

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)

**I.T.A. Nos. 1558 & 1559/Kol/2019
Assessment Years: 2013-14 & 2014-15**

Mjunction Services Ltd.....Appellant
[PAN: AACCM 5881 C]

Vs.

DCIT, Circle-8(1), Kolkata.....Respondent

Appearances by:

*Sh. Chetan Mehta &
Sh. Vivek Ruia, A/R, appeared on behalf of the Assessee.*

Sh. Supriyo Paul, Addl. CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : February 24th, 2021

Date of pronouncing the order : March 24th, 2021

ORDER

Per J. Sudhakar Reddy, AM:

Both these appeals filed by the assessee are directed against separate but identical orders of the Learned Commissioner of Income Tax (Appeals)-3, Kolkata, [hereinafter the "CIT(A)"], passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dated 10.04.2019 for the Assessment Years 2013-14 & 2014-15. As the issues arising in both these appeals are identical, for the sake of convenience they are heard together and disposed off by way of this common order.

2. We have heard Mr. Sh. Chetan Mehta & Mr. Vivek Ruia on behalf of the assessee and Mr. Supriyo Paul, Id. Sr. D/R on behalf of the Revenue. 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.

3. The contention of the Id. Counsel for the assessee that the AO has not recorded proper satisfaction before invoking Rule 8D of the Income Tax Rules, 1962 and hence the disallowance made u/s 14A of the Act by applying Rule 8D of the Income Tax Rules, 1962 is bad in law cannot be accepted for the reason that the AO in para-2.4 page-4 had

recorded his satisfaction as required by law. Thus this argument of the assessee stands dismissed.

3.1. On the issue of quantum of disallowance, we restore the issue to the file of the AO for fresh adjudication of in accordance with law, with the direction to apply the propositions of law laid down by Hon'ble Bombay High Court in the case of *HDFC Bank Limited vs. DCIT (WP No. 1753 of 2016) dated 5th February, 2016 (Bombay HC)*, *DCIT vs. SPML Infra Limited (ITA No. 1698/Kol/2018)* and *REI Agro [(2013) GA 3022 of 2013; ITAT 161 of 2013 (Cal HC)]* and determine the question of disallowance u/s 14A of the Act.

3.2. The assessee is directed to cooperate with the AO in completion of the assessment in accordance with law. In the result, this ground of the assessee is allowed in part.

4. The second ground of the assessee is on the disallowance of provisions for leave encashment. The Hon'ble Supreme Court in the case of *Exide Industries Ltd. [(2020) 116 taxmann.com 378 (SC)] order dated 24th April, 2020* held that the provisions of Section 43B of the Act to provision made for leave encashment. Thus we dismiss this ground of the assessee.

4.1. The assessee requests the Tribunal that necessary directions be given to the AO to grant deduction of leave encashment on actual payment basis. The AO is directed to consider this claim of the assessee in accordance with law for this year. In the result, this ground of the assessee is allowed in part.

5. Ground no. 3 is on the issue of TDS credit. This ground is dismissed as not pressed.

6. In the result, the appeal of the assessee is allowed in part.

Kolkata, the 24th March, 2021.

Sd/-
[Aby T. Varkey]
Judicial Member

Dated: 24.03.2021

Bidhan (P.S.)

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Copy of the order forwarded to:

1. ***Mjunction Services Ltd., Godrej Waterside Tower 1, 3rd Floor, Plot No. 5, DP Block, Sector V, Saltlake, Kolkata-700 091.***
2. ***DCIT, Circle-8(1), Kolkata.***
3. CIT(A)-3, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches