

आयकर अपीलीय अधिकरण
गुवाहाटी 'डीबी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI 'DB' BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

डॉ. मनीष बोरड, लेखा सदस्य

के समक्ष

Before

**SRI RAJPAL YADAV, VICE PRESIDENT (KZ)
&
DR. MANISH BORAD, ACCOUNTANT MEMBER**

I.T.A. No.: 316/Gty/2018

Assessment Year: 2014-15

Nortech Power Projects Pvt. Ltd.....Appellant
[PAN: AABCN 7084 P]

Vs.

ACIT, Circle-4, Guwahati.....Respondent

Appearances by:

None appeared on behalf of the Assessee.

Sh. N.T. Sherpa, JCIT, appeared on behalf of the Revenue.

Date of concluding the hearing : December 20th, 2022

Date of pronouncing the order : December 22nd, 2022

आदेश

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2014-15 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the

“Act”) by Id. Commissioner of Income-tax (Appeals)-2, Guwahati [in short Id. “CIT(A)”] dated 27.08.2018 arising out of the assessment order framed u/s 143(3) of the Act dated 21.12.2016.

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

“1. For that the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad in law, facts and procedure.

2. a) For that on the facts and circumstances of the case, the Id. CIT(A) was not justified in confirming the arbitrarily made disallowance of Rs. 4,50,025/- by the Id. AO by invoking provisions of section 14A of the Act.

b) For that the aforesaid disallowance u/s 14A being made without satisfying the pre-requisite condition specified in that section, the Id. CIT(A) ought to have hold that the disallowance made is without jurisdiction and bad in law.

c) For that in absence of any income being claimed as exempt income during the year by the appellant, the Id. CIT(A) ought to have hold that the Id. AO was not justified in disallowing Rs. 4,50,025/- by invoking provisions of section 14A of the Act.

3. For that on the facts and circumstances of the case, the Id. CIT(A) was not justified in confirming disallowance of Rs. 2,42,313/- made by the Id. AO by invoking provisions of section 40(a)(ia) of the Act.

4. For that the Id. CIT(A) was not justified in not holding that the Id. AO has erred in not allowing credit for ITDS of Rs. 10,93,506/- (Rs. 2,73,877/- and Rs. 8,19,629/-) and that too without passing any speaking order and without stating any reason, whatsoever.

5. For that the Id. CIT(A) was not justified in not allowing any reasonable opportunity of being heard to the appellant.

6. For that the Id. CIT(A) ought to have hold that the order of assessment passed by the Id. AO being made in gross violation of principles of natural justice, the same is untenable and bad in law.

7. For that your appellant craves leave of your honours to take additional ground or grounds and/or to modify any ground(s) of appeal at or before the time of hearing.”

3. When the case was called for, none appeared on behalf of the assessee. A perusal of the records shows that a number of opportunities have been given to the assessee but there is no compliance. Therefore, since sufficient opportunities have been granted and looking to the smallness of the issues, we decide to adjudicate the appeal with the assistance of ld. D/R and the available records.

4. Brief facts of the case as culled out from the records are that assessee is a private limited company engaged in business as EPC contractor and Government supplier. Income of Rs. 1,17,05,040/- declared in e-return filed on 29.11.2014 for AY 2014-15. Case selected for scrutiny through CASS followed by serving of notices u/s 143(2) & 142(1) of the Act. Ld. AO after calling for the details concluded the assessment making disallowance of Rs. 4,50,025/- u/s 14A of the Act and disallowance of interest paid on car loan at Rs. 2,42,313/-. The assessee failed to get any relief from ld. CIT(A) on the said two additions.

5. Aggrieved, the assessee is now in appeal before this Tribunal.

6. Ld. D/R vehemently argued supporting the orders of both the lower authorities.

7. We have heard ld. D/R and perused the records placed before us. As regards issue of disallowance u/s 14A of the Act raised in ground no. 2 of the appeal, we notice that the said disallowance has been worked out by ld. AO @ 0.5% of the average investment at Rs. 9,00,05,000/-. We also find that out of the three limbs of Rule 8D of the Income Tax Rules, 1962, except the third limb no

addition has been made towards the direct expenses related to the exempt income and interest disallowance. Since the average investment of the assessee is Rs. 9,00,05,000/- and there is no record to indicate that the assessee has not earned any exempt income during the year. We, therefore, fail to find any infirmity in the finding of ld. CIT(A) confirming the disallowance of Rs. 4,50,025/-.

8. As regards ground no. 3 relating to interest on car loan of Rs. 2,42,313/-, we notice that the said interest was paid to Tata Finance Ltd. The assessee being a company was required to deduct tax at source on the said payment and in the absence thereof provisions of Section 40(a)(ia) of the Act are attracted. Since the assessee failed to furnish any reason before ld. AO for not deducting tax at source, the said disallowance has rightly been made. We, thus, fail to find any infirmity in the finding of ld. CIT(A). Therefore, ground no. 3 raised by the assessee is dismissed.

9. Ground no. 4 raised by the assessee is that ld. AO erred in not allowing credit of ITDS of Rs. 10,93,506/-. We notice that there is no discussion on the said issue in the assessment order nor in the impugned order. Therefore, we are remitting this issue to ld. AO to verify the correctness of the claim of the assessee and if the same is found to be correct, then the same should be allowed in accordance with law after providing reasonable opportunity of being heard to the assessee.

10. As regards ground nos. 5 & 6 raised regarding not allowing the reasonable opportunity of being heard, we notice that the assessee was issued noticed of hearing on three occasions by ld.

CIT(A) but the assessee failed to appear. Therefore, it cannot be said that reasonable opportunity of being heard was not provided to the assessee. Hence, ground nos. 5 & 6 raised by the assessee are dismissed.

11. Other grounds are general in nature which need no adjudication.

12. In the result, appeal of the assessee is partly allowed for statistical purposes.

Kolkata, the 22nd December, 2022.

Sd/-
[Rajpal Yadav]
Vice President

Sd/-
[Manish Borad]
Accountant Member

Dated: 22.12.2022

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Nortech Power Projects Pvt. Ltd., 602, Lords, 7/1 Lord Sinha Road, Rabindra Sadan, Kolkata-700 071.**
- 2. ACIT, Circle-4, Guwahati.**
3. CIT(A)-2, Guwahati.
4. CIT-
5. CIT(DR), Guwahati Bench, Guwahati.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata