

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.1571/Mum/2020
(Assessment Year :2014-15)**

M/s. Express Industrial Services Pvt. Ltd., Mittal Tower C-Wing, 14 th Floor Nariman Point Mumbai- 400 021	Vs.	ACIT Circle 3(1)(2) RoomNo.607, Aayakar Bhavan, Mumbai- 400 020
PAN/GIR No.AAACE1339D		
(Appellant)	..	(Respondent)

Assessee by	Shri Madhur Agrawal
Revenue by	Shri U. Singh
Date of Hearing	23/08/2022
Date of Pronouncement	28/09/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1571/Mum/2020 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-8, Mumbai in appeal No.CIT(A), Mumbai-8/10974/2016-17 dated 23/01/2020 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) by the Id. Asst. Commissioner of Income Tax, Circle-3(1)(2), Mumbai (hereinafter referred to as Id. AO).

2. The first issue to be decided in this appeal is with regard to disallowance u/s.14A of the Act r.w.Rule 8D(2) of the Rules.

3. We have heard rival submissions and perused the materials available on record. We find that the assessee company is engaged in the business of providing management consultancy services for activities in connection with procurement and sourcing of natural / mineral resources and in the trading business of bullion more specifically gold. The assessee had further explored its objective to carryout farming activities in order to diversify its business operations. The return of income for the A.Y.2014-15 was filed by the assessee on 22/09/2014 declaring total income of Rs.1,85,94,950/-. During the year under consideration, the assessee received dividend income of Rs.17,92,385/- and claimed the same as exempt u/s.10(34) of the Act. No disallowance of expenses was suomoto made by the assessee in the return of income for the purpose of earning such exempt income. The assessee pleaded that no investments were made during the year and overall the investments had reduced during the year when compared with earlier year. The Id. AO however, did not heed to the contentions of the assessee and proceeded to invoke computation mechanism provided in Rule 8D(2) of the Rules as under:-

(i) Under Rule 8D(2)(ii)	-	Rs. 13,334/-
(ii) Under Rule 8D(2)(iii)	-	<u>Rs.2,37,722/-</u>
Total		Rs.2,51,056/-
		=====

3.1. We find that assessee is having sufficient own funds which is evident from the balance sheet in page 3 of the paper book and hence, it could be reasonably presumed that the investments which had yielded

exempt income to the assessee had been made out of interest free funds available with the assessee by placing reliance on the decision of the Hon'ble Supreme Court in the case of South Indian Bank Ltd reported in 438 ITR 1 (SC). We direct that there could be no disallowance of interest in terms of Rule 8D(2)(ii) of the Rules. The Id. AO is directed accordingly to delete the same.

3.2. With regard to disallowance made under Rule 8D(2)(iii) of the rules is concerned, we direct the Id.AO to consider only those investments which had actually yielded exempt income to the assessee during the year under consideration and recompute the disallowance accordingly. The workings for the same are given by the assessee in page 43 of the paper book. The Id. AO is directed to verify the same and re-compute the disallowance. Accordingly, the ground Nos. 1 & 2 raised by the assessee are allowed for statistical purposes.

4. The ground No.3 raised by the assessee is challenging the disallowance of foreign travel expenses.

4.1. We have heard rival submissions and perused the materials available on record. As stated supra, the assessee is engaged in the business of management consultancy services to find out suitable location, extraction and processing of natural minerals. During the year, the assessee was exploring the business opportunities of farming of various types of plantations like Eucalyptus, Olive, Pomegranates and Orchards. The same required huge finance and the management thought and the assessee company had to raise funds from proper investors in the international market which necessitated the visits to foreign countries by the Director and other parties of the assessee company. The entire details

of foreign travel expenditure together with the purpose of travel were duly furnished by the assessee before the Id. AO together with the bills and vouchers thereon vide submission dated 18/10/2016. We further find that the foreign travel expenditure included air ticket of Rs.1,58,880/-, hotel and boarding charges of Rs.11,22,619/-, expenses incurred towards visa conveyance etc., of Rs.1,82,777/- and sales promotion expenditure of Rs.59,096/-. All these expenditure should only be construed as incurred for the purpose of business of the assessee. We find that the grievance of the Revenue seems to be that Mrs. Ragini Barfiwala, wife of Director had accompanied Director to the foreign country and her expenditure is also debited in the books of the company. This is factually incorrect as is evident from the perusal of the ledger account of travelling expenses (International), wherein the travel expenditure of Mrs. Ragini Barfiwala has been reimbursed by her to the assessee company and the expenditure of the assessee is duly credited to that extent. This categorically goes to prove that no expenditure pertaining to Mrs. Ragini Barfiwala has been debited in the books of the assessee company. Hence, there cannot be any personal element of expenditure debited in the assessee company's books. These details were duly furnished before the lower authorities which had been ignored by the lower authorities. Hence, we have no hesitation in directing the Id. AO to delete the disallowances made on account of foreign travel expenses of Rs.5,22,872/-. The ground No.3 raised by the assessee is allowed.

5. The ground No.4 raised by the assessee is challenging the adhoc disallowance sustained by the Id. CIT(A) at 5% as against 20% made by the Id. AO in respect of travelling expenses, sales promotion, office maintenance and staff welfare expenses.

5.1. We have heard rival submissions and perused the materials available on record. We find that the Id. AO had disallowed the following expenses on an adhoc basis @20% or 10% , as the case may be, which was reduced to 5% by the Id. CIT(A) as under:-

Nature of Expenditure	Adhoc Disallowance by AO	Adhoc sustenance by CIT(A) at 5%
a) Travelling Expenses	11,73,953	2,93,488
b) Sales Promotion	5,28,287	1,32,072
c) Office Maintenance	1,13,106	28,276
d) Staff Welfare	33,659	16,829

5.2. During the course of assessment proceedings, the assessee furnished the entire books of accounts along with bills and vouchers for verification of the Id. AO. It is not in dispute that assessee company has its head office in Mumbai and other offices at various locations in India at Shillong, Gauhati, Indore, Khajuraho for administrative convenience between sites of business activities. The employees of the company are required to frequently undertake travelling to various locations for business purposes, for which purpose, company has created guest house facilities at locations frequently visited by employees at Mumbai, Shillong, Gauhati and Indore. This has been done primarily to reduce hotel and food expenditure payable to third parties. The assessee in order to maintain the guest house had incurred expenditure towards groceries, fruits, vegetables, purchase of milk etc., The Id. AO observed that these groceries are meant for the purposes of guest house and hence, not incurred for business purpose of the assessee. We are unable to persuade ourselves to accept to this argument of the Revenue as the expenditures were incurred by the assessee in the guest house maintenance which are

meant for usage of the assessee company employees and its Directors on their official visits. Obviously those persons who are staying in the said guest house on their official trip had to consume food, tea, coffee etc., for which purpose, the aforesaid groceries are very much required to be purchased and kept ready. Had these employees gone and stayed in a private hotel, the assessee company would have to incur the accommodation purpose together with the food bills thereon which would be more costlier for the assessee.

5.3. We find that assessee had incurred travelling expenses to meet various customers and to go along with various customers coming from various parts of the country for evaluation of mining prospects. The assessee also takes help of reputed experts and consultants in the field and had to incur their travelling expenses while visiting on their official trips for the purpose of benefit of the assessee company. Hence, we hold that the entire travelling expenses as being incurred wholly and exclusively for the purpose of business of the assessee only and there cannot be any adhoc disallowance towards the same. The Id. AO is directed to delete the same.

5.4. With regard to sales promotion of Rs.26,41,437/-, a sum of Rs.10,00,890/- which works out to 38% of sales promotion expenses was paid to M/s. Vijay Jewellers for the purchase of gold coins. This was explained by the assessee when confronted by the Id. AO that as assessee is engaged in the service industry, it had to give these gold coins as gifts to its customers and suppliers during auspicious occasions like Diwali, Christmas, Marriage etc., It was pointed out that these gifts are customary in nature and had to be considered only as wholly and exclusively for the purpose of business. The bills of the same were duly

furnished before the lower authorities. The assessee also pointed out that a sum of Rs.8,48,000/- was incurred as conference expenses wherein the same was paid to M/s. Thackers Caterers for providing food in the conference meeting to the customers of the assessee who attended conference. These expenses are to be construed only as expenditure incurred in the normal course of business of the assessee company. We hold there cannot be any adhoc disallowance of the same without finding any defect in the books or in the bills and vouchers produced by the assessee before the lower authorities. The Id. AO is directed accordingly.

5.5. With regard to office maintenance charges, it is not in dispute that assessee owns 14th Floor, C Wing of Mittal Tower and operates its business from the said premises. Accordingly, the assessee is bound to make payment of society maintenance expenses to Mittal Tower Premises Co-operative Society and housekeeping / care taking expenses to Sanjay Maintenance Services Pvt. Ltd., as office maintenance charges. This was sought to be disallowed by the Id. AO as not incurred wholly and exclusively for the purpose of business which was confirmed by the Id. CIT(A). We are unable to persuade ourselves to the stand taken by the Revenue as the premises in which these expenses were incurred where the business of the assessee is being carried on. It is duty bound on the part of the assessee to pay maintenance charges to the housing society and house keeping charges to a contractor outsourced by the housing societies. Hence, we hold that the said expenditure is wholly and exclusively incurred for the purpose of the business of the assessee and accordingly allowable as deduction. The Id. AO is directed accordingly.

5.6. With regard to staff welfare expenses, we find that assessee has incurred expenses towards milk, tea, water, medicines, vegetables kept at

guest house. We have already held that assessee is maintaining guest houses at various locations to house its employees on their official visits. Accordingly, these expenses are to be mandatorily incurred to maintain the said guest house for providing basic amenities to its employees. Hence, we hold that these are wholly and exclusively incurred for the purpose of business and accordingly, the Id. AO is directed to allow deduction for the same in toto. Accordingly, the ground No.4 raised by the assessee is allowed.

6. The ground No.5 raised by the assessee is general in nature and does not require any specific adjudication.

7. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced on 28/09/2022 by way of proper mentioning in the notice board.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 28/09/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai