

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
(Before Sri J. Sudhakar Reddy, Accountant Member)**

**I.T.A. No. 898/Kol/2019
Assessment Year: 2013-14**

Carwin Trading Pvt. Ltd.....Appellant
[PAN : AABCC 1186 H]

Vs.

ITO, Ward- 2(2), Kolkata.....Respondent

Appearances by:

Anil Kochar, Adv., appeared on behalf of the Assessee.

Sh. Jayanta Khanna, JCIT, Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : September 24th, 2019

Date of pronouncing the order : September 27th, 2019

ORDER

Per J. Sudhakar Reddy, AM :-

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-16, Kolkata ('CIT(A)' for short) dated 29.03.2019 passed u/s 250 of the Income Tax Act, 1961 ('the Act' for short) on the following grounds:

"1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.

2. For that the Ld. CIT (A) erred in confirming disallowance of Rs.4,79,174/- as made out by the A.O. u/s 14A read with Rule 8D on the alleged grounds.

3. For that there was no expenditure that could be disallowed by invoking provisions of Sec.14A read with Rule 8D of the Act and the Ld. CIT (A) ought to have properly appreciated the submissions made before him based on facts as well as Law.

4. For that the Ld. CIT (A) erred in confirming disallowance of Rs.8,46,260/- made by the A.O. by applying provisions of Sec.40(a)(ia) on the alleged grounds.

5. For that the Ld. CIT (A) ought to have properly appreciated the submissions made by the appellant and ought not to have confirmed the disallowances made by the A.O. under the provisions of Sec.40(a)(ia) of the Act.

6. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds."

2. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, perusal of the papers on record, all the orders of the authorities below as well as case law cited, I hold as follows.

3. Ground no. 1 is general in nature.

4. Ground nos. 2 and 3 are against the disallowance made by the Assessing Officer ('AO' for short) u/s 14A r.w.s. 8D(iii) of the Act. The AO has disallowed 0.5% of the value of investments on the last of the previous year. The Id. CIT(A) confirmed the same. I do not see any reason to interfere with this finding of the Id. CIT(A). In the result these two grounds of the assessee are dismissed.

5. Ground nos. 4 and 5 are on the disallowance made u/s 40(a)(ia) of the Act. The assessee submitted before the Id. CIT(A) that the payees have taken the amount in question as income in their income while filing the return of income and that they paid taxes on the same and hence, in view of the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Ansal Landmark Township Pvt. Ltd.* in ITA 160/2015, order dated 26.08.2015, no disallowance can be made u/s 40(a)(ia) of the Act. The Id. CIT(A) rejected this plea on the ground that no evidence had been furnished by the assessee. Before me, the Id. Counsel for the assessee demonstrated that necessary evidence has been filed before the Id. CIT(A) in the form of copies of return of income, income and expenditure account etc. of the payees in this case. In view of the above, I am of the considered opinion that the issue should be restored to the file of the AO for verification whether the payees in this case have taken into account the income in question and thereafter paid taxes thereto. If the payees have paid taxes, then no disallowance shall be made u/s 40(a)(ia) of the Act. In the result, these grounds are allowed for statistical purposes.

6. The last ground is general in nature.

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

Kolkata, the 27th September, 2019.

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated : 27.09.2019
Bidhan

Copy of the order forwarded to:

1. ***Carwin Trading Pvt. Ltd., E-24/7, Karunamayee, Salt Lake, Kolkata-700 091.***
2. ***ITO, Ward- 2(2), Kolkata.***
3. CIT(A)-16, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches