

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

[Before Shri J. Sudhakar Reddy, Accountant Member & Shri S.S. Godara, Judicial Member]

**I.T.A. No. 2058/Kol/2018
Assessment Year: 2012-13**

Kankani Construction Pvt. Ltd.....Appellant
[PAN: AABCK 4191 Q]

Vs.

DCIT, Circle-4(1), Kolkata.....Respondent

Appearances by:

Sh. Somnath Ghosh, Adv., appeared on behalf of the Assessee.

Sh. Dhruvjayoti Ray, JCIT, Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : December 05th, 2019
Date of pronouncing the order : January 8th, 2020

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)-2, Kolkata ['CIT(A)' for short] dated 12.07.2018 u/s 250 of the Income Tax Act, 1961 ('the Act' for short) for AY 2012-13.

2. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, perusal of the papers on record and case laws cited, we hold as follows.

3. Ground no. 1 is on the issue of disallowance made u/s 14A of the Act. The assessee claims that it has not earned any dividend income and hence no disallowance can be made u/s 14A of the Act, when there is no exempt income earned by the assessee during the year. This issue is supported by the propositions of law laid down by the jurisdictional High Court in the case of *Commissioner of Income Tax vs. M/s. Ashika Global Securities Ltd.*

4. He further submitted that disallowances are arbitrary made on ad hoc basis and hence cannot be sustained. He further submitted that amounts were added u/s 56 of the Act as undisclosed income and that the assessee was not given adequate opportunity to

furnish the required details. He also submitted that the AO did not take on record evidences filed by the assessee to prove the identity, creditworthiness and genuineness of the transaction. The Id. DR, though not leaving his ground, agreed that there was violation of the principles of natural justice and that the matter may be restored to the AO for fresh adjudication in accordance with law.

5. In view of the above discussion we set aside the matter to the file of the AO for fresh adjudication in accordance with law, as he has not provided adequate opportunity to the assessee. The Id. CIT(A) has also passed an *ex-parte* order.

6. The AO is directed not to disallow any amount u/s 14A of the Act, if the assessee has not earned any dividend on loan which is exempt from tax, during the year.

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

Kolkata, the 8th January, 2020.

Sd/-
[S.S. Godara]
Judicial Member

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated: 08.01.2020
Bidhan

Copy of the order forwarded to:

1. ***Kankani Construction Pvt. Ltd., C/o S.N. Ghosh & Associates, Advocates "Seben Brothers' Lodge", P.O. Buroshibtala, P.S. Chinsurah, Hooghly-712 105.***
2. ***DCIT, Circle-4(1), Kolkata.***
3. CIT(A)-2, Kolkata. (sent through e-mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through e-mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches