

आयकर अपीलीय अधिकरण, कोलकाता
पीठ 'A-SMC', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA
A-SMC, KOLKATA

समक्ष : श्री मनीष बोरड, लेखा सदस्य

Before: Shri Manish Borad, Accountant Member

आयकर अपील सं.य/ITA No. 391/कोल
/2022
निर्धारण वर्ष/Assessment Year:2006-07

M/s.Lovely International Pvt. Ltd Anuj Chambers, Unit 3B, 3rd Floor, 24 Park Street, Kolkata-700 016.	बनाम V/s.	DCIT, Cir-7(1), Kolkata P-7 Chowringhee Square, Kolkata-700 069.
PAN: AAACL5322K		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
अपीलार्थी की ओर से/By Appellant		Shri Sunil Surana, Ld.AR
प्रत्यर्थी की ओर से/By Respondent		Shri Vijay Kumar, Add. CIT, Ld. DR
सुनवाई की तारीख/Date of Hearing		15-09-2022
घोषणा की तारीख/ Date of Pronouncement		20-09-2022

आदेश /O R D E R

This appeal filed by the assessee pertaining to the A.Y. 2006-07 is directed against the order passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dt. 23-05-2016 of Id. Commissioner of Income-tax (in short hereinafter referred to as the Id. CIT(Appeals), - 2, Kolkata, which is arising out of assessment order dt. 08-12-2008 passed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') passed by the DCIT, Cir-7(1), Kolkata.

2. The assessee has raised the following grounds of appeal:-

- (i) *For that the action of CIT(A) in confirming the addition made by AO u/s. 14A was not valid when there was no exempt income and hence, no disallowance u/s. 14A was called for.*
- (ii) *For that the action of CIT(A) in confirming the disallowance made by AO u/s. 40(a)(ia) of Rs.31,580/- was also not valid and is liable to be deleted.*
- (iii) *For that even otherwise the disallowances made were not valid and therefor, relief may kindly be provided to the assessee.*

3. In this appeal the assessee has raised two issues. First issue relates to disallowance at Rs.3,87,770/- made u/s. 14A r.w.r 8D and secondly, the disallowance of Rs.31,580/- made u/s. 40(a)(ia) of the Act.

4. At the outset, Ld. Counsel for the assessee submitted that in view of decision of the Co-ordinate Bench (ITAT, Kolkata) in the case *Babul Fiscal Services P.Ltd in ITA No. 318/Kol/2022 dt. 02-08-2022*, since no exempt income is earned by the assessee during the year the disallowance made u/s. 14A/r.w.r 8D is uncalled for. As regards the second issue, the disallowance of Rs.31,580/- made u/s. 40(a)(ia) of the Act, Ld. Counsel for the assessee submitted that the said amount stands duly deposited before the due date of filing of return u/s. 139(1) of the Act. Thus, the disallowance made u/s. 40(a)(ia) of the Act is also uncalled for.

5. Per contra, the Ld. Departmental Representative vehemently argued supporting the orders of the lower authorities.

6. I have heard the rival contentions and perused the record placed before me. I observe that the assessee is a private limited company

and income at Rs. 41,55,174/- declared in the return filed for AY 2006-07 on 30-11-2006. After being selected for scrutiny and duly serving of statutory notices u/s. 143(2) and 142(1) of the Act, the assessment completed after making disallowance u/s. 14A/r.w.r 8D(2) of Rs. 3,87,770/- and disallowance u/s. 40(a)(ia) of the Act for non-deduction of tax at source at Rs.31,580/- on interest expenditure. The assessee failed to get any relief from the Id. CIT(A).

7. Before me for the issue of disallowance made u/s. 14A/r.w.r 8D(2), the reliance has been placed on the decision of this Tribunal (ITAT Kolkata) in the case of *Babul Fiscal Services P.Ltd in ITA No. 318/Kol/2022 dt. 02-08-2022*. I find that the assessee has not earned any exempt income. As per the ratio laid down by the Hon'ble High Court of Delhi in the case of *PCIT Vs. M/s. Era Infrastructure (I) Ltd in ITA 204/2022 dt. 20-07-2022* no disallowance is to be made in case the assessee has not earned any tax free income/exempt income during the year for such investments made by it. This ratio has also been followed by this Tribunal in the case *Babul Fiscal Services P.Ltd in ITA No. 318/Kol/2022 dt. 02-08-2022*.

8. The above referred judgement/decision being squarely applicable on the facts of the present case, respectfully following the same, I hold that since in the instant case also undisputedly there is no exempt income earned by the assessee, the Id.AO was not justified in making disallowance u/s. 14A/R.W.R 8D. I, therefore, set aside the finding of the Id. CIT(A) and delete the impugned addition Rs.3,87,770/- made by the Id.AO u/s. 14A of the Act. Ground no. (i) of assessee's appeal is allowed.

9. As regards ground no. (ii), I find that the assessee had incurred interest expenditure of Rs. 31,580/-. It was liable to deduct tax at source u/s. 194A of the Act. The provisions of section 40(a)(ia) of the Act could have been attracted in the case of assessee if the amount of TDS has not been deducted and deposited before the due date of filing of return u/s. 139(1). However, on perusal of Tax Audit Report provided u/s. 44AB of the Act more specifically annexure 5 for Form 3CB and as stated by the Ld. Counsel for the assessee before me that tax of Rs. 3,158/- has been deducted at source on the alleged interest payment of Rs. 31,580/- and the assessee has deposited the amount of Rs.3,158/- on 20-04-2006, which is much more before the due date of filing return u/s. 139(1) of the Act. Under these facts and circumstances of the case the Id. AO erred in invoking the provisions of section 40(a)(ia) of the Act. I, therefore, set aside the impugned finding of the Id. CIT(A) and delete the disallowance of Rs. 31,580/- made u/s. 40(a)(ia) of the Act. Ground no. (ii) of assessee's appeal is allowed.

10. Ground no. (iii) is general in nature, which requires no adjudication.

परिणामतः निर्धारिती की अपील मंजूर की जाती है।

11. In the result, the appeal of the assessee is allowed.

आदेश खुले न्यायपीठ में दिनांक... /09/2022 को उद्घोषित।
Order pronounced in the open court on 20. 09/2022

Sd/-

मनीष बोरड, लेखा सदस्य

(MANISH BORAD)

ACCOUNTANT MEMBER

दिनांक /Dated :20 -09-2022

**PP/SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

- 1.अपीलार्थी/Appellant/ M/s.Lovely International Pvt. Ltd
Anuj Chambers, Unit 3B, 3rd Floor, 24 Park Street, Kolkata-700
016.
2. प्रत्यर्थी/Respondent/DCIT, Cir-7(1), Kolkata, P-7 Chowringhee
Square, Kolkata-700 069.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT,
Kolkata
6. गार्ड फाइल / Guard file. By order/आदेश से,

/True Copy/

Assistant Registrar
ITAT, Kolkata