

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ ITA No. 14/JP/2020
निर्धारण वर्ष / Assessment Year :2014-15

Theme Engineering Services Pvt. Ltd., 203, Dadu Marg, Barkat Nagar, Tonk Phatak, Jaipur-302015.	बनाम Vs.	A.C.I.T., Circle-6, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AABCT 6043 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mukesh Khandelwal (CA)
राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 02/09/2020
उदघोषणा की तारीख / Date of Pronouncement : 14/09/2020

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Ajmer dated 17/10/2019 for the A.Y. 2014-15 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short, the Act).

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. In this appeal, the assessee is aggrieved for addition confirmed U/s 14A of Rs. 1,37,624/- and disallowance of expenses of Rs. 2,75,000/-.

4. Rival contentions have been heard and record perused. Facts in brief are that the assessee concern is a private limited company and doing profession of consultancy & undertaking contracts of supervision of technical nature. The assessee filed his return of income on 29/11/2014 for A.Y. 2014-15 declaring total income of Rs. 3,69,40,920/-under the head income from business and profession and Income from other sources. The AO selected the case of assessee for scrutiny and issued a notice u/s 143(2) of the Act to the assessee on 31/08/2015 in response to the notice, the assessee submitted necessary reply.

5. During the assessment proceedings, the AO was not satisfied about following items of deductions claimed and disallowed the same and added into returned income

Delayed deposit of employees contribution to PF	1,08,541
Delayed deposit of employees contribution to ESI	46,365
Addition u/s 14A	1,37,624
Disallowances out of expenses	2,75 000

6. By the impugned order, the Id. CIT(A) deleted the addition made on account of delayed deposit of PF and ESI contribution. However, he has upheld disallowance made U/s 14A of the Act and disallowance out of expenses, against which, the assessee is in further appeal before the ITAT.

7. We have considered the rival contentions and carefully gone through the orders of the authorities below. In so far as the disallowance U/s 14A of the Act is concerned, we found that as at 31.03.2013 the assessee had total investment in business assets at Rs. 22,54,47,989 against which he had only a sum of Rs. 1,08,95,957 as interest bearing funds (in the form of Long term borrowings) and rest of the funds of the assessee is interest free amounting to Rs. 21,45,52,032.

8. We found that as at 31.03.2014 the assessee had total investment in business assets at Rs. 27,54,53,568 against which he had only a sum of Rs. 2,03,04,662 as interest bearing funds (in the form of Long-term borrowings) and rest of the funds of the assessee is interest free amounting to Rs. 25,51,48,906.

9. In view of the above factual position, it is clear that the assessee has not incurred any interest expenditure towards investment in tax free securities. For invoking provisions of Section 14A(2) r.w.r. 8D of the Income Tax Rules, 1962, the A.O. is required to record a positive satisfaction to the effect that the claim of assessee towards for earning exempt income is not correct and he has to estimate such expenditure. Further Section 14A(3) states that provisions of sub-Section 2 shall also apply if the assessee

claims that no expenditure has been incurred for earning exempt income. However, only after recording his satisfaction only the A.O. can proceed to apply the provisions of Rule 8D. The A.O. did not record his satisfaction about claim of the assessee for NIL expenditure for earning exempt income and hence invocation of Rule 8D is unjustified. Accordingly, we do not find any justification for the disallowance of Rs. 1,37,624/- made by the A.O. U/s 14A of the Act. Hence, we direct the A.O. to delete the same.

10. The A.O. has also disallowed Rs. 1,50,000/- out of tour and travel expenses and Rs. 1,25,000/- out of conveyance expenses. In this regard, we found that the AO has made a casual remark for disallowing certain amount out of above cited expenses. However, not even a single iota of evidence has come to his notice evidencing the contention made by the assessee. Had there been any example of such improper voucher/ non availability of vouchers coming to his notice, same could have been quoted by him in the order. We found that the assessee company is engaged in the profession of providing services for designing of highway projects and supervision of the work executed by the contractor. The survey and site expenses include amount paid by the assessee to its workers for fooding charges, staff stay charges at site. Labour charges paid for engaging local persons for the said

purpose etc. So far as expenditure on tours, travelling and conveyance is concerned it is for meeting out cost of travelling of the staff for such site inspection, designing etc. Normally the place of work i.e. sites are always far away from the office of the assessee and staff has to incur sufficient cost for travelling, conveyance and other expenses. Further the expenditure on both these heads is of prime importance for the assessee to sustain in the business Therefore considering the fact that assessee undertakes such designing and supervision work at various locations on pan India basis and has to hire very efficient professionals such claimed expenditure deserves to be allowed. Accordingly, we direct the A.O. to delete the disallowances so made.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 14th September, 2020.

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 14/09/2020
*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Theme Engineering Services Pvt. Ltd.,
Jaipur.
2. प्रत्यर्थी / The Respondent- The A.C.I.T., Circle-6, Jaipur.

3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 14/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar