

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

Before Shri Rajpal Yadav, Vice-President (KZ)

&

Shri Rajesh Kumar, Accountant Member

**I.T.A. No. 512/kol/2020
Assessment Year: 2008-2009**

Dholai Tea Co. Limited,.....Appellant

33A, J.L. Nehru Road, 15th Floor,

Kolkata-700071

[PAN: AAACD9301Q]

-Vs.-

Deputy Commissioner of Income Tax,.....Respondent

Circle-4, Kolkata,

Aayakar Bhawan, 8th Floor,

P-7, Chowringhee Square,

Kolkata-700069

Appearances by:

Shri P.J. Bhide, FCA, appeared on behalf of the assessee

Shri P.P. Barman, Sr. D.R., appeared on behalf of the Revenue

Date of concluding the hearing : March 08, 2022

Date of pronouncing the order : March 22, 2022

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals), Kolkata-20 dated 26.08.2020 passed for assessment year 2008-09.

2. In the first ground of appeal, the assessee has pleaded that Id. Assessing Officer has erred in treating the expenditure of Rs.13,58,885/- as capital expenditure incurred for development of the Nursery.

3. Brief facts of the case are that the assessee has filed its return of income on 28.09.2008 declaring total income of Rs.17,90,894/-. The assessee at the relevant time was engaged in the business of growing and

manufacturing of tea. Its case was selected for scrutiny assessment and notices under section 143(2) and 142(1) were issued. A perusal of the record would reveal to the Assessing Officer that it has debited nursery expenditure of Rs.13,58,885/-. The Assessing Officer has disallowed this expenditure by recording a very brief finding which reads as under:-

"Nursery Expenses :

The assessee is engaged in Growing, Manufacturing and sale of tea. In course of hearing it was noticed that the assessee has claimed nursery expenses of Rs.13,58,885/- and debited this in the P& L Account. Nursery expense is related to the initial budding of tea which gives advantage to the assessee for a number of years. Hence this cannot come under revenue expenditure. Considering that the nature of the expenditure is of capital one and also considering the decision of the Hon'ble Calcutta High Court in Tasati Tea Company case the said expenditure is disallowed. However the assessee may capitalise the. Same.

(Addition 88,219/-)".

Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

4. Before us, ld. counsel for the assessee submitted that ld. Assessing Officer failed to appreciate and construe the true proposition laid down by the Hon'ble Calcutta High Court in the case of Tasati Tea Ltd., which has been relied upon by the Assessing Officer. He took us through this judgment, which is reported in 262 ITR page 388. According to the ld. counsel for the assessee, this judgment leads the case of the assessee. He submitted that Hon'ble Court has held that nursery expenditures are to be treated as revenue expenditure. However, on the other hand, ld. D.R. contended that this judgment laid down a proposition that if the plants are raised and maintained in a nursery for being utilized for the purpose of re-plantation without any expansion of the plantation area or re-plantation in an abandoned area, then it could be a revenue expenditure. In other words, it could not be a capital expenditure. But if the nursery is being raised for expansion of the plantation area, then such expenditure is to be capitalized. Thus in view of the above proposition, it has to be ascertained for what purpose this nursery was raised by the assessee, how the plants were used. The impugned orders are silent on this point.

5. We have duly considered the rival contentions and gone through the record carefully. A perusal of paragraph no. 8 of the judgment relied upon by the ld. counsel for the assessee would exhibit that Hon'ble High Court has propounded that if expenditure is incurred by a Tea Company for raising a nursery wherein plants could be utilized for the purpose of re-plantation without any expansion of the plantation area, then expenditure incurred on such an activity will be a revenue expenditure. But if the nursery is being raised and plants are developed for expansion of the plantation to an additional area, then such expenditure would be treated as a capital expenditure. This aspect has not been looked into by the ld. Assessing Officer while disallowing the claim of the assessee. Therefore, we deem it appropriate to remit this issue to the file of the ld. Assessing Officer. Ld. Assessing Officer shall re-adjudicate this issue specifically considering the proposition laid down in paragraphs no. 8 & 9 of this judgment. This ground of appeal is allowed for statistical purposes.

6. In the next fold of grievance, the assessee has pleaded that ld. CIT(Appeals) has erred in confirming the disallowance to the extent of Rs.65,804/-, which was disallowed by the ld. Assessing Officer with the aid of section 14A of the Income Tax Act.

7. Brief facts of the case are that the assessee has shown dividend income of Rs.4,75,082/-. It has added back Rs.62,122/- towards expenditure. In other words, it has made a *suo motu* disallowance of expenditure at Rs.62,122/-. However, ld. Assessing Officer worked out the disallowance at Rs.2,74,035/- with the help of formula provided in Rule 8D.

8. On appeal, the ld. CIT(Appeals) has reduced this disallowance substantially and the finding of the ld. CIT(Appeals) reads as under:-

"I have carefully considered the facts of the case and the submissions of the appellant. Appellant has computed the disallowable amount by applying its

own estimates. From AY: 2008-09, disallowable amount u/s.14A has to be computed as per Rule 8D. Although the appellant had mentioned that the loan amount has not been utilised in making investment but beyond this it has not provided any details of the fund flow statement. Neither has the AO made out a case establishing that borrowed funds have been utilised for making investment. Under the circumstances, it cannot be said, for sure, that any borrowed funds are utilised in making investment. However, some administrative expenses in respect of the investment made cannot be ruled out. Appellant on its own has computed disallowance under Rule 8D(2)(iii) by considering only those shares on which dividend has been received during the year. The disallowable amount comes to Rs.65,804/-. Considering the totality of facts and also the constraints due to the cryptic descriptions given in the assessment order regarding the need for applying Rule 8D, I am of the opinion that to serve the end of justice the disallowable amount should be computed only under Rule 8D(2)(iii). Further, in view of the decision of the Kolkata ITAT in REI Agro and several other judgments, it is now accepted that only those shares should be considered for computation of disallowance under Rule 8D on which dividend has been received during the year. Considering the same, disallowable amount comes to Rs.65,804/-. Consequently, AO is directed to consider only the amount of Rs.65,804/- as disallowable amount u/s.14A read with Rule 8D. Further, assessee has already suo motu disallowed Rs.62,122/- while filing the return of income. Consequently, the disallowance u/s.14A only to the extent of Rs.3,682/- is confirmed”.

9. The quantum mentioned in the ground of appeal is incorrect. If it is perused in the light of the finding recorded by the Id. CIT(Appeals), the Id. CIT(Appeals) though worked out the total expenditure at Rs.65,804/-, but set off this expenditure with the amount assessee itself has disallowed suo motu and a net addition of Rs.3,682/- has been confirmed. After going through the well reasoned finding of the Id. CIT(Appeals), we do not find any error in it. This ground of appeal is rejected.

10. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on March 22nd, 2022.

**Sd/-
(Rajesh Kumar)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President (KZ)**

Kolkata, the 22nd day of March, 2022

Copies to : (1) **Dholai Tea Co. Limited,**

33A, J.L. Nehru Road, 15th Floor, Kolkata-700071

**(2) Deputy Commissioner of Income Tax,
Circle-4, Kolkata,
Aayakar Bhawan, 8th Floor,
P-7, Chowringhee Square, Kolkata-700069**

(3) Commissioner of Income Tax (Appeals)-20, Kolkata;

(4) Commissioner of Income Tax- ,

(5) The Departmental Representative

(6) Guard File

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By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.