

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA
(Virtual Court)**

(Before Sri J. Sudhakar Reddy, Accountant Member & Ms. Madhumita Roy, Judicial Member)

**I.T.A. No. 2501/Kol/2018
Assessment Year: 2013-14**

Param Shubham Vanijya Ltd.....Appellant
[PAN: AABCP 5721 B]

Vs.

ITO, Ward-5(2), Kolkata.....Respondent

Appearances by:

Sh. Arvind Agarwal, Adv., appeared on behalf of the Assessee.

Sh. Supriyo Pal, Addl. CIT, Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : August 11th, 2020

Date of pronouncing the order : November 2nd, 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 [hereinafter Id. 'CIT(A)' for short] dated 06.09.2018 passed u/s 250 of the Income Tax Act, 1961 ('the Act' for short) for AY 2013-14.

2. The assessee is a domestic company and is engaged in the business of being a dealer in paper and board, generation of wind power and trading in shares and securities. For the AY 2013-14 it filed its return of income on 26.09.2013. The return was processed u/s 143(1) of the Act and thereafter taken up for scrutiny. The AO passed an order u/s 143(3) of the Act on 23.02.2016 determining the total income under normal provisions of the Act at a loss of ₹59,99,291/- inter alia making disallowances on account of motor car running expenses on ad-hoc basis of 20% and disallowance of expenditure incurred under miscellaneous expenses on ad-hoc basis of 20%. A further disallowance u/s 14A of the Act read with Rule 8D(2) of the Income Tax Rules, 1962 of ₹7,36,132/- was made. Aggrieved, the assessee carried the matter in

appeal before the first appellate authority without success. Further aggrieved, the assessee is before us on the following grounds:

"1. That the CIT(A) erred in upholding disallowance made by the Assessing Officer on arbitrary basis of Rs.84,940/- being calculated at 20% of total expenses incurred on running and maintenance of Motor car of Rs.4,24,690/- without considering the contentions, facts and case law submitted by the appellant company.

2. That the CIT(A) erred in upholding disallowances made by the Assessing Officer of Rs.3,95,290/- on arbitrary basis @ 10% of total expenses incurred by the company on travelling and conveyance, charges general and sales promotion expenses without considering the contentions, details and legal position explained by the appellant company.

3. That the CIT(A) erred in upholding further disallowance of Rs.7,36,132/- made by the Assessing Officer u/s 14A of the Act read with Rule 8D of Income-tax Rules without correctly appreciating the facts of the case of the appellant company and also the decision of Hon'ble Supreme Court in the case of Maxopp Investments Ltd. v. CIT (2018) 402 ITR 640 (SC).

4. That the order passed by CIT(A) is bad in law as same has been passed without discussing and appreciating the contentions and submissions of the appellant company."

3. The Id. Counsel for the assessee, Sri Arvind Agarwal submitted that the ad-hoc disallowance made on motor car running expenses and miscellaneous expenses are bad in law as the assessee has furnished all the documents that were called for, including vouchers. He submitted a paper book wherein ledger account copies as well as copies of bills in support of expenditure were filed. He submitted that all these evidences were placed before the AO and that the accounts were audited and under those circumstances the AO was wrong in making ad-hoc disallowances without pointing out any specific defects and by simply saying that the relevancy of the expenses were not proved by the assessee.

4. On the issue of disallowance u/s 14A of the Act, the Id. Counsel for the assessee submitted that the issue may be set aside to the file of the AO with the direction to adjudicate the disallowance afresh by applying the ratio laid down by the jurisdictional High Court in the case of *CIT vs. M/s. REI Agro Ltd.* in *GA No. 3581 of 2013*. He further submitted that no loan funds were utilized for acquiring shares and that the disallowance under Rule 8D(2)(ii) has to be recalculated based on the ratio laid down by the Hon'ble Bombay High Court in the case of *CIT vs. HDFC Bank Ltd. [2014] 49 taxmann.com 335 (Bombay)*.

5. The Id. DR on the other hand opposed the contention of the assessee and submitted that, in the case of disallowances of expenditure, the AO had clearly recorded that the assessee failed to produce any concrete evidence in support of its claim and

that the expenditure was not fully verifiable. Thus he submits that the disallowance has to be sustained. On the argument that the books being audited and hence no disallowance can be made, he submitted that, this does not prohibit the AO from verifying the genuineness of the expenditure and coming to the quantum of disallowance.

6. On the issue of disallowance u/s14A, he relied on the judgement of the Hon'ble apex Court in the case of *Maxopp Investment Ltd. vs. CIT [2018] 91 taxmann.com 154 (SC)* and submitted that disallowance cannot be deleted on the ground that the shares were held as stock-in-trade. Nevertheless he submitted that the issue may be restored to the file of the AO with the direction to re-compute the disallowance by following the binding decision of the jurisdictional High Court on this issue.

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

8. On issue of ad-hoc disallowance, the AO has clearly recorded as follows:

“The AR of the assessee company failed to produce on record any concrete evidences in support of its claim. Due to the absence of the relevant details, the genuineness of the expenses on account of ‘Motor Car running expenses’ as claimed to have been incurred by the assessee were not fully verifiable. On the other hand, in view of the nature and activities of the assessee’s business, the requirement of such expenses could not be entirely ruled out. Hence, to plug the escapement of revenue, 20% of the above head i.e. ₹4,24,693.49/- which comes to ₹84,940/- is disallowed on estimate basis and added back to the total income of the assessee-company for the FY 2011-12 relevant to the AY 2012-13.”

9. As regards miscellaneous expenditure, similar observations were made. The assessee before us has filed a ledger extract of the expenditure and also copy of certain bills. A perusal of these bills demonstrates that they pertain to motor car running expenses. The assessee claims that these were the details filed before the AO. Under these circumstances disallowances of 20% of this expenditure on ad-hoc basis is not correct as the bills are verifiable. Coming to miscellaneous expenditure, no such details have been filed before us by the assessee as in the case of motor car running expenses.

Only ledger copies have been given. Under these circumstances we sustain the disallowance made on ad-hoc basis of expenditure claimed under the head 'Miscellaneous expenditure'. Audited books of account do not bar the AO from making his verification and investigation which is his statutory duty. Disallowance can be made on merits. Thus ground no. 1 of the assessee is allowed and ground no. 2 of the assessee is dismissed.

10. Coming to the disallowance made u/s 14A of the Act, as the law developed and is settling as requested by both the parties, this issue is set aside to the file of the AO with the direction to compute the disallowance afresh by applying the propositions of law laid down by various judgements by the jurisdictional High Court, specifically the judgement in the case of *M/s. REI Agro Ltd.* (supra). As regards disallowance of interest, the propositions of law laid down by this Tribunal by following the decision of the Hon'ble Bombay High Court in the case of *HDFC Bank Ltd.* (supra) is required to be followed by the AO. In the result this ground of the assessee is allowed for statistical purposes.

11. In the result, the appeal filed by the assessee is allowed in part.

Kolkata, the 2nd November, 2020.

Sd/-
 [Madhumita Roy]
 Judicial Member

Sd/-
 [J. Sudhakar Reddy]
 Accountant Member

Dated: 02.11.2020
Bidhan

Copy of the order forwarded to:

1. ***Param Shubham Vanijya Ltd., 7 Council Street, Kolkata-700 001.***
2. ***ITO, Ward-5(2), Kolkata.***
3. CIT(A)-2, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar
 ITAT, Kolkata Benches