

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos.934 to 936/Kol/2019
Assessment Years: 2005-06 to 2007-08**

VISA International Ltd. 8/10, Alipore Road, VISA House, Alipore, Kolkata- 700027. (PAN: AAACV8649P)	Vs.	Deputy Commissioner of Income-tax, Circle-11(2), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : N o n e
Respondent by : Shri P. P. Barman, Addl. CIT

Date of Hearing : 13.03.2023
Date of Pronouncement : 28.03.2023

ORDER

PER BENCH:

All these captioned appeals filed by the assessee are against the separate orders of Ld. CIT(A)-20, Kolkata vide appeal Nos. 168/CC-1(2)/CIT(A)-20/13-14 dated 08.02.2019, No. 169/C-11(2)/Kol/CIT(A)-20/2013-14 dated 22.02.2019 and No. 170/CC-1(2)/CIT(A)-20/13-14 dated 08.02.2019 against the order of Ld. DCIT, Circle-11, Kolkata passed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 31.12.2007, 30.12.2008 and 09.02.2009 respectively.

2. In all the three appals, there is a common ground in respect of denial of exemption on agriculture income while computing the total income of the assessee except variance in amount. Also, there is a ground common for AY 2005-06 and 2007-08 in respect of disallowance made u/s. 14A of the Act. All other grounds are specific to AY 2005-06.

3. We will take the lead case as one for AY 2005-06 in ITA No. 934/Kol/2019 results of which will apply *mutatis mutandis* in respect of the above stated common ground in the other two assessment years. So grounds in respect of AY 2005-06 are reproduced as under:

“1. That on the facts and circumstances of the case, Rs.29,274/- the learned CIT(Appeals) erred in confirming the action of the Assessing Officer in disallowing a sum of Rs. 80,000/- paid for flat no. 5DB Mani Tower under section 40A(2)(b).

2. That on the facts and circumstances of the case, Rs. 75,557/- the learned CIT(Appeals) erred in confirming the disallowance to the extent of 50% of the professional fee amounting to Rs. 2,06,483/- while computing the total income of the appellant.

3. That on the facts and circumstances of the case, Rs. 55,885/- the learned CIT(Appeals) erred in confirming the action of the Assessing Officer in disallowing a sum of Rs. 1,52,722/- on account of business promotion expense.

4. That on the facts and circumstances of the case, Rs. 4,296/- the learned CIT(Appeals) erred in confirming the action of the Assessing Officer in disallowing a sum of Rs.11,739/- on account of telephone expenses.

5. That on the facts and circumstances of the case, Rs.1,76,640/- the learned CIT(Appeals) erred in confirming the action of the Assessing Officer in disallowing expenses of Rs.4,82,722/- under section 14A of the Act.

6. That on the facts and circumstances of the case, Rs.2,83,500/- the learned CIT(Appeals) erred in confirming the action of the Assessing Officer in denying exemption with respect to agricultural income of Rs, 7,74,750/- while computing the total income of the appellant.

7. That the appellant craves leave to add, alter, amend, amplify or modify any or all of the above grounds of cross objections at or before the time of hearing of the appeal.”

4. There is a delay in filing the present appeals of 17 days in AY 2005-06, 5 days in AY 2006-07 and 17 days in AY 2007-08 for which petition for condonation of delay is placed on record. From the said petition, it is noted that assessee had made payment of appeal filing fees under a wrong sub-head in the challan. Assessee got the challan corrected from the Ld. AO by having the correct head of payment for appeal filing fees which resulted into the aforesaid delays. Necessary documentary evidences are placed on record in

this respect. Considering this, the delay in filing the three appeals is condoned and the said appeals are admitted for adjudication.

5. Brief facts of the case are that assessee is engaged in business of consultancy, investment, agricultural activities. It also derives income from rent and consultancy services in connection with trading of minerals and metals. Return for AY 2005-06 was filed on 30.10.2005 reporting a total income of Rs.5,86,930/- and book profit of Rs.38,29,390/- u/s. 115JB of the Act. Case for the assessee was selected for scrutiny assessment for which statutory notices were issued and served on the assessee. In the course of assessment proceedings, Ld. AO enquired about various expenses and allowances claimed by the assessee to which submissions were made. However, Ld. AO did not find favour with the submissions made by the assessee and completed the assessment by making certain additions/disallowances. Aggrieved, assessee went in appeal before Ld. CIT(A) who gave partial relief on certain additions/disallowances made by the Ld. AO. For the remaining additions/disallowances sustained, the assessee is in appeal before the Tribunal by taking the grounds listed above.

6. In the present appeal before us, none represented the assessee at the time of hearing. However, in the past, a letter dated 24.05.2022 was filed from the office of the Authorised Representative M/s. A. K. Tulsiyan & Associates, Chartered Accountants. In the said letter, it is stated that the assessee has been allowed to carry on the business as a going concern under a new management namely, Progressive

Star Finance Pvt. Ltd. (PSFPL) for which Ld. National Company Law Tribunal (NCLT) has passed its order dated 03.03.2022. Owing to take over of the assessee by new management of PSFPL, time was sought by the Ld. AR to prepare the case and represent the matter before the Bench. Subsequently, adjournment applications were filed on 28.07.2022 and 03.11.2022 seeking time to collate the information from the new management. On the last hearing dated 16.01.2023, Ld. AR again sought an adjournment on the same premise which was granted. However, on this present date of hearing on 13.03.2023 none appeared on behalf of the assessee. It is noted that Ld. NCLT had passed its order on 03.03.2022 and it has been more than one year since then. Also these appeals are of the year 2019 which are close to four years old. Considering the above facts, we are inclined to take up the matter ex parte qua the assessee with the assistance of Ld. Sr. DR.

7. We take up the grounds of appeal in seriatim:

8. Addition made in respect of rent paid for flat in Mani towers, Kolkata:

8.1. Assessee has paid rent of Rs. 80,000/- to Shri Vivek Agarwal, Director of the assessee who is a person specified u/s. 40A(2)(b) of the Act. On enquiry in respect of this expenditure, no explanation was furnished in respect of purpose of said flat taken on rent from the Director. It is also noted that in the same tower, assessee owns a similar flat which is let out to one of its group company for an annual rent of Rs.48,000/-. Thus, there is an excess

payment of Rs. 32,000/- when compared to what the assessee is receiving for a similar size of flat in the same tower. Ld. AO has also noted the fact that assessee does not have any branch office for its business activities. Before the Ld. CIT(A), it was submitted that assessee has used this flat for accommodating executives of the company during their official visit to Kolkata. However, nothing corroborative is placed on record to substantiate this claim. Considering all these facts, Ld. CIT(A) noted that assessee has not been able to give any concrete evidence differentiating the two flats in terms of area or other amenities and thus upheld the disallowance made by the ld. AO. Considering these facts on record, we do not find any reason to interfere with the finding given by the Ld. CIT(A). Accordingly, this ground of appeal of assessee is dismissed.

9. Ground no. 2 is in respect of disallowance on professional fees paid by the assessee.

9.1. Assessee had incurred expenditure towards professional fees by making payments to Khaitan & Co., VINL, VISA.Com Trade & Phalguni Bag. Ld. AO enquired about the nature of services rendered in respect of these payments as well as details of TDS thereon which remained unverified as to whether it relates to assessee's business or to earning of rental income or for acquisition of property. In the course of First Appellate Proceedings, Ld. CIT(A) gave relief and allowed 50% of the said professional fees on estimate basis. In our view, Ld. CIT(A) has given appropriate relief to the assessee in absence of any details towards nature of service,

TDS etc. and we have no reason to interfere with the same. Accordingly, ground taken by the assessee in this respect is dismissed.

10. In respect of ground nos. 3 and 4 relating to disallowance of Rs.1,52,722/- towards business promotion expenses and Rs.11,739/- towards telephone expenses, there is nothing corroborative placed on record owing to which Ld. AO disallowed 40% of the business promotion expenses and one fourth of the mobile telephone expenses. From the perusal of the observations made by Ld. AO as well as Ld. CIT(A) that these expenses could not be verified in absence of bills furnished by the assessee, we do not find any reason to interfere with the finding given by the Ld. CIT(A) and accordingly, both the grounds taken by the assessee in this respect are dismissed.

11. Ground no. 5 is in respect of disallowance made u/s. 14A of the Act towards exempt dividend income and profit on sale of investment.

11.1. Ld. AO enquired about the proportionate management expenses incurred by the assessee in earning the exempt income. Assessee had submitted that it has not incurred any expenditure in earning the exempt income and, therefore, no disallowance is called for. However, Ld. AO treated 50% of the remuneration of Mrs. Saroj Agarwal, Managing Director of the assessee which comes to Rs.4,82,722/- as proportionate management expenses for

making a disallowance u/s. 14A of the Act. Ld. CIT(A) confirmed this disallowance.

11.2. From the observations made by the ld. AO, we note that there is no direct nexus which has been established by the Ld. AO for treating 50% of the remuneration of the Managing Director for disallowance u/s. 14A of the Act. Further, provisions of Rule 8D under the Income Tax Rules, 1962 came into effect from 24.03.2008 by IT (5th Amendment) Rules, 2008. The case before us is in respect of AY 2005-06 and the other one being for AY 2007-08 for which Rule 8D cannot be applied. Accordingly, considering the provisions of law and the ad-hoc treatment of considering 50% of remuneration of the Managing Director towards earning of exempt income by the Ld. AO is uncalled for. Accordingly, this ground of appeal taken by the assessee is allowed.

12, Ground no. 6 is in respect of denying the exemption on earning of agriculture income of Rs.7,74,750/-. Assessee has shown agriculture income of Rs.7,74,750/- and claimed expenses thereon of Rs.57,250/- resulting into net exempt agriculture income of Rs.7,17,500/-. Assessee was asked to substantiate the genuineness of agriculture income so earned by it. Assessee furnished the details of land stating that assessee acquired two lands viz., (i) at Merauli, Delhi of 12.99 acres at a cost of Rs.1,77,99,520/- and (ii) at Gautam Buddha Nagar, UP of 3580 sq. yards at a cost of Rs.6,68,78,500/-. However, assessee did not furnish details in respect of wages and other expenses incurred in carrying

out agriculture activity. A statement was furnished giving month wise sale of flowers and certain vegetable crops viz., Khira, Kakri, Bhindi which did not satisfy the authorities below. Further, it was noted that assessee had no assets viz., agriculture tools, irrigation facility, tractor etc. to produce the quantity of flowers and other vegetable crops on the said two lands stated to be at Delhi. Considering this above fact, addition was made in respect of the agriculture receipts of Rs.7,74,750/-. Based on the submission made as noted in the orders of the authorities below and the material available on record, we do not find any reason to interfere with the finding given by the Ld. CIT(A) and accordingly, ground taken in this respect is dismissed.

13. The findings given in this appeal for ground no. 5 and ground no. 6 will apply *mutatis mutandis* to the other two appeals viz., AY 2006-07 and 2007-08.

14. In the result, appeals for AYs 2005-06 and 2007-08 are partly allowed and appeal for AY 2006-07 is dismissed.

Order pronounced in the open court on 28th March, 2023.

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 28th March, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:
 3. CIT(A)-20, Kolkata
 4. CIT, Kolkata
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata