

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.649/Chny/2020**
(निर्धारण वर्ष / **Assessment Year: 2013-14**)

Sri GopiKrishna Dalmia, 4C Jain Manor Apartment, Periasamy Road West, RS Puram, Coimbatore – 641 002.	बनाम/ Vs.	DCIT Circle -1, Ootacamund.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. ADKPD-4133-A		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri T.S. Lakshmi Venkataraman (CA) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri ARV Sreenivasan (Addl.CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	21-04-2022
घोषणा की तारीख / Date of Pronouncement	:	05-05-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income Tax (Appeals)-, Coimbatore-3 [CIT(A)] dated 19.02.2020 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 22.03.2016.
2. The grounds raised by the assessee read as under:

1. On the facts and circumstances of the case the learned CIT (A)-3 Coimbatore is not justified in sustaining the disallowance of Rs.1,32,09,071/- made under section 14A of the Act. The position accepted by the AO is that, the appellant earned an exempt income of only Rs.1250/- during the financial year 2012-13. It has been judicially settled by the Apex court that disallowance under 14 A can't exceed exempt income.
2. On The facts and circumstances of the case the learned CIT (A) -3 Coimbatore is not justified in sustaining the addition under section 68 of the act to an extent of Rs.21,23,000/- in the total addition of Rs.26,74,000/- made by the AO. In the course of assessment proceedings necessary evidences were produced to substantiate the entire cash deposits of Rs 26,74,000/- in the bank account.
3. On the facts and circumstances of the case, the learned CIT(A) -3 Coimbatore is not justified in enhancing the disallowance under the head Travelling expenses made by the AO at a figure of Rs. 98,703/- to a figure of Rs.1,50,000/- . The first appellate authority has not given any notice of enhancement before making the above increased disallowance as contemplated u/s 251 of the Act.
4. In view of the above grounds and other submissions to be made at the time of appeal hearing, the disallowances and additions made by the AO and sustained by CIT (A) and further enhancement made by CIT(A) maybe deleted and Justice rendered.

As evident, the assessee is aggrieved by confirmation of certain additions and disallowances in the impugned order.

2. The Ld. AR advanced arguments to assail the additions which have been controverted by Ld. Sr. DR. Having heard rival contentions, our adjudication to the subject matter would be as given in succeeding paragraphs. The assessee being resident individual is stated to be engaged in trading of tea and fabric under proprietary concern namely M/s. Vinayaka Tea Company. It was assessed for the year u/s 143(3) on wherein it was saddled with disallowance u/s 14A, additions u/s 68 and adhoc addition of travelling expenses. All these additions / disallowances, upon confirmation in the impugned order, are in further challenge before us.

3. Disallowance u/s. 14A

3.1 The assessee earned exempt income of Rs.1,250/- and accordingly, Ld. AO computed disallowance u/s 14A in terms of Rule 8D.

The disallowance worked out to be Rs.132.09 Lacs which was interest disallowance of Rs.0.28 Lacs u/r 8D(2)(ii) and indirect expense disallowance u/r 8D(2)(iii) for Rs.131.81 Lacs. Though the assessee raised various arguments during appellate proceedings, however, the same were dismissed and the additions were confirmed. Aggrieved, the assessee is in further appeal before us.

3.2 Upon perusal of documents on record, it could be seen that the assessee maintain separate accounts for personal transactions and for M/s Vinayaka Tea Company. In personal account, the only deduction claimed in the computation of income is interest paid for Rs.29,711/-. The credit side of Profit & Loss consist of dividend, rental income and short term capital gains which are assessable under separate heads. Therefore, this interest payment has no correlation with the business of the assessee and the same is to be disallowed in full.

3.3 The Profit & Loss Account of M/s Vinayaka Tea Co. is for business transactions of the assessee. No exempt income has been credited by the assessee in this account. All the expenditure is related to the business of the assessee. No significant interest has been debited in the Profit & Loss Account. Therefore, no disallowance u/s 14A is warranted here.

3.4 In other words, we direct Ld. AO to restrict disallowance u/s 14A to Rs.29,711/-. The ground stand partly allowed.

4. Addition u/s. 68

4.1 It transpired that the assessee deposited cash on various dates in bank account of M/s. Vinayaka Tea Company. The same are detailed in para-7 of the assessment order. In support, the assessee furnished extract from cash book. However, the said explanation was held to be

not maintainable as the nature of source of deposits was not clarified and accordingly, the amount of Rs.26.74 Lacs was added as unexplained cash credit u/s 68 of the Act. Upon further appeal, Ld. CIT(A), in the light of remand report, restricted the addition to Rs.21.23 Lacs against which the assessee is in further appeal before us.

4.2 We find that the additions have been made on the ground that the sales being reelected by the assessee were fabricated to accommodate the cash deposits and credits are appearing in the account of Ms. Maya Dalmia (wife of the assessee) on various dates at a figure of Rs.19,900/- each. However, we find that M/s Vinayaka Tea Company has admitted sale of Rs.34.26 Lacs and earned profit of Rs.3.43 Lacs during the year. The same has been accepted by Ld. AO which would lead to a conclusion that the sale could not be termed as fabricated.

4.3 Proceeding further, the assessee has received loan on various dates from the wife which is partly in cash and partly through banking channels. The loan aggregated to Rs.28.10 Lacs and the same has fully been repaid by the assessee during this year itself. Therefore, the genuineness of the same could not be doubted. Ms. Maya Dalmia has filed here return of income declaring income of Rs.3.07 Lacs. Therefore, no doubt could be raised on these transactions.

4.4 Lastly, it could be noted that the assessee has furnished its cash book to prove the source of cash deposit. The cash has been reflected in assessee's cash book and the books of accounts have not been rejected. No defect could be pointed out in the cash book.

4.5 In the light of the above, the explanation of the assessee, in our considered opinion, has to be accepted. The impugned addition does not

have any legs to stand. By deleting the same, we allow this ground of appeal.

5. Travelling Expenses:

5.1 The assessee debited travelling expenditure of Rs.3.29 Lacs. The Ld. AO made adhoc disallowance of 30% to personal element which resulted into another addition of Rs.0.98 Lacs in the hands of the assessee. The Ld. CIT(A) noted that the correct figure as claimed by the assessee was Rs.2,99,960/- which was to be allowed to render justice. However, in the very next line, Ld. CIT(A) sustained addition of Rs.1.50 Lacs which is much more than the addition made by Ld. AO.

5.2 Considering that the correct figures are Rs.2,99,960/-, we direct Ld. AO to disallow 10% of the same to account for personal element. The addition stand restricted to Rs.30,000/- and the balance addition stand deleted. This ground stand partly allowed.

Conclusion

6. The appeal stand partly allowed in terms of our above order.

Order pronounced on 05th May, 2022.

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 05-05-2022

JPV

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF