

IN THE INCOME TAX APPELLATE TRIBUNAL, "A" BENCH, KOLKATA

[Before Shri Waseem Ahmed, AM and Smt. Madhumita Roy, JM]

I.T.A. No. 2370/Kol/2019

Assessment Year:2014-15

And

I.T.A. No. 2371/Kol/2019

Assessment Year:2013-14

M/s. Ambuja Housing & Urban Infrastructure Co. Ltd PAN: AAFCA 0904P	Vs.	DCIT, Cir-11(1), Kolkat
Appellant		Respondent

Date of Hearing (Virtual)	10-11-2020
Date of Pronouncement	16/12/2020
For the Appellant	Ms. Priyanka Salarpuria, FCA, Ld.A.R
For the Respondent	Shri Dhruvajyoti Ray, JCIT, Ld.Sr. DR

ORDER**Per Smt. Madhumita Roy, JM**

Both the appeals filed by the assessee are directed against the separate orders both dated 29-08-2019 passed by the Ld. CIT(A)-4, Kolkata arising out of separate assessment order both dated 26-12-2016 passed by the DCIT, Circle-11(1), Kolkata u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as " the Act") for the Assessment Years 2013-14 and 2014-15 respectively. Since both the appeals relate to the same assessee, these (appeals) are disposed of by a common order.

ITA No. 2371/Kol/2019 A.Y 2013-14

2. This appeal as taken up as a lead case.

3. The assessee has made an application on 09-10-2020 for admission of additional Grounds of appeal which was not therein initially before us, copy whereof was also submitted to the Ld.DR.

4. At the time of hearing of the instant appeals, the Ld. Counsel appearing on behalf of the assessee submitted before us that the omission of this ground was genuine and a bonafide mistake and not intentional and malafide. It is relevant to mention that this ground relates to not granting credit of advance tax to the tune of Rs. 20 lakhs and not allowing full credit of Rs. 77,00,340/- by the Revenue.

5. We have perused the said application dt. 09-10-2020 for admission of said additional grounds of appeal. In fact, this particular ground was also raised before the Ld. CIT(A) in appeal by way of additional grounds of appeal. However, Ld. CIT(A) has not adjudicated the same. Upon perusal of the said appeal, we do not find any ingenuity or intentional laches on the part of the assessee in making such application before us. We have further considered the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd vs. CIT reported in 229 ITR 383 (SC) as relied upon by the assessee and respectfully relying upon the ratio of laid down therein we find it fit and proper to admit such additional grounds of appeal. Hence, application for admission of additional grounds of appeal is allowed.

6. Main ground of appeal relates to disallowance made u/s. 14A read with rule 8D of the Income-tax Rules, 1962 (in short, hereinafter referred to as 'the I.T. Rules'. During the assessment year under consideration, the appellant assessee has shown a dividend income of Rs. 74,25,000/- claimed as exempt income u/s. 10(34) of the Act. The suo motu disallowance computed by the appellant assessee in the return of income at Rs. 4,69,487/- u/s. 14 of the Act. During the assessment proceedings the assessee was directed to file the details of tax free income earned by the assessee and to explain why provisions of section 14A of the Act should not be invoked. In response to that the assessee submitted its reply on 14-12-2016 along with calculation for such suo motu disallowance u/s. 14A as it also reflects from the order passed by the Ld. AO. However, such explanation as rendered by the assessee was not found acceptable and considering the CBDT Circular dated 11-02-2014 and the recent Amendment in Rule 8D vide Notification No. S.O 1949 E [F. No. 370142/7/2016-TPL] dated 02-06-2016, the disallowance of expenditure u/s. 14A of the Act

the Ld. AO computed the disallowance of Rs. 2,67,07,781/- at 1% of the average monthly balance of the investment. Since the assessee has suo motu disallowed expenditure of Rs. 4,69,487/-, the balance amount of Rs. 2,62,38,194/- was disallowed/added back to the total income of the assessee by the AO.

7. In appeal, the Ld. CIT(A) has been pleased to direct the AO and to consider the average of the investments by applying the decision of REI Agro Ltd , which have yielded the exempt income. Hence, the instant appeal before us.

8. At the time of hearing of the instant appeals the Ld. Counsel appearing for the assessee submitted before us that the disallowance of Rs. 2,67,07,681/- made by the AO is arbitrary and has been done in a mechanical manner. Further, that in earlier years on the same set of facts on such suo-motu disallowance neither the AO has drawn any adverse inference in the assessment order passed u/s. 143(3) of the Act nor any expenditure in relation to such investments was disallowed by the AO. Further that the notification dated 02.06.2016 as relied upon by the Revenue has no relevance with the instant case as contended by the Ld. AR since it has not given retrospective effect. The Ld. DR, on the other hand, relied upon the orders passed by the authorities below.

9. We have heard rival submissions made by respective parties and also perused the material available on records. It appears that while invoking Rule 8D of the I.T Rules, 1962 the AO has not pointed out/identified any specific infirmity in the disallowance so offered by the appellant/ assessee. A single sentence “explanation of the assessee was considered, but not acceptable” has been made instead of giving specific reason for such non acceptance. It is evident from the records particularly the order passed by the Ld. AO that without recording satisfaction about the correctness of the claim of assessee u/s. 10(34) of the Act, the Ld. AO has made the quantum of disallowance by invoking the Rule 8D of the Income-tax Rules, 1962. The accounts of the assessee has been examined, in absence of which the order of disallowances and Ld.AO is not sustainable. In this regard on the same set of facts, the judgment which has been cited by the Ld. Counsel appearing for the

assessee in the matter of REI Agro Ltd has been considered by us. The Ld. Tribunal (ITAT Kolkata) in the matter of REI Agro Ltd for the assessment year 2009-10, ITA No. 1811/K/2012 by its order dt. 14-05-2013 has been pleased to observe as follows:-

“9. We find from the facts of the above case that the AO has not examined the accounts of the assessee and there is no satisfaction recorded by the AO about the correctness of the claim of the assessee and without the same he invoked Rule 8 D of the Rules. While rejecting the claim of the assessee with regard to expenditure or no expenditure, as the case may be, in relation exempted income, the AO has to indicate cogent reasons for the same. From the facts of the present case it is noticed that the AO has not considered the claim of the assessee and straight away embarked upon computing disallowance under Rule 8D of the Rules on presuming the average value of investment at ½ % of the total value. In view of the above and respectfully following the coordinate bench decision in the case of J.K. Investors (Bombay) Ltd. Supra, we uphold the order of CIT(A). This ground of revenue is dismissed.”

a)

10. Further, that this particular order passed by the Co-ordinate bench has been upheld by the Hon'ble Jurisdictional High Court in the matter of REI Agro Ltd in GA No 3022 of 2013 by its judgment and order dt. 23-12-2013. Hon'ble Jurisdictional High Court has declined to interfere with the order passed by the Co-ordinate Bench.

11. Further that, we make it clear that the amendment dtd. 02.06.2016 is prospective in nature and has no manner of application in the AY 2013-14 or AY 2014-15.

12. Further, that the rule of consistency also to be followed by the authorities below particularly when in the earlier years the basis and manner of working out suo motu disallowance of administrative expenses with reference to establishment and expansion expenses has been consistently followed by Revenue. It appears from the documents submitted before us that for the AYs. 2010-11, 2011-12 and 2012-13 though such query in respect of disallowance under section 14A/Read with Rule 8D was raised by the AO, after examining the same manner and method of working out disallowance of administrative

expenses no further disallowance was made by the AO accepting the same as fair and reasonable. Under the circumstances of the case, we find no reason as to why the suo motu disallowance made by the assessee to be disturbed in the same set of factual position. In this regard, we have considered the judgment passed by the Hon'ble Apex Court in the matter of Radhasoami Satsang vs. CIT reported in 193 ITR 321. Relevant portion of finding is as follows:-

“where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and the parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be change in a subsequent year.”

13. Thus, respectfully following the above ratio, we find no reason for such disallowance and the same is hereby deleted. This ground of appeal filed by the assessee is, thus, allowed.

14. The additional ground relates to not allowing credit for advance tax paid of Rs. 20 lakhs and full TDS credit of Rs. 77,00,340/-. We have considered the enclosed copy of 26AS, from which it appears that the assessee is entitled to avail such relief. We find that though such additional ground was raised by the assessee before the Ld. CIT(A), but the same was not adjudicated by him.

15. Hence, we direct the Ld. AO to grant relief to the assessee in respect to the additional ground in accordance with law.

The appeal of assessee in ITA No. 2371/Kol/2019 for the AY 2013-14 is allowed for statistical purposes.

ITA No. 2370/Kol/2019 AY 2014-15

16. Since the issue involved in this appeal of assessee is identical under same set of facts involved in appeal-ITA No. 2371/Kol/2019 for the AY 2013-14, which we have already disposed of as above by allowing the same, following our same ratio of decision, this appeal of assessee-ITA No.2370/Kol/2019 for the AY 2014-15 is allowed for statistical purposes.

17. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order is pronounced in the open court on 16/12/2020

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Madhumita Roy)
Judicial Member

Dated :16/12/2020

**PP(Sr.P.S.)

Copy of the order forwarded to:

1. Respective Appellant/Assessee: M/s. Ambuja Housing & Urban Infrastructure Co. Ltd Vishwakarma, South West Block, 86C, Topsia Road (S), Kolkata-46.
2. Respondent/Department : The DCIT, Cir-11(1), Aaykar Bhawan, P-7 Chowringhee Square, Kolkata-700 069.
3. CIT(A),
4. CIT- ,
5. DR, ITAT, Kolkata.

/True Copy,

By order,

Assistant Registrar