

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“ A ” BENCH, KOLKATA**  
**(E-COURT HEARING AT KOLKATA)**

**BEFORE HON'BLE SHRI LALIT KUMAR, JM AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपील सं./ I.T.A. No. 499/Kol/2020  
(निर्धारण वर्ष / Assessment Year: 2013-14)

<b>ACIT- Cir-6(2), Kolkata</b> Aaykar Bhawan, 6 <sup>th</sup> Floor P-7 Chowringhee Square Kolkata-700 069.	<b>बनाम/ Vs.</b>	<b>M/s. West Bengal Infrastructure Development Finance Corporation Limited</b> 36A, Hemanta Basu Sarani Kolkata-700 001.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AAACW-3432-D</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Revenue by</b>	:	Shri Amol S. Kamat-Ld. CIT- DR
<b>Assessee by</b>	:	None

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	09/11/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	09/11/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year (AY) 2013-14 arises out of the order the Ld. Commissioner of Income Tax (Appeals)-7, Kolkata [CIT(A)] dated 26/11/2019 in the matter of assessment framed by learned Assessing Officer (AO) u/s.143(3) of the Income-tax Act, 1961 on 21/01/2016.
2. The registry has noted a delay of 214 days in the appeal, the condonation of which has been sought by the revenue on the strength of condonation petition dated 09/09/2020. It has been submitted that though the due date of filing of appeal was 10/02/2020, however, the authorization to file the appeal was received only on 26/08/2020.

Thereafter, the requisite documents were prepared and the appeal was finally filed on 09/09/2020. Considering the fact that the year 2020 was marred by Corona Pandemic (Covid-19), the bench formed an opinion that the delay was to be condoned and the appeal was to be admitted. Accordingly, we proceed with the adjudication of the appeal on merits.

3. At the time of hearing none appeared for assessee. However, the findings rendered in the impugned order by Ld. CIT(A) were sufficient for disposal of the appeal. The Ld. CIT-DR supported the assessment framed by Ld. AO. After due consideration, our adjudication would be as under.

4. An assessment was framed for the year wherein Ld. AO made disallowance u/s 14A for Rs.16.73 Crores. Another addition of Rs.2.26 Lacs was made u/s. 43B(b) for non-payment of Employer's contribution to gratuity fund.

#### **5. Disallowance u/s 14A**

5.1 The assessee earned exempt dividend income of Rs.2.09 Lacs and offer suo-moto disallowance of Rs.35.18 Lacs while computing the income. The disallowance was made as per Rule 8D by considering those investments which yielded exempt income during the year. However, not satisfied, Ld. AO included all investments and computed aggregate disallowance of Rs.16.73 Crores in terms of Rule 8D and added the differential of Rs.16.37 Crores to the income of the assessee.

5.2 The Ld. CIT(A), deleted the additional disallowance, inter-alia, by observing that Ld. AO was duty bound to record his dissatisfaction about the computation of disallowance made by the assessee. Aggrieved, the department is in further appeal before us.

5.3 We find that besides the observation of Ld. CIT(A) in the impugned order, the disallowance is not sustainable for two reasons. Firstly, the suo-moto disallowance as offered by the assessee was more than the exempt income. Secondly, as per settled legal position, only those investments were to be considered which had actually yielded any exempt income during the year. The suo-moto disallowance offered by the assessee was in accordance with law. Therefore, finding no reason to interfere in the impugned order on this issue, we dismiss the ground raised by the revenue.

### **6. Disallowance u/s 43B (Employer's contribution to Gratuity Fund)**

This disallowance was made u/s. 43B(b) as per the observation of Tax Auditor that there was non-payment of Employer's contribution to approved Gratuity Fund. However, Ld. CIT(A) deleted the same by observing that the same was already disallowed by the assessee in the computation of income and further disallowance would amount to double addition. In this regard, we direct Ld. AO to verify the observation and delete the disallowance. This ground stand allowed for statistical purpose.

### **Conclusion**

7. The appeal stand partly allowed for statistical purposes.

*Order pronounced on 09<sup>th</sup> November, 2021.*

Sd/-

**(Lalit Kumar)**

न्यायिक सदस्य / **Judicial Member**

Sd/-

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

Kolkata; दिनांक Dated : 09/11/2021

\*\*Sr.PS, PP

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant : ACIT-Cir-6(2), Kolkata Aaykar Bhawan, 6<sup>th</sup> Fl,P-7 Chowringhee Square, Kolkata-700 069.
2. प्रत्यर्थी/ The Respondent: M/s. West Bengal Infrastructure Development Finance Corporation Limited, 36A, Hemanta Basu Sarani, Kolkata-700 001
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

Senior P.S., DDO,ITAT, Kolkata