

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.1027/Del./2017
Assessment Year 2013-2014

Padmini Vna Mechatronics (P) Ltd., New Delhi – 016. PAN AACCV1001F C/o. Raj Kumar & Associates, C.As. L- 7A(LGF), South Ext. Part-2 New Delhi – 110 049.	vs.,	The DCIT, Circle – 19 (2), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Rajkumar Gupta, C.A. Shri Sumit Goel, C.A.
For Revenue :	Shri Umesh Takyar, Sr. D.R.

Date of Hearing :	24.02.2020
Date of Pronouncement :	27.02.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-12, New Delhi, Dated 06.01.2017, for the A.Y. 2013-2014.

2. We have heard the Learned Representatives of both the parties and perused the material on record.

3. On Ground No.1, assessee challenged the disallowance of Rs.7,75,846/- under section 14A read with Rule 8D against *suo motu* disallowance made at Rs.9,846/-, thus, the net disallowance of Rs.7,66,000/-.

3.1. The A.O. noted that assessee has earned exempted income being dividend income of Rs.10,68,155/- and long term capital gains exempted under section 10(38) being Rs.92,566/-. The assessee *suo motu* has disallowed Rs.9,846/-, the details of which, are mentioned in the impugned order. The A.O. was of the view that the calculation of assessee is not correct as per Rule 8D. He has taken the entire investments being opening and closing balance etc., and made disallowance of Rs.7,75,846/- and by reducing the disallowance already made by the assessee of Rs.9,846/-, made the addition of Rs.7,66,000/-.

4. The assessee submitted before the Ld. CIT(A) that assessee has opening investments in mutual funds at

Rs.22.95 crores and closing investments in mutual funds to the tune of Rs.8.07 crores. Thus, calculation of assessee is correct. It was submitted that investments which do not provide exempted income is not to be considered for averaging purposes. The assessee relied upon decision of the Hon'ble Delhi High Court in the case of ACB India Ltd., 374 ITR 108 (Del.) in which it was held that *"the average value of investment should be taken only relating to such income which is not the part of the total income i.e., the value of the tax exempt investment. In otherwords, the average of such investments has to be taken on which exempted income has been earned during the year."* The Ld. CIT(A), however, dismissed this ground of appeal of assessee.

5. After considering the rival submissions, we are of the view that the matter requires reconsideration at the level of the Ld. CIT(A). Learned Counsel for the Assessee submitted that A.O. has not recorded any satisfaction in the Order as to how the calculation of assessee is not correct and relied upon Judgment of Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs., I.P. Support

Services India (P) Ltd., [2015] 378 ITR 240 (Del.) and Commissioner of Income Tax vs., Taikisha Engineering India Ltd., (2015) 370 ITR 0338 (Delhi). In view of the above facts, it is clear that the satisfaction is not discerning from the impugned orders while making the disallowance under section 14A and that the average of such investments has to be taken, on which, exempted income has been earned during the year. The A.O. shall have to verify these facts in the light of the above decisions and in accordance with Law. We, accordingly, set aside the impugned orders and restore the matter in issue to the file of A.O. with a direction to re-decide this ground in the light of factual submissions made by assessee, in the light of above decisions of the Hon'ble Delhi High Court (supra). The A.O. shall give reasonable, sufficient opportunity of being heard to the assessee. Ground No.1 of appeal of assessee is allowed for statistical purposes.

6. On Ground No.2, assessee challenged adhoc disallowance of Rs.50,000/- out of Diwali and New Year expenses.

6.1. The A.O. noted that assessee has claimed staff welfare expenses of Rs.15,48,967/- which has been claimed as Diwali and New Year expenses. The A.O. noted that personal element of these expenses is not ruled out. Hence, disallowed 10% on estimate basis and made the addition of Rs.1,54,897/-. The Ld. CIT(A) on adhoc basis sustained the addition of Rs.50,000/-.

7. After considering the rival submissions, we do not find any merit on the above addition. The assessee is a Company and as such it could not have any element of personal nature in these expenses. The assessee is a legal entity and as such, such adhoc allowance is not permissible. No specific findings have been given by the A.O. and the Ld. CIT(A) as to how these expenses are not allowable as business expenditure in the case of assessee. The estimate and adhoc addition is not permissible. In this view of the matter, we set aside the impugned orders of the authorities below and delete the addition of Rs.50,000/-. Ground No.2 of the appeal of the assessee is allowed.

8. In the result, appeal of the Assessee partly allowed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 27th February, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "F" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.