

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'B', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.1611/Chd/2017
Assessment Year: 2010-11

M/s Sundesh Springs Pvt. Ltd. D-138, Phase-V Focal Point, Ludhiana	Vs.	The DCIT Central Circle-I Ludhiana
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PAN No. AACCS2723F

(Appellant)

(Respondent)

Assessee By	:	Sh. S.K. Mukhi
Revenue By	:	Sh. Manjit Singh

Date of hearing	:	23/08/2018
Date of Pronouncement	:	15-11-2018

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Assessee against the order of the Commissioner of Income Tax(A)-5 (hereinafter referred to as 'CIT(A)') dt. 03/08/2017.

2. The assessee in this appeal has taken three effective grounds. Ground No. 1 is general in nature and does not need any adjudication.

3. In second ground of appeal the assessee has agitated the confirmation of the addition of Rs. 23,688/- on account of disallowance of expenditure incurred by the assessee for earning of Tax exempt income.

4. At the outset the Ld. Counsel for the Assessee has submitted that the assessee during the year did not earn any tax exempt income. The issue, admittedly, is squarely covered by various decisions of the High Court including that of Jurisdictional Punjab and Haryana High Court in the case of CIT Faridabad v. Lakhani Marketing INC 226 Taxmann 45 (P&H) and also by the decision of Hon'ble Delhi High Court in case of Cheminvest Ltd. Vs. CIT (2015) 378 ITR 33 (Del) and further of the Hon'ble Allahabad High Court in the case of CIT Vs. M/s Shivam Motors (P) Ltd. (2014) 272 CTR 277 (All) wherein the Hon'ble High Courts have been unanimous to hold that disallowance under section 14A

cannot exceed to tax exempt income earned by the assessee. Since for the year under consideration the assessee did not earn any tax exempt income, hence no disallowance on this issue is warranted and impugned addition made on this issue is hereby deleted.

5. Ground No. 3 is in relation to the disallowance of Rs. 20,49,484/- for non deduction of TDS under the provisions of Section 40(a)(ia) of the Act.

6. The Ld. Counsel for the assessee has submitted that the payees of the amount in question have taken into consideration the aforesaid receipts from the assessee in their return of income. However the assessee due to some unavoidable circumstances could not furnish the certificate of accountant of the payees in this respect. He has therefore requested that the issue be restored to the file of the Assessing Officer before whom the assessee will provide the necessary certificate certifying that the payees have taken into account the payments made by the assessee in their return of income and have paid due taxes accordingly.

7. In view of the above submission of the Ld. Counsel of the Assessee, the issue in ground no. 3 is restored to the file of the Assessing Officer. If assessee will be able to furnish the necessary details / certificates as noted above then no disallowance will be attracted on this issue. The Assessing Officer is therefore directed to decide the issue accordingly.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Dated : 15/11/2018

AG

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR