

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA.No.4111/Del./2016
Assessment Year 2012-2013

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| M/s. C.S. Construction Company Pvt. Ltd., Plot No.2, Local Shopping Complex, Vasant Kunj, New Delhi-110 057. PAN AACCC9009Q | vs., | The DCIT, Circle-5(2), New Delhi. |
| (Appellant) | | (Respondent) |

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| For Assessee : | Shri K. Sampath And Shri V. Rajkumar, Advocates |
| For Revenue : | Ms. Ashima Neb, Sr.DR |

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| Date of Hearing : | 21.05.2019 |
| Date of Pronouncement : | 03.06.2019 |

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-2, New Delhi, Dated 11.05.2016, for the A.Y. 2012-2013.

2. We have heard the Learned Representatives of both the parties and perused the material available on record.

3. On Ground No.1, assessee challenged the addition of Rs.12 lakhs on account of adhoc disallowance on travelling, car running/maintenance and direct expenses.

3.1. In this case, assessee filed return of income declaring income of Rs.6.73 crores. The assessee company is engaged in business of construction. The assessee produced the books of account and details, which were examined by the A.O. The A.O. asked the assessee to produce the ledger account for expenses incurred by the company, which were produced by the assessee from time to time. The assessee has debited in the P & L A/c travelling expenses etc., in a sum of Rs.2,12,18,987/-. The assessee was asked to produce the bills and vouchers of these expenses with supporting evidences and justification in respect of the claim. The assessee produced the ledger account. However, no justification of expenses was produced. No bills and vouchers have been produced. The

A.O, therefore, noted that assessee has failed to discharge its onus by not substantiating the claim of these expenditure with supporting documents. Therefore, out of the total expenses claimed at Rs.2.12 crores, A.O. disallowed *lump sum* amount of Rs.12 lakhs.

3.2. The assessee challenged the addition before the Ld. CIT(A) and it was submitted that all the details are noted in the books of account which have been verified by the A.O. It is an adhoc addition in nature. The Ld. CIT(A), however, on the same reasoning given by the A.O, dismissed this ground of appeal of assessee.

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to Board Circular No.18, Dated 28.04.1955 in which Board has clarified that *“with a view to encouraging non-company assesseees to get their accounts fully audited, if a chartered accountant gives unqualified certificate in the form given below, and agreed to by the Institute of Chartered Accountants, then such a certificate should ordinarily be treated with the same consideration that would be given to a*

certificate given in the case of a company. The Income-tax Officers should not, however, hesitate to go behind the certificate and call for detailed accounts where in their opinion the facts of a case justify that course.” Learned Counsel for the Assessee submitted that the accounts of the assessee are audited, in which, Chartered Accountant has given unqualified certificate in favour of the assessee. Therefore, no addition should be made. He has alternatively submitted that addition is excessive in nature.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that since no bills and vouchers have been produced, therefore, addition is justified.

6. After considering the rival submissions, we are of the view that addition is excessive in nature. It is a fact that assessee produced the books of account and ledger account before A.O. in respect of the above expenditure. The accounts of the assessee are also audited and Auditor has given unqualified certificate in favour of the assessee. Still assessee shall have to produce some of the vouchers and

bills before A.O. when called for by the A.O. at assessment stage. The A.O. also did not give any specific details in the assessment order, as to which of the expenses are not admissible in nature. Therefore, considering the totality of the facts and circumstances and the returned income declared by the assessee in the light of nature of business of assessee, we are of the view that addition is excessive. The interest of justice requires that addition may be restricted to Rs.6 lakhs only as against Rs.12 lakhs. This would meet the ends of justice in the facts and circumstances of the case. We, accordingly, set aside the Orders of the authorities below and restrict the addition to Rs.6 lakhs as against Rs.12 lakhs made by the authorities below. Ground No.1 of appeal of Assessee is partly allowed.

7. On Ground No.2, assessee challenged the addition of Rs.78,56,790/- by invoking the provisions of Section 14A of the I.T. Act, 1961.

8. The A.O. asked the assessee to furnish details of exempt income and expenditure pertaining to the same. The A.O. also issued show cause notice as to why the

expenditure be not disallowed under section 14A of the Act with respect to investment made in shares and agricultural land. The assessee submitted a reply, in which, assessee explained that investment made in shares is that of Group companies. Investment made in Group companies for control purpose is to be viewed from a different angle rather than mere dividend income. In the instant case, assessee had purchased shares of Group companies and agricultural land. In both the cases, the intention is not to earn income which does not form part of the taxable income. In case of acquisition of shares of Group companies, there has never been any dividend being received from the Group companies, even till date. The shares were purchased as the assessee wish to enter into other projects. The A.O. however, did not accept the contention of assessee and following Section 14A of the I.T. Act read with Rule 8D, disallowed Rs.78,56,790/-

9. The assessee challenged the addition before the Ld. CIT(A) and it was similarly submitted that A.O. has erred in making the above addition in respect of investment

made in shares of Group companies and agricultural land, without appreciating the fact that both investments being made by the assessee were not with an intention to earn any income which is not taxable nor any such income had ever been earned by the assessee during any of the years on account of such investments. It was submitted that A.O. had not appreciated the fact that agricultural land was not even outside Municipal Limit so as to have capital gains arising on account of the proposed sale outside the ambit of taxation. Since no exempt income have been earned, therefore, addition is unjustified. It was further submitted that in case of acquisition on shares of Group companies, there has never been any dividend being received from the Group companies till date. Several decisions were relied upon in respect of the contention that in case there is no exempt income, then, no disallowance could be made. The Ld. CIT(A), however, did not accept the contention of assessee and rejected this ground of appeal of assessee.

10. Learned Counsel for the Assessee has reiterated the submissions made before the authorities below and

submitted that assessee do not earn any dividend income, therefore, no addition could be made against the assessee. He has relied upon the Judgment of the Hon'ble Supreme Court in the case of CIT (Central)-1, vs. Chettinad Logistics (P.) Ltd., (2018) 95 taxmann.com 250 (SC), in which it was held as under :

“SLP dismissed against High Court ruling that Section 14A cannot be invoked where no exempt income was earned by assessee in relevant assessment year.”

11. After considering the rival submissions, we are of the view that addition is wholly unjustified. The Hon'ble Delhi High Court in the case of Cheminvest Limited vs. CIT 378 ITR 33 (Del.) held *“that no exempted income was earned by the assessee in the relevant assessment year and since genuineness of the expenditure incurred by the assessee was not in doubt, no disallowance could be made under section 14A.”* In the present case, assessee specifically submitted before the authorities below that investment was made in shares and agricultural land and in both the cases there were no intention to earn any exempt income and in fact, no

dividend exempt from tax have been earned by the assessee. The investments were made to engage into other projects. The submissions of the assessee have not been disputed by the authorities below. It is, therefore, clear that assessee did not earn any exempt dividend income in assessment year under appeal. Therefore, no disallowance under section 14A could be made. Learned Counsel for the Assessee rightly relied upon decision of the Hon'ble Supreme Court in the case of CIT (Central)-1 vs. Chettinad Logistics (P.) Ltd., (supra). Following the above discussion, we set aside the Orders of the authorities below and delete the addition. In the result, Ground No.2 of appeal of assessee is allowed.

12. In the result, appeal of Assessee partly allowed.

Order pronounced in the open Court.

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 03rd June, 2019

VBP/-

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| 1. | The appellant |
| 2. | The respondent |
| 3. | CIT(A) concerned |
| 4. | CIT concerned |
| 5. | D.R. ITAT "B" Bench |
| 6. | Guard File |

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.