

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH, KOLKATA**

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)**

**ITA No. 1469 & 1470/Kol/2019**  
Assessment Year: 2013-14 & 2015-16

**Deputy Commissioner of Income Tax, Circle-12(1), Kolkata.....Appellant**

**Vs.**

**M/s. The Peerless General Finance & Investment & Co. Ltd.....Respondent**  
**3, Esplanade East**  
**Kolkata - 700 069**  
**[PAN : AABCT 3043 L]**

**Appearances by:**

*Shri Supriyo Pal, JCIT Sr. D/R, appearing on behalf of the Revenue*

*Shri S.K. Tulsian, Adv. & Subrata Dey, CA, appeared on behalf of the assessee.*

Date of concluding the hearing : October 31<sup>st</sup>, 2019

Date of pronouncing the order : December 5<sup>th</sup>, 2019

**ORDER**

**Per J. Sudhakar Reddy, AM :-**

Both these appeals filed by the revenue are directed against separate orders of the Learned Commissioner of Income Tax (Appeals) – 1, Kolkata, (hereinafter the “ld.CIT(A)”), passed u/s. 250 of the Income Tax Act, 1961 (the ‘Act’), dt. 08/03/2019, for the Assessment Year 2013-14 & dt. 04/03/2019 for the Assessment Year 2015-16.

2. At the outset we find that there is a delay of 5 (five) days in filing of both these appeals by the revenue. After perusing the petition for condonation, we are convinced that the department was prevented by sufficient cause from filing the appeal on time. Hence the delay is condoned and the appeals are admitted.

2.1. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

3. We first take the appeal of the revenue for the Assessment Year 2013-14.

4. On Ground No. 1, we find that the ld. CIT(A), at para 23 has stated as follows:-

*“23. In Ground of Appeal No. 5 pertains to not carrying forward the Long Term Capital Loss of Rs.160,65,10,531/-. This is agreed. The Ld. A.O. may consult the files of the previous years and if the amount is due and unclaimed, the same may be allowed.”*

4.1. We find no infirmity in these directions of the Id. CIT(A). The Assessing Officer is directed to verify the claim of the assessee and allow the same, in accordance with law. Hence, we dismiss this ground of revenue.

5. Ground Nos. 2, 3 & 4 are on the issue of disallowance u/s 14A r.w.r. 8D(2) of the Act. The Id. CIT(A) at para 8 page 5 of his order, has stated as follows:-

*“8. In view of the above and in the absence of any satisfaction note recorded by the Id. A.O., the addition made u/s 14A of the Income-tax Act, 1961, is not as per law.”*

5.1. This paragraph, has not been specifically challenged before us. The Id. D/R, could not demonstrate that the Assessing Officer has recorded satisfaction, as required under law, prior to invoking Rule 8D of the Income Tax Rules, 1962 ('Rules'). Thus, this issue is covered in favour of the assessee by the order of this Bench of the Tribunal in the case of *REI Agro Ltd. vs. DCIT [2013] 144 ITD 141 (Kolkata - Trib.)*, wherein it was held as under:-

***“Section 14A of the Income-tax Act, 1961, read with rule 8D of the Income-tax Rules, 1962 - Expenditure incurred in relation to income not includible in total income [Rule 8D] - Assessment year 2008-09 - Whether, where Assessing Officer was not satisfied with correctness of claim made by assessee that no expenditure was incurred in relation to such income which did not form part of total income, he could invoke section 14A only after recording satisfaction on that issue with regard to accounts of assessee - Held, yes -Whether disallowance under section 14A read with rule 8D(2)(iii) can be computed only by taking into consideration average value of investment appearing in balance sheet as on first and last day of previous year from which income not falling within total income has been earned - Held, yes - Whether, where Assessing Officer had taken into consideration entire investment made by assessee during relevant year for calculation of disallowance under rule 8D, matter was to be restored for recomputation”***

6. Consistent with the view taken therein, we dismiss this Ground Nos. 2, 3 & 4 of the revenue.

7. Ground No. 5 is against the deletion of disallowance made u/s 40(a)(ia) of the Act.

7.1. The Id. CIT(A) at para 19 held as follows:-

*“19. In view of the above submissions that there was no requirement to deduct TDS on the payment and as such no disallowance u/s 40(a)(ia) of the Income-tax Act, 1961 is warranted. I have gone through the order of the Id. A.O. and the submissions made by the assessee. It is the requirement of law that TDS can be deducted only when the provisions of TDS are applicable to the facts of the case. In the instant cases, after considering the submissions made by the Id. A.R. of the assessee, it is crystal clear that TDS provisions were not applicable. As such, no TDS were required to be deducted, if not mandated by the statute. Thus, no additions to income could have been made u/s 40(a)(ia) of the Income-tax Act, 1961 as has been done by the Id. A.O.*

