

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

Before

SRI MANISH BORAD, ACCOUNTANT MEMBER

&

SRI SONJOY SARMA, JUDICIAL MEMBER

**I.T.A. Nos.: 583 & 584/Kol/2020
Assessment Year: 2012-13 & 2013-14**

***M/s. Kamakhya (India) Ltd.....Appellant
[PAN: AABCK 3602 L]***

Vs.

DCIT, Central Circle-1(3), Kolkata.....Respondent

Appearances by:

*Sh. S.K. Tulsiyan, Adv. &
Smt. Puja Somani, CA, appeared on behalf of the Assessee.*

Sh. Jayanta Khanra, JCIT, appeared on behalf of the Revenue.

Date of concluding the hearing : May 18th, 2022

Date of pronouncing the order : June 22nd, 2022

ORDER

Per Manish Borad, Accountant Member:

The captioned appeals filed by the assessee pertaining to the Assessment Years (in short "AY") 2012-13 & 2013-14 are directed against separate orders passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals)-20, Kolkata [in short Id. "CIT(A)"] dated 21.09.2020 arising out of the common assessment order framed u/s 143(3) r.w.s. 153A of the Act dated 31.03.2015.

2. The assessee is in appeal before the Tribunal raising the following grounds:

Assessment Year 2012-13:

“1. That, on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law and acted against the principal of natural justice in having passed the ex parte appellate order without providing adequate opportunity of being heard on the allegation that in compliance to the notice of hearing sent electronically, the appellant had not filed any written submission.

2. That, the Ld. C.I.T.(A) further erred in having dismissed the grounds of appeal in limini without adjudicating the same on merits on the basis of evidences already on record in spite of the fact that as per sec.250(6) r.w.s. 250(4), 250(5), 251(1)(a) & (b) and Explanation to sec. 251(2) of the Act, he was required to dispose of the appeal with reasons for decisions by passing a speaking order.

3. That, the Ld. A.O. under wrong application of sec.36(1)(ii) and also sec.43B of the Act erred in disallowing a sum of Rs.3,56,858/- paid to employees as bonus and commission for services rendered by them and the Ld. C.I.T.(A) erred in confirming such erroneous addition to the income without considering the issue on merits of the case, in spite of the fact that identical claim has been allowed in the assessments made for earlier assessment years.

4. That, the Ld. C.I.T.(A) erred in upholding the erroneous computation of disallowance u/s 14A r.w.r. 8D(2)(ii) & (iii) of the Rules aggregating to Rs.4,39,674/- when as per decision of Hon’ble ITAT, Kolkata in the case of REI Agro vs. DCIT (244 ITD 141) and upheld by the Hon’ble High Court, Rule 8D(2)(ii) will have no application for computing the disallowance u/s 14A of the Act and the disallowance u/s.14A should be restricted only to the dividend yielding investments.

5. That, as the additions made in the assessment and upheld by the Ld. C.I.T.(A), resulting in an erroneous computation of higher income than disclosed by the appellant in the ROI deserve to be deleted, the interests charged of Rs.2,09,472/- and Rs.9,102/- u/s. 234B & 234C of the Act respectively were uncalled for and liable to be quashed.

6. That, therefore, as the *ex parte* order of the Ld. CIT(A) suffers from illegality and is devoid of any merit, the same should be quashed and your appellant be given such relief(s) as prayed for.

7. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/ or rescind any or all of the above grounds.”

Assessment Year 2013-14:

“1. That, on the facts and in the circumstances of the case, the Ld. CIT(A) erred in law and acted against the principal of natural justice in having passed the *ex parte* order qua the appellant without providing adequate opportunity of being heard on the allegation that in compliance to the notice of hearing sent electronically, the appellant had not filed any written submission.

2. That, the Ld. C.I.T.(A) further erred in having dismissed the grounds of appeal in limini without adjudicating the same on merits on the basis of evidences already on record in spite of the fact that as per sec.250(6) r.w.s. 250(4), 250(5), 251(1)(a) & (b) and Explanation to sec. 251(2) of the Act, he was required to dispose of the appeal with reasons for decisions by passing a speaking order.

3. That, the Ld. A.O. under wrong application of sec.36(1)(ii) and also sec.43B of the Act erred in disallowing a sum of Rs.4,08,344/- paid to employees as bonus and commission for services rendered by them and the Ld. C.I.T.(A) erred in confirming such erroneous addition to the income without considering the issue on merits of the case, in spite of the fact that identical claim has been allowed in the assessments made for earlier assessment years.

4. That, the Ld. A.O. without recording any dissatisfaction over the claim of sundry balance written off of Rs.86,282/- has added back the same and the Ld. C.I.T.(A) simultaneously erred in having upheld such an erroneous addition in spite of the fact that in the assessments of past years, identical claim has been allowed.

5. That, the Ld. C.I.T.(A) erred in upholding the erroneous computation of disallowance u/s 14A r.w.r. 8D(2)(ii) & (iii) of the Rules aggregating to Rs.3,72,475/- when as per decision of Hon'ble ITAT, Kolkata in the case of REI Agro vs. DCIT (244 ITD 141) and upheld by the Hon'ble High Court, Rule 8D(2)(ii) will have no application for computing the disallowance u/s 14A of the Act and the disallowance u/s.14A should be restricted only to the dividend yielding investments.

6. That, as the additions made in the assessment and upheld by the Ld. C.I.T.(A), resulting in an erroneous computation of higher income than disclosed by the appellant in the ROI deserve to be deleted, the interests charged of Rs.2,00,442/- and Rs.71,348/- u/s. 234B & 234C of the Act respectively were uncalled for and liable to be quashed.

7. That, therefore, as the *ex parte* order of the Ld. CIT(A) suffers from illegality and is devoid of any merit, the same should be quashed and your appellant be given such relief(s) as prayed for.

8. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/ or rescind any or all of the above grounds.”

3. At the outset, ld. Counsel for the assessee referring to ground nos. 1 & 2 stated that the impugned orders are *ex-parte* as adequate opportunity of being heard was not provided and the assessee could file any written submission. So, prayer was made to restore the issues under challenge in the instant appeals to ld. CIT(A) for afresh adjudication.

4. Ld. D/R was fair enough in not raising any objection if the issues raised in these instant appeals are restored to ld. CIT(A).

5. We have heard rival contentions and perused the records placed before us. Through the common ground nos. 1 & 2 raised by the assessee for AYs 2012-13 & 2013-14 it is stated that adequate opportunity was not provided to the assessee and the assessee could not file any written submission. Examining this contention of the ld. Counsel for the assessee in light of the finding of the ld. CIT(A) in the impugned order, we find that ld. CIT(A) has observed that the assessee did not file any submission in appellate proceedings.

6. Since adequate opportunity was not provided and also since the date on which the impugned order was passed falls during the COVID-19 restrictions, we, being fair to both the parties and in the interest of justice, restore all the issues raised on merit in the instant two appeals to the Id. CIT(A) for afresh adjudication and needless to mention that proper opportunity of being heard should be provided to the assessee to file necessary submissions in support of its contentions raised against the additions made by the Id. AO. The assessee is directed to remain vigilant and file necessary documents, if considered, in support of its grounds of appeal and should not take adjournment, unless otherwise required for reasonable cause. In case after providing sufficient opportunity to the assessee, there is no compliance before the Id. CIT(A), then Id. CIT(A) can pass the speaking order in accordance with law.

7. In the result, both the appeals of the assessee are allowed for statistical purposes.

Kolkata, the 22nd June, 2022.

Sd/-

[Sonjoy Sarma]
Judicial Member

Dated: 22.06.2022

Bidhan (P.S.)

Sd/-

[Manish Borad]
Accountant Member

Copy of the order forwarded to:

- 1. M/s. Kamakhya (India) Ltd., 21, Princep Street, Bowbazar, 2nd Floor, Kolkata-700 072.**
- 2. DCIT, Central Circle-1(3), Kolkata.**
3. CIT(A)-20, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata