



IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.2024/Mum./2018
(Assessment Year : 2013-14)

Astoria Agro & Allied Industries P. Ltd.
Gagte no.187, A/P Katfal
Baramati, Pune 413 102
PAN – AAICA4511H

..... Appellant

v/s

Income Tax Officer
Ward-12(1)(2), Mumbai

..... Respondent

Assessee by : Shri Aamod Prabhudesai
Revenue by : Shri S.K. Jain

Date of Hearing – 11.04.2019

Date of Order – 29.05.2019

ORDER

PER SAKTIJIT DEY. J.M.

The aforesaid appeal has been filed by the assessee challenging the order dated 8th November 2017, passed by the learned Commissioner (Appeals)-20, Mumbai, pertaining to the assessment year 2013-14.

2. The grounds raised by the assessee pertains to the disallowance under section 14A of the Income Tax Act, 1961 (for short "*the Act*") r/w rule 8D of the Income Tax Rules, 1962.

3. Brief facts are, for the assessment year under dispute the assessee filed its return of income on 28th September 2018, declaring nil income. The assessment in case of the assessee was completed under section 143(3) of the Act determining the total income nil after set-off of loss. However, while doing so, the Assessing Officer made a disallowance of ₹ 1,55,10,808, under section under section 14A r/w rule 8D, thereby effectively reducing the losses claimed by the assessee. The assessee challenged the aforesaid disallowance before the first appellate authority.

4. As stated by learned Commissioner (Appeals), the assessee sought adjournment on two occasions and did not appear the third time when the appeal was fixed for hearing. Therefore, he proceeded to decide the appeal ex-parte. While doing so, he sustained the disallowance made by the Assessing Officer u/s 14A r/w rule 8D.

5. The learned Authorised Representative submitted before us, without affording sufficient opportunity of being heard, learned Commissioner (Appeals) has disposed off the appeal ex-parte in complete violation of rules of natural justice. Therefore, he submitted, the issue raised in the appeal should be restored back to the learned Commissioner (Appeals) for de novo adjudication.

6. The learned Departmental Representative, though, justified ex-parte disposal of the appeal by the learned Commissioner (Appeals), however, he submitted that one more opportunity can be given to the assessee to represent its case before the first appellate authority.

7. We have considered rival submissions and perused the material on record. The issue in dispute in the present appeal is with regard to disallowance made under section 14A r/w rule 8D. Before us, learned Authorised Representative has submitted that the disallowance made under section 14A r/w rule 8D is legally unsustainable for various reasons. He has submitted, had learned Commissioner (Appeals) not decided the issue ex-parte, assessee could have convinced him that no disallowance under section 14A r/w rule 8D could be made. Considering the aforesaid submissions of the learned Authorised Representative and without entering into the controversy whether the ex-parte disposal of the appeal by the learned Commissioner (Appeals) is justified or not, we are of the view that the assessee deserves an opportunity to explain its case relating to disallowance mad under section 14A r/w rule 8D before learned Commissioner (Appeals). Accordingly, we set aside the impugned order of learned Commissioner (Appeals) and restore the issue relating to the disallowance made under section 14A r/w rule 8D for de novo adjudication by the learned Commissioner (Appeals) after providing

due opportunity of being heard to the assessee. Further, we direct the assessee to appear before learned Commissioner (Appeals) and represent its case in an effective manner with supporting evidences and co-operate in finalization of appeal proceedings. With the aforesaid observations, grounds are allowed for statistical purposes.

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

Order pronounced in the open Court on 29.05.2019

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 29.05.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai