

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH : KOLKATA

[Before Hon'ble Shri S.S. Godara, JM]

I.T.A No. 2258/Kol/2018

Assessment Year : 2012-13

Pawan Kumar Agarwal
[PAN: ACZPA 0405 C]
(Appellant)

-vs-

ACIT, Circle-3, Bankura

(Respondent)

For the Appellant : Shri D.K. Son, Advocate

For the Respondent : Shri C.J. Singh, JCIT, Sr. DR

Date of Hearing : 04.03.2019

Date of Pronouncement : 22.03.2019

ORDER

1. This assessee's appeal for assessment year 2012-13 is directed against the CIT(A)-Durgapur's order dated 23.05.2018 passed in case no. 17/CIT(A)/DGP/2015-16 involving proceedings u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act').

Heard both the parties. Case file perused.

2. It emerges at the outset that the assessee's instant appeal suffers from 63 days' delay in filing. The assessee has placed on record his medical certificate in support of condonation petition. The Revenue is far enough in not disputing correctness amount. I accordingly treat the impugned 63 days to be neither intentional nor deliberate. The case is now taken up for adjudication on merits.

3. I come to the former issue of section 14A read with Rule 8D disallowance of Rs. 1,68,523/- made in the course of assessment as confirmed the lower appellate proceedings. Suffice to say, the assessee has derived exempt income amounting to Rs.

30,692/- only from dividends claimed as exempt u/s 10(34) of the Act. Without going much into legality and merits of the assessee's grievance, I deem it appropriate to restrict the impugned disallowance to the extent of exempt income only as per hon'ble Delhi high court decision in the case of Joint Investments Pvt. Ltd. vs. CIT in I.T.A. No. 117/2015 dated 25.02.2015. Both the learned representatives are fair enough in not disputing this legal position qua the impugned disallowance . I therefore restrict the impugned disallowance to the extent of Rs. 30,692/- only.

4. Next comes to assessee's latter substantive ground seeking to delete 2% disallowance of various expenses confirmed by the Id. CIT(A) thereby partly upholding the Assessing Officer's findings rejecting the said expenses to the extent of 10% on estimation basis. It transpires during the course of hearing neither the lower authorities are drawn any comparative chart of the impugned claim in preceding or succeeding assessment years nor the assessee has not been able to fully prove his case. I take into account all these facts to restrict the impugned disallowance @ 2% to 1% only with a rider that the same shall not be treated as a precedent in any other assessment year. This latter substantive ground is treated as partly accepted to the extent of 1% only.

4. This appeal of the assessee is partly accepted in above terms.

Order pronounced in the Court on 22.03.2019

Sd/-

[S.S.Godara]
Judicial Member

Dated : 22.03.2019

SB, Sr. PS

Copy of the order forwarded to:

1. Pawan Kumar Agarwal, Suvankar Sarani, P.O.& Dist. Bankura, Pin-722101
2. ACIT, Circle-3, Bankura
- 3..C.I.T(A).-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Assistant Registrar
Kolkata Benches