8. He accepted the claim of the assessee that payment made to parties to the tune of Rs.30,000/- were not a single transaction and hence, Section 194C of the Act, does not apply. As regards payments to Vyapar Bharati Press, he accepted the submission that TDS @ 1% was deducted on the payments and hence Section 40(a)(ia) of the Act is not applicable. In case of payments to NG Gosai Printing Pvt. Ltd., as it was purchase of goods, he held that the provisions of Section 194C of the Act, does not apply. Regarding the payment to Jivan Ratan Chatterjee Legal, he submitted that the payment of Rs.31517/-, was towards advocate fees and service tax and as the advocate fees was less than Rs.30,000/-, Section 194J of the Act, does not apply. Similarly, he has analysed each and every payment and came to a conclusion that provision of tax deduction at source do not apply.

8.1. The Id. D/R, could not contradict these factual findings of the Id. CIT(A). Thus, we uphold the same and dismiss Ground No. 5 of the revenue.

9. Ground No. 6 is general in nature.

10. In the result, appeal of the revenue in ITA No. 1469/Kol/2019; Assessment Year 2013-14, is dismissed.

11. Now we take up the revenue's appeal for the Assessment Year 2015-16.

12. The Grounds of appeal reads as follows:-

*“1. Ld. CIT(A) has erred in law in deleting the addition of Rs. 2,92,66,350/- u/s. 14A read Rule 8D of the I. T. Rule.*

2. *The Ld. CIT(A) has erred in law in deleting the addition of Rs. 29,09,680/- on sale of right property and carried forward the loss to future years where as the assessee claimed indexed long term capital loss of Rs. 36,60,000/-.*

3. *The Ld. CIT(A) erred in law in allowing the deduction of CSR expenditure paid of Rs. 55,42,400 as expenditure incurred by the assessee for the purposes of the business or profession. Any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.*

4. *The Ld. CIT(A) erred in law in allowing the deduction of Education Cess paid of Rs. 95,23,489/- u/s. 37(1) of the Act. which has held that Education Cess does not form part of tax and hence outside the ambit of section 40(1) (ii) which covers tax only.*

5. *The appellant craves leave to make any addition, alteration or modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings."*

13. Ground No. 1 is against the deletion of an addition made u/s 14A r.w.r. 8D. In this also, as for the Assessment Year 2013-14, the Id. CIT(A) has come to a factual conclusion that the Assessing Officer has not recorded satisfaction before invoking Rule 8D of the Rules. Consistent with the view taken by us for the Assessment Year 2013-14, we uphold the finding of the Id. CIT(A) and dismiss this ground of the revenue as the Id. D/R was not able to demonstrate that the Assessing Officer has recorded satisfaction as required by law, prior to invoking Rule 8D of the Income Tax Rules.

14. Ground No. 2, is regarding the deletion of an addition made on account of sale of rights in property and carry forward of loss to future years.

15. The assessee has sold the rights in property in the Assessment Year 2013-14 and 2014-15. The assessee declared the same as income from capital gain in its return of income for these Assessment Years. The Assessing Officer has accepted this claim of the assessee and assessed the income under the head capital gains. During the current Assessment Year 2015-16, the Assessing Officer treated the income from sale of right in property as income from business. The assessee disputed the same before the Id. CIT(A). Its case is that the income in question is assessable under the head capital gains and not under the head income from business of profession. He relies on the decision of the Hon'ble Supreme Court in the case of *Radhasoami Satsang vs. CIT*

(1992) 193 ITR 321 (SC), for the proposition that consistency should be followed by the Assessing Officer when the facts permeating over the years are the same. The Id. CIT(A) at para 11, 12 and 13 of his order, page 9, held as follows:-

*“11. I have gone through the order of the Id. A.O. and the submissions made by the Id. A.R.s of the assessee. It is a fact that after adverting on the issue in earlier year, the Id. A.O. has not been consistent with the approach. Reasons for not following the earlier order has also not been made particularly when facts were same/ similar. The decision in Radha Swami Satsang stands vitiated. Further, decision in Union of India Kanmudini Narayan Dalal 249 ITR is also relied upon.*

