

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : G : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA Nos.263 to 268/Del/2016

A.Ys: 2010-11, 2009-10, 2007-08, 2006-07, 2005-06 & 2004-05

Cedar Infonet Pvt. Ltd.,
C/o R.S. Ahuja & Co., CA,
C-353, Defence Colony,
New Delhi.

Vs ACIT,
Central Circle-11,
New Delhi.

PAN: AABCC9486E

(Appellant)

(Respondent)

| | | |
|-----------------------|---|-------------------------|
| Assessee by | : | None |
| Revenue by | : | Shri S.S. Rana, CIT, DR |
| Date of Hearing | : | 25.11.2019 |
| Date of Pronouncement | : | 28.11.2019 |

ORDER

PER R.K. PANDA, AM:

This batch of appeals filed by the assessee are directed against the separate orders of the CIT(A)-31, New Delhi, for the respective assessment years. Since identical grounds have been raised by the assessee in all these appeals, these were heard together and are being disposed of by this common order for the sake of convenience.

2. It was seen that the notice issued by the Registry through RPAD was returned by the Postal Authorities with the remarks: 'Left without address.' The assessee has not taken any steps to intimate the change of address, if any. Under these circumstances, all these appeals filed by the assessee are being decided on the basis of the material available on record and after hearing the Id. DR.

3. The grounds raised by the assessee in all the appeals read as under:-

“ITA No.263/Del/2016

(A) That on the facts & circumstances of the case the learned ITO & the CIT(A) erred in :

1. Upholding the assessment & addition of Rs.3,81,96,642/- u/s 14A in spite of the fact that the assessment for the year had abated in terms of section 153A and no incriminating material was unearthed in the course of search & seizure operations.
2. Disallowance of Rs.3,81,96,642/- u/s 36(1)(iii).

(B) The assessee craves leave to add, alter or amend the grounds of appeal at and before the hearing.”

ITA No.264/Del/2016

(A) That on the facts & circumstances of the case the learned ITO & the CIT(A) erred in :

1. Upholding the assessment & addition of Rs.17,20,875/- u/s 14A and Rs.4,08,45,156/- in spite of the fact that the assessment for the year had abated in terms of section 153A and no incriminating material was unearthed in the course of search & seizure operations.
2. Disallowance of Rs.17,20,875/- u/s 14A pertaining to expenses towards investment activity.
3. Disallowing u/s 14A without the Assessing Officer giving any finding in the assessment order regarding the amount of actual expenditure incurred by the assessee to earn tax-free income.

4. Not following the orders of the jurisdictional High Court in this matter.

5. Disallowance of interest paid Rs.4,08,45,156 u/s 36(1)(iii).

(B) The assessee craves leave to add, alter or amend the grounds of appeal at and before the hearing.”

ITA No.265/Del/2016

(A) That on the facts & circumstances of the case the learned ITO & the CIT(A) erred in :

1. Upholding the assessment & addition of Rs.8,88,513/- u/s 14A in spite of the fact that the assessment for the year had abated in terms of section 153A and no incriminating material was unearthed in the course of search & seizure operations.

2. Disallowance of Rs.8,88,513/- u/s 14A r.w.r 8D of the Income Tax Act.

3. Disallowing u/s 14A without the Assessing Officer giving any finding in the assessment order regarding the amount of actual expenditure incurred by the assessee to earn tax-free income.

4. Not following the orders of the jurisdictional High Court in this matter.

(B) The assessee craves leave to add, alter or amend the grounds of appeal at and before the hearing.”

ITA No.266/Del/2016

(A) That on the facts & circumstances of the case the learned ITO & the CIT(A) erred in :

1. Upholding the addition of Rs.25,02,253/- on account of bogus purchases.

2. Disallowance of Rs.1,00,000/- u/s 14A of the Income Tax Act even though this was not part of Grounds of Appeal before CIT(A) and no notice of enhancement has been given.

3. Disallowing u/s 14A without the Assessing Officer giving any finding in the assessment order regarding the amount of actual expenditure incurred by the assessee to earn tax-free income.

4. Not following the orders of the jurisdictional High Court in this matter.

(B) The assessee craves leave to add, alter or amend the grounds of appeal at and before the hearing.”

ITA No.267/Del/2016

(A) That on the facts & circumstances of the case the learned ITO & the CIT(A) erred in :

1. Upholding the assessment & addition of Rs.1,00,000/- u/s 14A in spite of the fact that the assessment for the year had abated in terms of section 153A & no incriminating material was unearthed in the course of search & seizure operations.
2. Addition of Rs.48,50,000/- as deemed dividend u/s 2(22)(e) of the Income Tax Act.
3. Disallowing Rs.1,00,000/- u/s 14A r.w.r. 8D of Income Tax Act.
4. Disallowing u/s 14A without the Assessing Officer giving any finding in the assessment order regarding the amount of actual expenditure incurred by the assessee to earn tax free income.
5. Not following the orders of the jurisdictional High Court in this matter.

(B) The assessee craves leave to add, alter or amend the grounds of appeal at and before the hearing.”

ITA No.268/Del/2016

(A) That on the facts & circumstances of the case the learned ITO & the CIT(A) erred in :

1. Upholding the assessment & addition of Rs.2,00,000/- u/s 14A in spite of the fact that the assessment for the year had abated in terms of section 153A & no incriminating material was unearthed in the course of search & seizure operations.
2. Disallowing Rs.2,00,000/- u/s 14A of Income Tax Act.

3. Disallowing u/s 14A without the Assessing Officer giving any finding in the assessment order regarding the amount of actual expenditure incurred by the assessee to earn tax free income.

4. Not following the orders of the jurisdictional High Court in this matter.

(B)The assessee craves leave to add, alter or amend the grounds of appeal at and before the hearing.”

5. First we take up ITA No.268/Del/2016 for assessment year 2004-05 as the lead case. Facts of the case, in brief, are that the assessee is a private limited company. A search and seizure operation u/s 132 of the IT Act was initiated in the case of the assessee on 24th September, 2009. In response to notice u/s 153A, the assessee filed return of income declaring total income at Rs.75,642/-. The Assessing Officer completed the assessment u/s 153A/143(3) on 29th December, 2011 determining the total income at Rs.2,99,111/- wherein he disallowed excessive claim of depreciation of Rs.10,707/- and disallowed interest of Rs.3,64,046/- u/s 36(1)(iii) of the IT Act, 1961.

6. Similarly, for assessment year 2005-06, the Assessing Officer completed the same determining the total income at Rs.56,64,423/- as against the returned income of Rs.6,46,821/-, wherein he made addition of Rs.8,317/- on account of excess claim of depreciation, of Rs.48,50,000/- on account of deemed dividend u/s 2(22)(e) and Rs.1,59,285/- being disallowance of interest u/s 36(1)(iii). For assessment year 2006-07, the Assessing Officer completed the assessment determining the total income at Rs.38,53,307/- as against returned income of Rs.12,32,982/- wherein he made addition of Rs.6,480/- on account of excess claim

of depreciation and Rs.25,02,253 being disallowance of interest u/s 36(1)(iii). For assessment year 2007-08, the Assessing Officer completed the assessment determining the total income at Rs.25,95,085/- as against the returned income of Rs.11,97,967/-, wherein he disallowed preliminary expenses of Rs.10,935/-, excess claim of depreciation of Rs.1,755/- and disallowance u/s 14A of Rs.8,88,513/-. For assessment year 2009-10, the Assessing Officer completed the assessment at a total income of Rs.9,02,23,864/- as against nil returned income wherein he disallowed preliminary expenses of Rs.10,935/-, excess claim of depreciation of Rs.1,268/-, disallowance of Rs 4,93,66,505/- u/s 14A and disallowance u/s 36(1)(iii) of Rs.4,08,45,156/-. So far as assessment year 2010-11 is concerned, the Assessing Officer completed the assessment by determining the total income at Rs.3,42,92,153/- as against declared loss of Rs.2,64,51,835/- wherein he disallowed preliminary expenses of Rs.10,935/-, excess claim of depreciation of Rs.12,68/-, disallowance u/s 14A of Rs.1,76,41,196/- and disallowance of interest u/s 36(1)(iii) of Rs.4,30,90,589/-.

7. Before the CIT(A), apart from challenging the addition on merit, we find the assessee had taken a legal ground which reads as under:-

“That the Assessing Officer exceeded his jurisdiction in making various additions/disallowances in the impugned assessment completed under sections 143(3)/153A of the Act, de-hors any incriminating material/document found during the course of search.”

8. Identical grounds have been raised by the assessee for all the years before the CIT(A).

9. However, we find the Id.CIT(A) has not adjudicated this ground. A perusal of the order of the Assessing Officer also shows that it is not clearly coming out from the assessment order as to whether the addition has been made on the basis of any incriminating material found during the course of search. Under these circumstances, we deem it proper to restore the issue to the file of the CIT(A) with a direction to adjudicate the legal ground raised before him challenging the various additions made by the Assessing Officer in absence of any incriminating material found during the course of search. Since we are restoring the issue to the file of the CIT(A) on this legal ground which was raised before him, but, not adjudicated by him, we refrain ourselves from adjudicating the various other grounds raised by the assessee challenging the various additions on merit. The appeals filed by the assessee are accordingly allowed for statistical purposes.

10. In the result, the appeals filed by the assessee are allowed for statistical purposes.

The decision was pronounced in the open court on 28.11.2019.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 28th November, 2019

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi