

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
GUWAHATI BENCH, GUWAHATI  
(VIRTUAL HEARING AT KOLKATA)**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER  
AND SHRI SONJOY SARMA, JUDICIAL MEMBER**

**ITA No.26/GTY/2021  
Assessment Year: 2009-10**

Carbon Specialities Limited 53/10, Naya Ganj, Kanpur, Uttar Pradesh-208001. <b>PAN: AAACC 7924 J</b>	Vs.	DCIT, Circle-2, Guwahati
(Appellant)		(Respondent)

**Present for:**

Appellant by : Shri S.P. Bhati, FCA

Respondent by : Shri P.S. Thuingaleng, ACIT.

Date of Hearing : 27.04.2023

Date of Pronouncement :.. 28.04.2022

**ORDER**

**PER RAJESH KUMAR, ACCOUNTANT MEMBER:**

The present appeal has been preferred by the assessee against the order dated 28.02.2020 passed by the Ld. Commissioner of Income Tax (Appeals) -2, Guwahati [hereinafter referred to as the CIT(A)] relevant to AY 2009-10.

2. The only issue raised by the assessee is against the confirmation of disallowance of Rs. 8,44,556/- by ld. CIT(A) as made by the AO u/s 14A of the Act relating to earning of exempt income.

3. The facts in brief are that this is an appeal against the appellate order passed by the ld. CIT(A) which in turn arises out of the assessment framed u/s 263/144 of the Act. The Commissioner revised and set aside the assessment on the ground that expenses relating to exempt income were not disallowed. In the set aside

assessment proceedings, the ld. AO invoked the provisions of section 14A of the Act and made a disallowance of Rs. 13,01,126/- comprising Rs. 3,60,365/- under Rule 8D(2)(i) & Rs. 9,40,461/- under Rule 8D(iii) in the assessment framed u/s 143(3) r.w.s. 263 of the Act dated 31.03.2015. In the appellate proceeding, ld. CIT(A) partly allowed the relief by sustaining the addition to the tune of Rs. 8,44,556/- by following the decision of Delhi High Court in the case of Pr. CIT vs Moderate Leasing And Capital Services Pvt. Ltd. [ITA 102/2018 dated 31.01.2018] against which SLP filed by the revenue before the Apex Court has been dismissed and disallowance was restricted to the amount of exempt income earned during the year.

4. After hearing rival submission and perusing the facts on record, we observe that in this case, the assessee has debited to profit and loss account only Rs. 3,60,665/- as is apparent from copy of profit and loss account filed before us. The total expenditure in the profit and loss account is Rs. 23,64,665/- out of which Rs. 20,00,000/- for Municipal Taxes and Rs. 4,000/- for service tax penalty. We observe that municipal tax has been claimed as deduction from the house property income whereas Rs. 4,000/- was added by the AO to the income of the assessee. Therefore, the balance expenses is only Rs. 3,60,664/-. We further note that the assessee has suo moto made disallowance of Rs. 1,88,417/- and, therefore, the disallowance can only be made of Rs. 1,72,247/- which is arrived at after making allowance of suo motto disallowance. Accordingly, we set aside the order of ld. CIT(A) and direct the AO to restrict the disallowance of Rs. 1,72,247/- apart from suo moto disallowance.

5. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the open court on 28.04.2023.**

**Sd/-  
(SONJOY SARMA)  
JUDICIAL MEMBER**

Kolkata, Dated:..28.04.2022  
Biswajit, Sr. P.S.

**Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER**

Copy to: The Appellant: Carbon Specialities Limited.  
The Respondent: DCIT, Circle-2, Guwahati.  
The CIT, Concerned, Kolkata  
The CIT (A) Concerned, Kolkata  
The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata