provisions and also in the computation of book profits u/s 115JB of the Act. The Ld. CIT(A) appreciated the fact that the assessee did not have any exempt income during the year. He also appreciated the fact that the assessee had substantially own funds which was much more than the investments made and hence there cannot be any disallowance towards interest under second limb of Rule 8D(2) of the Rules. Accordingly, the Ld. CIT(A) deleted the disallowance made u/s 14A of the Act both under normal provisions as well as under 115JB of the Act. Aggrieved the revenue is in appeal before us.

7. We have heard the rival submissions. At the outset, it is not in dispute that the assessee did not derive any exempt income. This issue is no longer res integra inasmuch as the Hon'ble Madras High Court in the case of CIT vs. Chettinad Logistics Pvt. Ltd. reported in 80 taxmann.com 221 (Mad. HC) had held that when there is no exempt income there cannot be any application of provisions of section 14A of the act. We find that the special leave petition preferred by the revenue against this order was dismissed by the Hon'ble Supreme Court which is reported in 95 taxmann.com 250 (SC). In view of these decisions, the reliance placed by the Id. DR on the CBDT Circular No. 5/2014 dated 11.02.2014 does not advance the case of the revenue as it has already been held that the circulars of CBDT are not binding on the assessee, if it is not beneficial to the assessee. Accordingly grounds no. 5 and 6 of the revenue are dismissed.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the Court on 29. 08.2018

Sd/-

[S.S. Viswanethra Ravi]
Judicial Member

Sd/-

[M.Balaganesh]
Accountant Member

Dated : 29. 08.2018

SB, Sr. PS

Copy of the order forwarded to:

1. ACIT, Central Circle-1(1), Kolkata, Aayakar Bhawan Poorva, 110, Shantipally, 3rd Floor, Kolkata-700107.
2. M/s Adhunik Alloys & Powers Ltd., 14, N.S. Road, Kolkata-700001.
- 3..C.I.T.(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches