

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No.1481/Mum./2021
(Assessment Year : 2016-17)

Nishrin Trading & Investment Pvt. Ltd.
Ground Floor, Sir Navroji Vakil Street
Grant road, Mumbai 400 007
PAN – AAACN1670J

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-7(3), Mumbai

..... Respondent

Assessee by : Shri Arpana Sivakumar
Revenue by : Ms. Kavita Kaushik

Date of Hearing – 09.06.2022

Date of Order – 04/07/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee against the ex-parte order dated 14/06/2021, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Principal Commissioner of Income Tax (Appeals)-49, Mumbai [*learned CIT(A)*], for the assessment year 2016-17.

2. In its appeal, the assessee has raised following grounds:-

"(a) The Id CIT(Appeals) erred in facts and law in not condoning the delay in filing the appeal without appreciating that the assessee had taken recourse to rectification application u/s 154 of the Act being one of the alternative remedies provided by the statute to avoid undue litigations and that the same does not automatically exhaust the right of the assessee to avail other vested remedies viz. appeal u/s 250 of the Act.

(b) The Id. CIT(Appeals) erred in facts and law in not appreciating that the assessee approached the appellate authority for grant of relief as a result of no action taken by the Id. Assessing Officer in pursuing the rectification and also failed to appreciate that the delay due to lack of resultant action from another remedy opted shall constitute a "sufficient cause" in terms of section 249(3) of the Act in light of justice.

(d) Without prejudice to the above, the Id. CIT(Appeals) erred in facts and law in not providing the assessee an opportunity of furnishing the copy of rectification application filed u/s. 154 of the Act to substantiate the delay in filing the appeal.

2(a) The Id. Assessing Officer erred in facts and law in disallowing amount of Rs.3,09,852/- u/s 14A read with Rule 8D without appreciating the explanations placed on record.

(b) The Id. Assessing Officer erred in facts and law in stating that the assessee failed to establish a direct nexus between funds received and investment made which was in fact already placed on record.

3. Your appellant craves leave to add, amend, alter or drop all or any of the above grounds of appeal."

3. The brief facts of the case pertaining to the issue, as emanating from the record, are: The assessee is engaged in retail business. For the year under consideration, the assessee e-filed its return of income on 21/09/2016, declaring total income of Rs.20,19,100. During the course of assessment proceedings, it was observed that the assessee during the year has earned tax free income of Rs.70,99,384, which is claimed to be exempt under section 10(2A) of the Act. The Assessing Officer, vide order dated 29.10.2018, passed under section 143(3) of the Act computed the

disallowance of Rs.3,09,852, under section 14A of the Act r/w rule 8D of the Income Tax Rules, 1962 ("Rules").

4. The learned CIT(A), vide impugned order dated 14/06/2021, dismissed the appeal filed by the assessee on the ground of delay by observing as under:-

"8.4. On these contentions of the Appellant, I have noted that except for the averments made in the letter for condonation of delay, no other documentary evidence has been filed by the Appellant. There is no evidence on record to even substantiate the contention of the appellant that it actually had filed a petition u/s 154 before the AO. However, even if the submissions of the assessee in this regard is accepted there remains no doubt about the fact that the assessee took a conscious decision of not filing of appeal, rather pursuing the matter through a petition filed u/s 154 of the Act."

5. Being aggrieved, the assessee is in appeal before us.

6. During the course of hearing, the learned A.R. submitted that the details filed by the assessee vide submissions dated 23/08/2018, were not considered by the Assessing Officer while making the addition under section 14A of the Act. Accordingly, the assessee filed an application dated 11/06/2019, under section 154 of the Act seeking rectification of the assessment order. The learned A.R. further submitted that due to verbal assurance that the assessment order will be rectified, appeal before the learned CIT(A) was not preferred within the stipulated period of time. The learned A.R. submitted that the said rectification application is still pending despite various follow-ups made by the assessee.

7. On the other hand, the learned D.R. fairly agreed that the decision on the rectification application will have bearing on disallowance made under section 14A of the Act.

8. We have considered the submissions and perused the material available on record. In the present case, the Assessing Officer made disallowance under section 14A of the Act in the absence of any evidence to prove one-to-one nexus of funds received and utilized. As per the assessee, vide submissions dated 23/08/2018, the details were submitted during the course of assessment proceedings, however, the Assessing Officer failed to take note of the same while passing the assessment order. Accordingly, the assessee filed application under section 154 of the Act seeking rectification of the assessment order. The learned CIT(A) also dismissed the appeal filed by the assessee on the ground of delay without adjudicating the grounds raised by the assessee on merits. During the hearing before us, the learned A.R. filed copies of follow-up letter filed before the Assessing Officer requesting for early disposal of rectification application dated 11/06/2019, filed by the assessee. As the details filed by the assessee were not considered by the Assessing Officer while passing the assessment order and the appeal filed by the assessee before the learned CIT(A) was also dismissed only on the ground of delay, we deem it appropriate to restore this issue of disallowance under section 14A of the Act to the file of the Assessing Officer for *de novo* adjudication, after consideration of all the details filed by the assessee. Needless to mention

that no order shall be passed without affording opportunity of being heard to the assessee. Thus, grounds raised in this appeal by the assessee are allowed for statistical purpose.

9. In the result, appeal by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 04/07/2022

Sd/-
GAGAN GOYAL
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 04/07/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai