

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.1874/Kol/2019
Assessment Year: 2013-14**

S. K. Development Private Limited. 23A, N. S. Road, 10 th Floor, Kolkata-700001. (PAN: AADCS7398K)	Vs.	DeputyCommissioner of Income-tax,Circle- 5(1), Kolkata.
(Appellant) (Respondent)		

Present for:

Appellant by : Shri Manish Tiwari, AR
Respondent by :Shri Vijay Kumar, Addl. CIT

Date of Hearing : 27.04.2023
Date of Pronouncement : 09.05.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This captioned appeal filed by the assessee is against the order of Ld. CIT(A)-2,Kolkata vide order No. 10159/CIT(A)-2/16-17 dated 19.06.2019 against the order of Ld. DCIT, Circle-5(1), Kolkata u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 21.03.2016.

2. Assessee has raised the following grounds of appeal:

1. That on the facts and in the circumstances of the case, Ld CIT(A) has erred in confirming the action of AO who disallowed expenditure amounting to 9,11,817/- on the ground that expenditure being related to house property and not related to business income.

2. That on the facts and in the circumstances of the case, Ld. CIT(A) erred in confirming the addition of Rs. 3,00,000/- on account of deemed dividend u/s 2(22)(e) of the Act.

3. That on the facts and in the circumstances of the case, Ld. CIT(A) erred in giving direction to AO to allow the claim of the appellant u/s 80G amounting to Rs.1,15,000/- after due verification instead of allowing the same on the basis of supporting documents filed before him along with written submissions.

4. that the appellant craves leave to add, alter, adduce or amend any ground(s) on or before the date of hearing of the appeal.”

3. Brief facts of the case as are that assessee is engaged in the business of construction of flats and shops. It filed its return on 30.09.2013 reporting total income of Rs.77,65,910/-. In the course of assessment, Ld. AO made certain additions out of which assessee is in appeal before the Tribunal on the three issues stated in the grounds produced above. We deal with the grounds of appeal in seriatim.

4. Accordingly, on the first ground relating to disallowance of expenditure of Rs.9,11,817/- on the premise that this expenditure relates to house property income and not to a business income, it was submitted by the assessee before the Ld. AO that this amount comprises of two components, one of Rs.3,65,700/- towards brokerage expenses in relation to dealings with immovable properties which are stock-in-trade as the assessee is engaged in the business of real estate and the second component of Rs.5,46,117/- in respect of repairs and maintenance of the house properties.

4.1. At the outset, Ld. Counsel for the assessee did not press for the component of Rs.5,46,117/- relating to repairs and maintenance as it is in respect of house property income.

For the other component of Rs.3,65,700/-, Ld. Counsel referred to the details of its dealings in immovable properties during the year for which brokerage expenses were incurred.

The details are tabulated as under:

Brokerage charges against sale of space

01-Apr-2012 to 31-Mar-2013

<i>Date of Brokerage</i>	<i>Name of person/concern to whom Brokerage paid</i>	<i>Address</i>	<i>PAN</i>	<i>Amount</i>	<i>TDS</i>	<i>Details of property</i>	<i>Date of sale</i>	<i>Sale amount</i>
18.04.2012	Dharmendra Kumar Shaw	FE 488, Sec-III, Salt Lake, Kol-91	DYSPS8219C	21,000	2,100	DN 24, Space 601	30.03.2013	41,55,000
31.01.2013	Dharmendra Kumar Shaw	FE 488, Sec-III, Salt Lake, Kol-91	DYSPS8219C	49,000	4,900	DN 24, Space 601	30.03.2013	96,95,000
12.07.2012	Kolkata Realty Company	HA 45, Sec-III, Salt lake, Kol-106	AHAPA9856H	50,161	5,618	DN24, Space 1006	30.03.2013	11,14,643
21.05.2012	Kolkata Realty Company	HA 45, Sec-III, Salt lake, Kol-106	AHAPA9856H	48,539	5,475	DN24, Space 404	30.03.2013	24,97,175
26.12.2012	Kolkata Realty Company	HA 45, Sec-III, Salt lake, Kol-106	AHAPA9856H	35,000	3,933	DN24, Space 303	30.03.2013	33,58,050
31.10.2012	Kolkata Realty Company	HA 45, Sec-III, Salt lake, Kol-106	AHAPA9856H	81,000	9,101	DN24, Space 1006	30.03.2013	18,00,507
27.06.2012	Manoj Kumar Akela	CF 333, Sec-1, Salt lake, Kol-64	AAIFK9429P	81,000	8,100	DN24, Space 402	27.06.2012	35,05,000
				3,65,700	39,227			2,61,25,375

4.2 Ld. Counsel also referred to the invoices raised in respect of brokerage charges incurred by the assessee for the sale of space and on which TDS was also done. On confrontation of these facts to the Ld. Sr. DR, there was nothing put on record to rebut the same. Considering the facts as submitted and corroborated by the documentary evidence placed on record, we find it proper to allow the claim of the assessee of Rs.3,65,700/- towards brokerage charges. Therefore, this ground of appeal is partly allowed.

5. On the second ground of appeal in respect of addition of Rs.3,00,000/- on account of deemed dividend u/s. 2(22)(e) of the Act, the fact is that assessee had received a loan of Rs.3,00,000/- from Durez Engineers Pvt. Ltd. (DEPL). Ld. AO observed that said company is a related party of the assessee as there is a common director, Shri Ramesh Kumar Nangalia, who holds more than 20% of share in both the companies and thus, has substantial interest in them.

5.1. In this respect, Ld. Counsel for the assessee invited the attention of the bench on the provision contained in section 2(22)(e) of the Act to submit that the primary condition is that payment by a company is to a shareholder who is a beneficial owner of shares holding not less than 10% of the voting power which is treated as deemed dividend. In the present case, Ld. Counsel submitted that assessee is not a shareholder having substantial interest in the lender company i.e. DEPL by way of holding more than 10% of the voting power/shares. The fact which has been taken on

record by the Ld. AO for the purpose of making this addition is that there is a common director between the two companies wherein he holds substantial interest in them. From the audited financial statement, of the assessee in the year under consideration, it is observed from the notes forming part of the financial statement, in Note No. 10 in respect of non-current investments wherein 'disclosure with regard to investments in bodies corporate' are given. From this disclosure it is observed that assessee company has made an investment of Rs.43,000/- comprising of 4300 shares with face value of Rs. 10/- each in the said DEPL. Considering these facts on record, we find it proper to remit the matter back to the file of Ld. AO for examination of these facts along with corroborative evidences to understand if the condition set out in sec. 2(22)(e) of the Act are met to make an addition by treating the loan taken by the assessee from DEPL as deemed dividend within the meaning of the said section. Assessee is given opportunity to furnish necessary documents in this respect to establish its case. Accordingly, this ground of appeal is allowed for statistical purpose.

6. In respect of ground no. 3 wherein claim of the assessee of Rs.1,15,000/- was not allowed u/s. 80G of the Act in absence of relevant documentary evidences, Ld. CIT(A) has accepted the claim of the assessee before whom assessee had furnished the relevant documentary evidence of making a donation to claim a deduction of Rs.1,15,000/- u/s. 80G of the Act. However, Ld. CIT(A) has directed Ld. AO to take evidence and allowed the claim of the assessee if they are sufficient to meet the requirements of the provisions of the

Act. We note that Ld. CIT(A) does not have the power to set aside the issue back to the file of Ld. AO as contained in sec. 250 and 251 of the Act. Since the ld. CIT(A) has taken on record the evidence furnished by the assessee in respect of this claim, however, by noting the non-compliance of provisions of Rule 46A by the assessee, the ld. Counsel prayed for remitting the matter back to the file of Ld. AO for the verification of evidence along with the claim of the assessee. We accordingly, remit the matter back to the file of Ld. AO to verify the sufficiency of the documents placed on record by the assessee for claiming a deduction u/s. 80G of Rs.1,15,000/-. Ld. AO may allow the claim of the assessee on due verification of the evidence furnished by the assessee. Accordingly, ground of appeal is allowed for statistical purposes.

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

Order is pronounced in the open court on 9th May, 2023.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 9th May, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:
 3. CIT(A)-2, Kolkata
 4. CIT, Kolkata
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata