

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, KOLKATA

Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Godara, Judicial Member

I.T.A. No.171/Kol/2018
(Assessment Year: 2012-13)

Mjunction Services Limited.....Appellant
[PAN :AACCM 5881 C]

Vs.

DCIT, Circle-8(1), Kolkata.....Respondent

Appearances by:

Shri A. Mansinka, AR, appearing on behalf of the appellant.

Shri Robin Choudhury, Sr. DR, Addl.CIT, appearing on behalf of the Respondent.

Date of concluding the hearing : April 9th, 2019

Date of pronouncing the order : April 26th, 2019

O R D E R

Per J. Sudhakar Reddy :-

This appeal by the assessee directed against the order of the Id. Commissioner of Income Tax (Appeals)-3, Kolkata (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dated 23.11.2017 for Assessment Year 2012-13.

2. The assessee is a company and its nature of business is online market/auction for steel and other products and also for arranging financial loans etc. The issues that arise for our adjudication in this appeal are (a) disallowance u/s 14A of the Act r.w.r. 8D; (b) disallowance of provision of leave encashment; (c) disallowance of provision for leave encashment while computing book profit u/s 115JB of the Act; & (d) disallowance of provision for bonus, gratuity and continuity bonus while computing book profits u/s 115JB of the Act.

3. We have heard Shri A. Mansinka, the Id. Counsel for the assessee and Shri Robin Choudhury, Sr. DR on behalf of the Revenue. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below we hold as follows.

4. Ground No.1 is against the disallowance made u/s 14A r.w.r. 8D. The assessee has earned dividend income of Rs.7,47,32,288/- which is exempted from tax. The assessee has suo moto disallowed Rs.14,82,017/- u/s 14A. The Assessing Officer made an additional disallowance of Rs.51,86,247/- under normal provisions of the Act.

5. Aggrieved, the assessee carried the matter in appeal without success. Further aggrieved the assessee is in before us.

6. After hearing rival contentions, we find that the disallowance was made u/s 14A by applying Rule 8D during the Assessment Year 2011-12. The wording of the satisfaction recorded by Assessing Officer for the Assessment Year 2011-12 as well as for the impugned Assessment Year 2012-13, as to why the Assessing Officer is not satisfied with the suo moto disallowance made by the assessee, are identical. The reasons stated for invoking Rule 8D was that the assessee did not maintain separate books of account for accounting for expenses incurred in relation to income not includable in the total income. This Bench in assessee's own case in ITA No.1960/Kol/2016 order dated 01.06.2018 for the Assessment Year 2011-12 on the same of facts held as follows:

“8. Applying the proposition of law laid down in these judgment to the facts of the case we find that the assessing Officer has not given any cogent reason as to why he is not satisfied with the suo moto disallowance made by the assessee. The Assessing Officer's comment that the assessee did not to maintain separate books of accounts, for the expenses incurred in relation to earning of income not includible in the 'total income' would tantamount to AO being of the opinion that the assessee should maintain separate books for this purpose. This is not required as per law. The AO has committed an error in assuming so. Hence this ground on which the AO has not accepted the suo motu disallowance made by the assessee u/s 14A of the Act is wrong. Thus, as the Assessing Officer has not recorded his satisfaction before rejecting the suo-moto disallowance

made by the assessee u/s 14A of the Act, we delete this disallowance made by the AO under Rule 8D of the Rules and allow ground no.1 of the assessee.”

7. Consistent with the view taken therein, we allow this ground of the assessee and delete the disallowance.

8. The second ground is the disallowance of the provision made for leave encashment.

9. This Bench of the Tribunal on identical facts for the Assessment Year 2011-12 in assessee's own case in ITA No.1960/Kol/2016 at Para 10 held as follows:

“10. We set aside this issue to the file of the A.O to fresh adjudication in accordance with law. The Assessing Officer may either wait for the judgment of Hon'ble Supreme Court in the case of Exide Industries Ltd. supra or may consider the alternative plea of the assessee that the claim be allowed on actual payment basis and if it is so done, the assessee would withdraw all the pending litigation, for all the years, wherein he sought deduction of the provision made for the leave encashment. Hence, this ground is allowed for statistical purposes.”

10. Consistent with the view taken therein, we remand the issue to the file of Assessing Officer.

11. Ground Nos.3 & 4 are on the issue of computation of book profits u/s 115JB of the Act.

12. The assessee's case is that the provision has been made for leave encashment and gratuity on actuarial valuation and hence, the liability is an ascertaining liability and hence the liability has to be allowed. As regards bonus, it is argued that the assessee had paid bonus and hence it is an ascertained liability. The ld. DR could not controvert these contentions of the assessee.

13. In our view, this issue is to be set aside to the file of the Assessing Officer, to examine whether the provision, in question, has been computed on scientific basis by using actuarial valuation as claimed. If so, the proposition of law laid down by the Hon'ble

Supreme Court in the case of Bharat Earth Movers vs. CIT; 245 ITR 428(SC) is to be applied by the Assessing Officer. As this aspect as to whether the provisions, in question, have been made by actuarial valuation has to be verified, we set aside Ground Nos.3 &4 to the file of the Assessing Officer for fresh adjudication in accordance with law.

14. In the result, the appeal of the assessee is allowed in part.

Kolkata, the 26th April, 2019.

Sd/-
[S.S. Godara]
Judicial Member

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : 26.04.2019
(RS, Sr. PS)

Copy of the order forwarded to:

1. Mjunction Services Limited, Godrej Waterside Tower 1, 3rd Floor, Plot No.5, DP Block, Sector-V, Salt Lake, Kolkata – 700 091.
2. DCIT, Circle-8(1), Kolkata.
3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches