

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.1549/Chny/2019**
(निर्धारण वर्ष / **Assessment Year: 2013-14**)

Newgen Digitalworks Pvt. Ltd. No.4, First Floor, G3 Building Bharathi Nagar Cross Street, Off LB Road, Thiruvanmiyur, Chennai – 600 041.	बनाम/ Vs.	ACIT Corporate Circle-4(2), Chennai.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAACH-0904-R		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri G.S.D Babu (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri V. Sreedhar -(Addl. CIT) –Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	09-06-2022
घोषणा की तारीख / Date of Pronouncement	:	09-06-2022

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)-8, Chennai [CIT(A)] dated 19-02-2019 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 18-03-2016. The grounds raised by the assessee read as under: -

The Appellant submits that the below grounds are independent and without prejudice to one another.

1. Deduction under section 80JJAA of the Act

1.1 Learned CIT (Appeals) or ('Ld. CIT(A)'), is not justified on law and facts in not deciding the ground relating to the claim of deduction of Rs.2,73,95,854 under section 80JJAA of the Income Tax Act ('Act').

1.2 Ld. CIT(A) ought to have followed the order of the Hon'ble 1TAT 'A' Bench Chennai in the Appellant's own case for AY 2012-13 (ITA No.303/Chny/2017 dated 16.02.2018) wherein the Hon'ble ITAT has allowed the claim of 80JJAA deduction in the earlier year.

2. Disallowance under section 14A of the Act.

2.1 Ld. CIT(A) without appreciating the correct facts of the case is not justified on law and facts and circumstances of the case in confirming the disallowance of Rs.11,36,620 made by the Assessing Officer under section 14A of the Act read with Rule 8D of the Income Tax Rules,1962 ('Rules').

2.2 Ld. CIT(A) has erred in not considering that the Appellant had made investments out of internal accruals and did not incur any expenses during the relevant Assessment year for earning the exempt income.

2.3 Ld. CIT(A) erred in not considering that the Assessing Officer has not arrived at a satisfaction to invoke section 14A and has also not demonstrated that the expenditure disallowed has nexus with the exempt income.

2. The Registry has noted delay of 27 days in the appeal. However, Ld. AR has filed revised Form 36 which is in order and considering the same, there is no delay in the appeal.

3. Having heard rival submissions, our adjudication to the subject matter of appeal would be as under. As evident, the grievance of the assessee is two-fold i.e., (i) denial of deduction u/s 80JJAA; (ii) disallowance u/s 14A.

4. Deduction u/s 80JJAA

4.1 This deduction was not claimed by the assessee in the return of income. During first appellate proceedings, the assessee raised additional ground and submitted that it was eligible for this deduction and therefore, pleaded for admission of additional ground in terms of the decision of Hon'ble Supreme Court in the case of **Jute Corporation of India Ltd. V/s CIT (187 ITR 688)** and various other

decisions. However, there is no discussion, whatsoever, on this ground in the impugned order. Aggrieved, the assessee is in further appeal before us.

4.2 It is settled legal position that the appellate authorities are not precluded from admitting new claims, if the same is otherwise in order. We also find that similar claim has also been allowed by Ld. AO in order-giving effect order dated 03.07.2017 for AY 2012-13. Therefore, we concur with the submissions of Ld. AR that though this ground was raised before Ld. CIT(A), however no findings have been rendered on this issue. Therefore, considering the fact of the case, we admit the additional ground of appeal and remit the matter back to the file of Ld. AO for adjudication. The Ld. AO is directed to bring the facts of the same on record and adjudicate the same after affording reasonable opportunity of hearing to the assessee. This ground stand allowed for statistical purposes.

5. Disallowance u/s 14A

5.1 Since the assessee had made investments and earned exempt income of Rs.28.78 Lacs, Ld. AO computed indirect expenses disallowance u/r 8D(2)(iii) @0.5% of average investments which came to Rs.11.36 Lacs and added the same to the income of the assessee. The assessee did not offer any suo-motu disallowance on the ground that it did not incur any expenditure to earn the exempt income. The Ld. CIT(A) upheld the disallowance against which the assessee is in further appeal before us.

5.2 The Ld. AR seek exclusion of those investments which were not capable of earning exempt incomes or which have not actually yielded any exempt income during the year. Accepting the same, we direct Ld.

AO to re-compute the disallowance. The assessee is directed to provide requisite details. This ground stand allowed for statistical purposes.

6. The appeal stand allowed for statistical purposes.

Order pronounced on 09th June, 2022.

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

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

चेन्नई / Chennai; दिनांक / Dated : 09-06-2022
EDN/-

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