



ITA No.208/Mum/2019  
M/s. Mutha Founders Pvt. Ltd.  
Assessment Year :2007-08

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं  
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।  
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND  
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No 208/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2007-08)

<b>M/s. Mutha Founders Pvt. Ltd.</b> 121, Vithalwadi, Kalbadevi, Mumbai – 400002.	<b>बनाम/ Vs.</b>	<b>DCIT-Circle 4(2)(2),</b> 6 <sup>th</sup> Floor, Aaykar Bhawan M.K. Road, Mumbai – 400020.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AAACM-3091-N</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Mr. Jayesh Kanungo-Ld. AR
<b>Revenue by</b>	:	Ms. Jothilakshmi Nayak- Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	29/01/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	05/02/2020

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1.1 Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2007-08 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/10114/2018-19 dated 10/10/2018* on following grounds of appeal:

- The orders passed by the learned lower authorities are bad in law and bad in facts.
- The learned lower authorities have grossly erred in not following the directions of the Hon’ble Tribunal and have further erred in making an addition of Rs. 88,995/-. The impugned addition is wholly unwarranted.



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- iii. The learned lower authorities have grossly erred in making impugned addition of Rs. 88,995/- without bringing any comparable instances on record to substantiate the allegation of payment of higher price for services availed.
- iv. Having regard to the facts of the case, provisions of law and judicial propositions the impugned addition of Rs. 88,995/- is wholly untenable.
- v. The learned lower authorities have grossly erred in making/upholding an addition of Rs.6675/- by recourse to section 14A of the IT Act, 1961. The impugned addition is wholly unwarranted and deserves to be deleted.
- vi. The appellant may please be permitted to raise any additional or alternative ground on or before the hearing of appeal.

1.2 This is second round of appeal before Tribunal since the assessment was originally framed u/s 143(3) on 27/11/2009 assessing the income at Rs.225.15 Lacs after certain additions as against returned income of Rs.224.11 Lacs e-filed by the assessee on 01/11/2007. The assessee was saddled with disallowances of Rs.0.89 Lacs & Rs.0.14 Lacs u/s 40A(2)(b) and u/s 14A respectively. The stand of Ld. AO, upon confirmation by Ld. CIT(A), was challenged before this Tribunal vide ITA No. 2907/Mum/2011 order dated 20/03/2013 wherein the matter was restored back to the file of Ld. AO for re-adjudication.

1.3 Accordingly, an assessment was again framed u/s 143(3) r.w.s. 254 on 30/03/2015 wherein the assessee was saddled with similar disallowances. These disallowances, upon partial confirmation by Ld. CIT(A), are under further appeal before us.

1.4 We have carefully heard the rival submissions and perused relevant material on record. Our adjudication to the subject matter of present appeal would be as given in succeeding paragraphs.

### **Disallowance u/s 40A(2)(b)**

2.1 The assessee was directed to justify the claim of Rs.17.79 Lacs paid to sister concern on account of machining charges, fitting charges,



sand molds etc. The assessee defended the same by submitting that the assessee did not avail any such services from outside parties and it was not possible for the assessee to provide any comparable instances for the said expenses. Therefore, the disallowance was repeated in the fresh assessment. The learned CIT(A) confirmed the same against which the assessee is under further appeal before us.

2.2 Upon due consideration, we find that in terms of Sec. 40A(2)(a), the onus was on revenue to establish that the expenditure incurred by assessee was unreasonable or excessive having regards to the fair market value of goods, services or facilities for which the payment is made. However, we find that no such efforts were made by Ld. AO to determine the fair market value of services being availed by the assessee and Ld. AO chose to make *ad hoc* disallowance as against the intent of legislation which mandate Ld.AO to bring on record material to establish that the price paid by the assessee was excessive or unreasonable. Therefore, by deleting the same, we allow this ground of appeal.

### **Disallowance u/s 14A**

3.1 The matter of disallowance of Rs.0.14 Lacs u/s 14A, was restored back by Tribunal since Rule 8D was found to be not applicable for year under consideration. The assessee submitted that it received exempt income of Rs.0.19 Lacs which was received directly through ECS and no expenditure was incurred to earn the exempt income. However, not convinced, Ld.AO computed disallowance at Rs.0.11 Lacs and accordingly, provide relief of Rs.0.03 Lacs to the assessee. The Ld. CIT(A) restricted the same to the extent of Rs.6,675/-, being exempt



income earned by the assessee. Still aggrieved, the assessee is under further appeal before us.

3.2 We find that Ld. CIT(A) has gone wrong in noting down the quantum of exempt income earned by the assessee during the year since as per submissions before Ld. AO, it appears that the assessee has earned exempt income of Rs.19,230/- which has wrongly been read as Rs.6675/- by Ld. CIT(A). Be that as the case may be, Rule 8D was not applicable for the year under consideration and the disallowance was to be worked out on an estimated basis. Therefore, no fault could be found in the action of Ld. CIT(A) in restricting the same to Rs.6,675/-. By confirming the same, we dismiss this ground of appeal.

### **Conclusion**

4. The appeal stands partly allowed.

*Order pronounced in the open court on 05<sup>th</sup> February, 2020.*

**Sd/-**  
**(Mahavir Singh)**  
उपाध्यक्ष / **Vice President**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 05/02/2020  
Sr.PS. Jaisy Varghese

### **आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent



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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.