

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC' KOLKATA

[BEFORE SHRI J. SUDHAKAR REDDY, HON'BLE ACCOUNTANT MEMBER]

[THROUGH VIRTUAL COURT]

I.T.A. No. 433/Kol/2020

Assessment Year: 2014-15

M/s. Sagar Vincom Pvt. Ltd.....Appellant

C/o. M/s. Salarpuria Jajodia & Co.

7, C.R. Avenue, 3rd Floor,

Kolkata – 700 072.

[PAN: AALCS 5250 N]

VS.

ITO, Ward – 3(3), KolkataRespondent

110, Shantipally, E.M. By-pass,

Kolkata – 700 107.

Appearances by:

Shri Siddharth Jhajharia, AR appearing on behalf of the Assessee.

Shri Jayanta Khanra, JCIT, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : April 8th, 2021

Date of pronouncing the order April 21st, 2021

ORDER

This is an appeal filed by the assessee directed against the order of Learned Commissioner of Income Tax (Appeals) – 16, Kolkata [hereinafter the "CIT(A)] passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dated 06.02.2020 for the Assessment Year 2014-15 on the following grounds:

"i. For that in view of the facts and in the circumstances, the Ld. CIT(A) was unjustified in affirming the action of the AO in disallowing the claim of deduction of Rs. 14,00,000/- u/s 35(1)(ii) and thus erred and in view of the facts and in the circumstances such sum is fully allowable and it may be held accordingly.

ii. Without prejudice to Ground No. 1 above, the Ld. CIT(A) failed to follow the decision of jurisdictional Tribunal and in view of the facts and in the circumstances it may be held accordingly.

iii. For that in view of the facts and in the circumstances, the Ld. CIT(A) erred in affirming the decision of the AO in disallowing loss of Rs.

2,11,986/- and in view of the facts and in the circumstances it may be held accordingly.

iv. Without prejudice to Ground No. 3 above, the Ld. CIT(A) erred in not appreciating and examining the relevant documents so placed before him in connection with aforesaid loss so claimed by the appellant and in view of the facts and in the circumstances such loss is fully allowable and it may be held accordingly.

v. For that in view of the facts and in the circumstances, the Ld. CIT(A) is unjustified in affirming the addition made by AO in addition of Rs. 6,86,705/- being alleged differential amount of interest and in view of the facts and in the circumstances the Ld. CIT(A)'s action is bad in law and it may be held accordingly.

vi. For that in view of the facts and in the circumstances, the Ld. CIT(A) failed to appreciate that such addition of Rs. 6,86,705/- is mere estimation by AO without any evidence in such respect and hence the addition so made is liable to be deleted and it may be held accordingly."

2. There is delay of 64 days in filing of the appeal. The reason is for the delay is stated as Covid Pandemic. After perusing the petition for condonation of delay, I am convinced that the assessee was prevented from reasonable cause for filing of the appeal in time. Hence I condone the delay and admit the appeal.

3. Ground No. 1 & 2 are against disallowance made u/s 35(1)(ii). This issue covered in favour of the assessee against revenue by the decision of Kolkata Bench of the ITAT in the case of Santosh Suresh Kumar Agarwal ITA No. 1162/Kol/2018 order dated 05.09.2018 wherein the Tribunal followed the decisions of the Coordinate Bench of this Tribunal in the case of Rajda Polymers in ITA No. 333/Kol/2017 order dated 08.11.2017 and the case of DCIT vs M/s. Maco Corporation (India) Pvt. Ltd. in ITA No. 16/Kol/2017,

Assessment Year 2013-14, order dated 14.03.2018 and other decisions and allowed the claim of the assessee.

4. Consistent with the view taken by us and the case of Santosh Suresh Kumar Agarwal (*supra*) I allow this ground of the assessee. Ground No. 1 and 2 are allowed.

5. Ground No. 3 and 4 are against the disallowance of loss of Rs. 2,11,986/-. The assessee purchased and sold jute. The relevant bills and vouchers are filed before the Assessing Officer by the assessee to prove the genuineness of the transactions. There was no investigation or verification above by the Assessing Officer. No evidence was gathered to demonstrate that the claim of the assessee was wrong. The disallowance was made merely on conjectures and surmises. The Ld. CIT(A) has also not considered the evidences in the record and in one line, rejected the contention of the assessee. This is not in accordance with law. Thus we delete this disallowance. Thus we allow these two grounds of the assessee.

6. Ground No. 5 and 6 are against the addition made on account of deemed interest income. We find that notional income cannot be brought tax under the scheme of the Income Tax Act as held by the Hon'ble Gauhati High Court in the case of Highways Construction Co. Pvt. Ltd. vs CIT 199 ITR 702.

7. Respectfully following the proposition of law laid down in those cases, we delete this addition of notional income and allow this ground of the assessee.

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

Order Pronounced in the Open Court on 21st April, 2021.

Sd/-

(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: 21/04/2021

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Sagar Vincom Pvt. Ltd., C/o. M/s. Salarpuria Jajodia & Co.,
7, C.R. Avenue, 3rd Floor, Kolkata – 700 072.
2. ITO, Ward – 3(3), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar/DDO
ITAT, Kolkata