



ITA No.5407/Mum/2018
Esmart Energy Solutions Private Limited
Assessment Year: 2013-14

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.5407/Mum/2018

(निर्धारण वर्ष / Assessment Year: 2013-14)

Esmart Energy Solutions Pvt. Ltd. C/o. H.N.Motiwalla & Co., 508, Sharda Chambers, 33, New Marine Lines, Mumbai- 400 020	बनाम/ Vs.	DCIT-1(1)(2), Aaykar Bhawan Mumbai
स्थायी लेखा सं./ जीआइआर सं./ PAN/GIR No. AACCS-0489-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri H.N.Motiwalla – Ld. AR
Revenue by	:	Shri Amit Pratap Singh – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	11/12/2019
घोषणा की तारीख / Date of Pronouncement	:	11/12/2019

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2013-14 contest the order of Ld. Commissioner of Income-Tax (Appeals)-2, Mumbai [in short referred to as ‘CIT(A)’], Appeal No. CIT(A)-2/IT/82/2016-17, dated 24/04/2018. Although the assessee has raised multiple grounds, but during hearing, Ld.



Authorized Representative for assessee (AR) pleaded only for Ground Nos. 2,3, 5 & 6 which read as under: -

“2. On the facts and in the circumstances of the case the said learned Commissioner of Income tax has also erred in confirming the disallowance of Rs.2,61,577/-, out of balance travelling expenses without appreciating that the appellant has received LOI for the work of Establishment of Energy Efficient Public Street Light Projects in various states and also from Municipal Corporation for replacement of energy efficient, LED street light developed inhouse by the appellant.

3. On the facts and in the circumstances of the case the said learned Commissioner of Income tax has also erred in confirming the disallowance of software development expenses of Rs. 19,50,000/- particularly when the said expenses were incurred for remote meter reading, which is business of the appellant and has also submitted invoice for the same.

5. On the facts and in the circumstances of the case the said learned Commissioner of Income tax has also erred in restricting the disallowance under section 14A of the Act, particularly when, the appellant had invested in shares and mutual funds Rs. 24,20,65,605/- out of its own fund of Rs. 33,78,56,341/- and thus not following the judgement of jurisdictional High Court.

6. On the facts and in the circumstances of the case the said learned Commissioner of Income tax has also erred in restricting the disallowance under section 14A of the Act.

2. Facts in brief are that the assessee being resident corporate assessee stated to be engaged in providing consultancy services was assessed for the year under consideration u/s 143(3) on 15/03/2016 wherein the loss was determined at Rs.143.23 Lacs after certain adjustments / disallowances as against returned loss of Rs.244.07 Lacs filed by the assessee on 28/09/2013. The following additions form subject matter of present appeal before us: -

No.	Nature of Disallowance	Amount (Rs.)
1	Travelling Expenses	2,61,557/-
2	Software Expenses	19,50,000/-
3	Disallowance u/s.14A	27,62,173/-

3. We have carefully heard the rival submissions and perused relevant material on record including documents placed in the paper-



book. Our adjudication on the stated issues would be as given in succeeding paragraphs.

4.1 Disallowance of Travelling Expenses

During assessment proceedings, it transpired that the assessee debited travelling expenses of Rs.24.27 Lacs out of which expenses of Rs.13.80 Lacs were towards foreign travelling expenses. Besides disallowing foreign travel expenses, Ld. AO estimated additional disallowance of 25% on balance travelling expenses of Rs.10.47 Lacs which came to Rs.2.61 Lacs. The assessee is aggrieved by estimation of 25%. The stand of Ld. AO, upon confirmation by learned first appellate authority, is under challenge before us. The prime argument of Ld. AR would revolve around the fact that the expenditure was an allowable deduction and complete details was available on record and therefore, the disallowance was on higher side. The Ld. DR submitted that the estimation was fair. Upon due consideration of details filed by the assessee, we find that estimation of 10% would meet the end of justice and would mitigate the litigation further. Therefore, we restrict the impugned addition to 10% of Rs.10,46,229/- which comes to Rs.1,04,623/-. The balance addition stands deleted. The ground stands partly allowed.

4.2 Disallowance of Software Expenses

It transpired that the assessee debited an amount of Rs.19.50 Lacs on account of software expenses. The said amount was *prima-facie* an advance paid to an entity namely UTJ wireless Pvt. Ltd. In the absence of any supportive documents, the said expenditure was disallowed. For the same reasons, depreciation was also disallowed. The Ld. CIT(A) confirmed the same since the assessee could not substantiate the said



expenditure neither at the time of assessment proceedings nor at the time of appellate proceedings. The Ld. AR drew our attention to the copies of invoices, ledger extracts etc. to submit that the expenditure was well documented and the same was an allowable deduction. The Ld. DR submitted that the assessee could not substantiate the expenditure with documentary evidences. Keeping in view the rival submissions, we deem it fit to restore the matter back to the file of Ld. AO for re-adjudication in the light of documentary evidences furnished by the assessee. Needless to add that adequate opportunity of being heard shall be provided to the assessee. This ground stand allowed for statistical purposes.

4.3 Disallowance u/s 14A

It transpired that the assessee held substantial closing investment of Rs.2420.66 Lacs which called for disallowance u/s.14A. The Ld. AO, invoking Rule 8D, worked out aggregate disallowance of Rs.27.62 Lacs which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.13.47 Lacs and administrative expense disallowance u/r 8D(2)(iii) for Rs.14.14 Lacs. The learned CIT(A), while confirming the said disallowance, directed Ld. AO to restrict the same to Rs.3,27,971/-, being exempt income earned by the assessee. Aggrieved, the assessee is under appeal before us.

Upon due consideration, we find that the action of Ld. CIT(A) in restricting the disallowance to the extent of exempt income earned by the assessee was well in line with settled legal position that disallowance could not exceed exempt income. Therefore, the impugned order, in this



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aspect, would not require any interreference on our part. This ground stands dismissed.

5. In the result, the appeal stands partly allowed to the extent indicated in the order.

Order pronounced in the open court on 11th December, 2019.

Sd/-

(C.N. Prasad)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 11/12/2019
Sr.PS, Murali Mohan

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.