

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'C' : NEW DELHI)

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1340/Del/2022, A.Y. 2014-15

Kalamkari Designs Pvt. Ltd. B-36 Sagar Apartments 6 Tilak Marg, New Delhi-110001 PAN :AABCK2117N	Vs.	DCIT, Circle-11(1), Kolkata
Appellant		Respondent

Assessee by	Sh. Nishchay Khandelwal, CA
Revenue by	Sh. Anuj Garg, Sr. DR

Date of hearing:	23.01.2023
Date of Pronouncement:	25.01.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been filed by the Assessee against order dated 27.04.2022 in Appeal No. CIT(A), Delhi 4/11598/2016-17 assessment year 2014-15 passed by Commissioner of Income Tax (appeals)-23, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 16/12/2016 u/s 143(3) of the Income Tax Act, 1961 passed by DCIT, Circle-11(1), Kolkata (hereinafter referred to as the Assessing Officer or 'AO').

2. Assessee has raised following grounds of appeal before the Tribunal :-

“1. On the facts and circumstances of the case, the order passed by the Ld. Commissioner of Income Tax (appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. Action of the Ld. CIT(A) in not allowing the claim made by the appellant Company on account of Disallowance of employee's contribution to Provident Fund / Employee State Insurance Funds amounting to Rs. 84,255/- out of which Rs. 79,404/- was employees' contribution to provident fund and Rs. 4,851/- as employees' contribution to ESI is unjust and against the facts and circumstances of the case.

3. Action of the Ld. CIT(A) in confirming the addition made on account of Disallowance of Interest on Delayed payment of TDS for Rs. 1,06,334/- is unjust and against the facts and circumstances of the case.

4. Action of the Ld. CIT(A) in confirming the addition of Rs. 2,45,146/- made on account of disallowance u/s 14A read with rule 8D is unjust and against the facts and circumstances of the case.”

3. Heard and perused the record.

4. At the time of arguments Ld. AR for the assessee stated at bar that he is not pressing ground no. 1 and 2 and with regard to ground no. 3 he was candid to accept the fact that the issue stands decided in favour of the revenue by co-ordinate Benches in ***ITA no. 2761/Del/2018 Universal Energies Ltd., vs. DCIT. Accordingly grounds no 1 to 3 are decided against assessee.***

5. As with regard to ground no. 4 it was submitted that assessee has no exempt income during the year and still disallowance u/s 14A has been made. He relied judgment of Hon'ble Delhi High Court in ***PCIT vs. Delhi International Airport Pvt. Ltd. [2022] 144 taxman.com 80 (Delhi) and PCIT (Central) vs. Era Infrastructure (India) Ltd. [2022] 141 taxmann.com 289 (Delhi).*** Ld. DR however, supported the findings of Ld. Tax Authorities below.

6. As per the orders of Ld. Tax Authorities below there is no dispute of the fact that assessee had not earned any exempt income during year. However in spite of assessee submitting judicial pronouncements in *Cheminvest Ltd.v. CIT [2015] 61 taxmann.com 118. (Delhi)*, Ld. CIT(A) erroneously took into consideration explanation to section 14A inserted vide Finance Act, 2022. Hon'ble Delhi High Court in *PCIT vs. Era Infrastructure (India) Ltd.* has categorically held that this explanation does not have a retrospective effect. In the light of above as present assessment year pertains to AY 2014-15, Ld. CIT(A) was supposed to have followed the principles of law cited on behalf of the assessee that if there is no exempt income, section 14A would not be applicable. In the light of aforesaid, ground no. 4 is allowed in favour of the assessee and **the appeal is allowed partly.**

Order pronounced in the open court on 25th January, 2023.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Date:-25.01.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI