IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA.No.399/Hyd/2022		
Assessment Year: 2013-14		
M/s. Harshini EPC Private Limited, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad – 500082. PAN : AABCC9335N.	Vs.	The Income Tax Officer, Ward – 2(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri P. Murali Mohan Rao	
Revenue by:	Shri M. Naveen Kumar	
Date of hearing:	27.04.2023	
Date of pronouncement:	16.05.2023	

O R D E R

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.25.07.2022 invoking proceedings under section 143(3) of the Act for the assessment year 2013-14.

2. Though assessee has raised as many as six grounds however the effective grounds raised by the assessee read as under :

"1. The ld.CIT(A) erred in confirming the disallowance made of Rs.1,87,154/- in respect of employee's contribution to P.F.

2. The ld.CIT(A) erred in upholding the addition made of Rs.19,71,722/- u/s 14A of the Act r.w Rule 8D of Income Tax Rules, 1962.

3. The ld.CIT(A) having allowed additional ground nos. 15 to 19 taken before him, erred in directing the Assessing Officer to verify the reconciliation statements and to give credit to TDS on satisfying with the conditions as contained in Section 199 of the Act."

3. The brief facts of the case are that assessee is a private limited company engaged in the business of providing consultancy services. Assessee company filed its return of income on 30.09.2013 admitting taxable income of Rs.37,68,770/-. The case was selected for scrutiny and notice u/s 143(2) was issued on 10.09.2014 and duly served on the assessee. In response to notices issued, assessee company furnished the information / explanation as called for. After verification of the information / explanation filed, Assessing Officer had completed the assessment u/s 143(3) of the Act on 31.03.2016 interalia making disallowance of Rs1,87,154/- u/s 36(1)(va) of the Act and Rs.19,71,722/- u/s 14A r.w. Rule 8D of the Act and thereby determined the total taxable income at Rs.59,27,646/-.

4. Feeling aggrieved with the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A)/NFAC who granted partial relief to the assessee.

5. Aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

GROUND NO.1

6. With respect to the disallowance of Rs.1,87,154/- u/s 36(1)(va) of the Act, we found that during the course of assessment proceedings, Assessing Officer noticed that assessee had paid employees contribution towards P.F. amounting to Rs.1,87,154/- after the due dates prescribed under P.F.Act, hence, he disallowed the same and brought it to tax u/s 36(1)(va) of the Act.

7. Before us, ld. AR had submitted that assessee had remitted the payment of employee contribution towards PF within the due date as prescribed under the Act. Since the said amount was paid before the due date for filing of return of income u/s 139(1) of the Act, the same has to be allowed as deduction.

8. On the other hand, ld. DR had submitted that amount of Rs.1,87,154/- towards PF contribution was disallowed by the Assessing Officer and ld.CIT(A) as the assessee has failed to substantiate the deposit of the amount within the time granted by the statute. Ld. DR placed heavy reliance on the authorities below. To justify the conclusions reached by the learned CIT(A) that the assessee is not entitled to claim the deduction in respect of the delayed remittance of the employees' contribution of PF and ESI, he placed reliance on the decision reported in Checkmate Services Pvt. Ltd., Vs. CIT, [2022] 143 taxmann.com 178 (SC). He, however, fairly brought it to our notice that subsequently there

are two decisions rendered by different Co-ordinate Benches of this Tribunal in the case of M/s P R Packaging Service Vs. ACIT in ITA No.2376/Mum/2022 (AY.2019-20) and M/s. Electrical India Vs. ADIT, CPC in ITA No.789/Chny/2022, (AY.2019-20) wherein contrary views are taken in case where the disallowance under section 36(iv)(a) was made while processing the return under section 143(1) of the Act. He submitted that as has been held in P.V. George v. State of Kerala, (2007) 3 SCC 557, the law declared by the Hon'ble Supreme Court will always be retrospective effect, if not otherwise stated to be so specifically.

9. We have heard the rival submissions and perused the material on record. With respect to these two grounds, the lower authorities have failed to make the specific order thereby making it abundantly clear the payments were not made within the time permitted by the parents statute namely ESI, PF and VAT. Hence we are of the opinion that the matter is required to be remanded back for verification to the file of Assessing Officer with a direction to the assessee to produce necessary challans of deposit of the VAT , ESI and PF contribution under the respective Acts within the time granted by the statute. In case, if the assessee produces the said documents to the satisfaction of the Assessing Officer which shows that the assessee had deposited the amount within the time provided by the said Acts(VAT , ESI and PF Act) and in that eventuality, the Assessing Officer shall allow the deduction to the assessee. Needless to say this issue shall be decided by the assessing officer after following the principle of natural justice and after affording opportunity of hearing to the assessee. Thus, this ground of the assessee is allowed for statistical purposes.

GROUND NO.2

10. The second issue relates to the disallowance of expenditure incurred on exempted income u/s 14A of the Act r.w Rule 8D of Income Tax Rules, 1962. During the assessment year, the Assessing Officer had found that the assessee had incurred expenditure in relation to the income which does not form part of the total income and hence, he computed the disallowance amount by applying Rule 8D.

11. Before us, ld. AR had submitted that disallowance u/s 14A is not required to be made as the Assessing Officer has not identified the actual amount of expenditure relating to the investments, the income there from which was exempt and that the Assessing Officer had not appreciated that the investments made by the assessee are for the purpose of business expedience. He further submitted that addition u/s 14A of the Act has to be deleted as the assessee has not earned any dividend income from the said investments.

12. Per contra, ld. DR had relied on the orders of lower authorities and also on CBDT's Circular bearing No.5/2014 dt.11.02.2014 which clarifies that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.

13. We have heard the rival submissions and perused the material on record. By the decision of ACIT Vs. Vireet Investment P. Ltd., (2017) [165 ITD 27] (Delhi) (SB), it was held that no addition u/s 14A of the Act can be made in the hands of the assessee if assessee has not received any exempt income during the year under consideration. In the said decision it was held as under :

> ***"11.6*** *In the backdrop of these facts the Tribunal's order was upheld by the Hon'ble High Court and Hon'ble Supreme Court. The Hon'ble Supreme Court, inter alia, held that it is the purpose of the expenditure that is relevant in determining the applicability of section 57(iii) and that purpose must be making or earning of income. It was further held that section 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of section 57(iii) to suggest that the purpose, for which the expenditure is made, should fructify into any benefit by way of return in the shape of income."*

14. Further, recently, the hon'ble Delhi High Court in the case of Chem Investment (378 ITR 33) and also in the case of CIT Vs. Chettinad Logistics reported in 80 taxmann.com 221 had also decided the issue in favour of the assessee. However, in the present case, the above said fact of assessee is not receiving any exempt income has not been considered by the Assessing Officer, therefore, we deem it appropriate to remand back this issue to the file of the Assessing Officer with a direction to verify whether the assessee had received any exmept income during the year under cosndieration or not. In case, the assessee has not received any exmept income then no disallowance shall be made by the Assessing Officer u/s 14A of the Act. With respect to the retrospective applicability of section 14A, for the pending assessment, in the light of the amendment brought in the Act. This issue had been examined by the hon'ble Delhi High Court in

the case of Era Infrastructure (India) Ltd. 2022] 141 taxmann.com 289 (Delhi) had held that amendment made by Finance Act, 2022 to section 14A by inserting a non-obstante clause and Explanation will take effect from 01.042022 and cannot be presumed to have retrospective effects. In the light of the above, this ground is allowed for statistical purposes.

GROUND NO.3

15. With respect to ground no.3, ld. AR has submitted that Assessing Officer has wrongly considered the TDS credit at Rs.1,43,026/- instead of Rs.10,04,778/- as claimed in the return of income and that credit of TDS is required to be allowed to the amalgamated company in accordance with section 199 read with rule 37BA of the Act when the assessee had included the receipt related to the TDS deducted in the hands of the amalgamated company.

16. Per contra, ld. DR had submitted that the addition made by the Assessing Officer u/s 199 is in accordance with the law.

17. We have heard the rival submissions and perused the material on record. It is an undisputed fact that assessee company along with three other companies have merged with M/s. Cryogeinc Industrial Consultant Pvt. Ltd w.e.f 01.01.2011 as per the judgment dt.09.09.2011 of hon'ble High Court of Andhra Pradesh and subsequently, M/s. Cryogeinc Industrial Consultant Pvt. Ltd was changed to Harshini EPC Private Limited and a fresh Certificate of Incorporation was also obtained by the Company from Registrar of Companies, Andhra Pradesh. In the present case, assessee is claiming credit of the TDS deducted in the name

of the amalgamated entities. However, the assessee would be eligible to claim credit of TDS deducted in the name of amalgamated entities, in case it submits the required evidence like reconciliation statement etc., to substantiate the above said contention. Here, the ld.CIT(A) rightly allowed this issue for statistical pruposes with a direction to the Assessing Officer to verify the reconciliation statement and upon being satisfied with the conditions stipulated in section 199 of the Act, he can permit the credit of TDS balance to the assessee. Hence, we are of the opinion that, no interference is called for to the finding of ld.CIT(A) on this issue. Thus, this ground is also allowed for statistical purposes.

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

Order pronounced in the Open Court on 16th May, 2023.

Sd/-	**Sd/-**
(RAMA KANTA PANDA) **ACCOUNTANT MEMBER**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 16th May, 2023
TYNM/Sr.PS

Copy to:

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1	M/s. Harishini EPC Private Limited, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad – 500082.
2	The Income Tax Officer, Ward – 2(3), Hyderabad.
3	DR, ITAT Hyderabad Benches
4	Guard File

By Order

S.No.	Details	Date
1	Draft dictated on	10.05.2023
2	Draft placed before author	10.05.2023
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	