*12. In this case 37 flats were purchased of different configuration. This was valid by an agreement. The approximate total area was 50051 sq. ft. Assessee purchased entire purchase consideration. It was reflected in the Audited Accounts as well. It shown as investment. Assessee declared total receipt of Rs.16,10,57,228/- as consideration. The last date of payment in all 37 cases/flats was 18.02.2015. This after 3 years. This position was accepted in earlier years.*

*13. Thus following the decision in Radha Soami Satsang. I have no option but to go by the decision in Radha Soami Satsang on the principles of consistency. Reliance is also placed on the decision of Calcutta ITAT in the case of DCIT vs. M/s. ABCI Infrastructure Pvt. Ltd. (ITA No. 990/Kolkata/2013).”*

16. We find no infirmity in the same. Hence we dismiss these grounds of the revenue.

17. Ground No. 3 is against the allowance of deduction of CSR expenses.

17.1. The Id. CIT(A) has dealt with the issue from para 15 onwards. At para 25, he concluded as follows:-

*“25. The present expenditure of Rs.55,42,400/- have been made apparently by way of contribution for CSR activities undertaken by various offices of Ramakrishna Mission, Bharat Sevashram Sangha etc. all of which are eligible for deduction u/s 80G(5)(vi) of the Act and on which the legislature has not put any restriction as regards allowance of CSR spent. Hence, the legal position that emerges and is applicable for the year under consideration is that any expenditure incurred towards eligible CSR activities which also fall within the expenditure/contributions specified in section 80G of the Act (other than Swacch Bharat Kosh or Clean Ganga Fund) is allowable as deduction u/s 80G of the Act.*

17.2. In the grounds of appeal, the revenue does not dispute the finding of the Id. CIT(A) that the expenditure in question is allowable u/s 80G of the Act. The Id. CIT(A) has not held that the expenditure is allowable u/s 36 /37 of the Act. It is not the case of the Id. CIT(A) that Explanation 2 to Section 37 of the Act, does not come into play. He

was of the view that deduction in question is allowable under chapter VIA and not under chapter IV. As this finding has not been challenged, in this ground, we dismiss the same.

18. Ground No. 4 is against the allowance of deduction of education cess u/s 37(1) of the Act.

19. The ld. CIT(A) at para 35 & 36 of his order held as follows:-

*"35. I have gone through the Kolkata Tribunal in the case of M/s. ITC Limited vs. ACIT, Range-8, Kolkata in ITA No. 685/Kol/2014. In para 12, the following has been stated by the Tribunal –*

*"12. The assessee's additional last/ substantive ground avers that it is entitled for the educations secondary higher education cess as overhead deduction amounting to Rs.423618317.0 u/s 37 of the Act. We not that hon'ble Rajasthan high court's decision in DB Income Tax Appeal No. 52/ Kolkata/ 2018 M/s Chambal Fertilizers Ltd. vs. DCIT decided on 31.07.2018 takes into account CBDT circular dated 18.05.1967 for holding such cess(es) to be allowable as deduction. Their lordships hold that section 40a(ii) applies only on taxes such than earn cess(es). We therefore reject the Revenue's contentions supporting the impugned disallowance. The assessee's instant substantive ground is accepted. The Assessing Officer is direction to verify all the relevant facts and allow the impugned cess (es) as deduction u/ s 37 of the Act. The assessee's appeal I.T.A. No. 685/ Kol/ 20 14 is partly accepted in above terms. "*

*36. The decision of the Tribunal is that of a higher judicial forum. Even though there may be divergent view, the decision of the higher judicial forum ought to be accepted. Assessee succeeds in this Ground of Appeal."*

20. We find not infirmity in this finding of the ld. CIT(A) and uphold the same. Hence Ground No. 4 of the revenue is dismissed.

21. Ground No. 5 is general in nature.

22. In the result, both the appeals of the revenue are dismissed.

***Kolkata, the 5<sup>th</sup> day of December, 2019.***

***Sd/-***  
**[Aby T. Varkey]**  
 Judicial Member

Dated : 05.12.2019  
 {SC SPS}

***Sd/-***  
**[J. Sudhakar Reddy]**  
 Accountant Member



*Copy of the order forwarded to:*

**1. M/s. The Peerless General Finance & Investment & Co. Ltd  
3, Esplanade East  
Kolkata - 700 069**

**2. Deputy Commissioner of Income Tax, Circle-12(1), Kolkata**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches