

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.131/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2009-10)

Mrs. Sudershan Rani Rallan L/H of late Shri Purushotam Nath Rallan 8/32, Karpura Street, Periamet, Chennai-600 003.	बनम / Vs.	ACIT, Circle-XII, Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AFXPP-3810-P		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri Raghav Rajeev Menon (Advocate) – Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri D.Hema Bhupal (JCIT)- Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	27-06-2023
घोषणाकी तारीख / Date of Pronouncement	:	27-06-2023

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2009-10 arises out of the order of learned Commissioner of Income Tax (Appeals)-5, Chennai [CIT(A)] dated 10-03-2020 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143 r.w.s. 147 of the Act on 31-10-2014. The grievance of the assessee is two folds i.e., (i) Disallowance u/s 40(a)(i) for want of TDS on certain foreign payments; (ii) disallowance u/s 14A. The registry has noted delay of 657 days in the appeal. Since the period of delay fall within the exclusion period of

Covide-19 Lockdown period, the delay is condoned and the appeal is admitted for adjudication on merits. Having heard rival submissions, the impugned issues are adjudicated as under. The assessee is manufacturer and trader of raw and finished leather.

2. Disallowance u/s 40(a)(i) / 37(1)

2.1 The assessee paid commission to foreign agents but did not deduct any tax at source against the same. Accordingly, the sum of Rs.31.11 Lacs was disallowed under this head. The Ld. CIT(A), considering the remand report of Ld. AO, deleted addition to the extent of Rs.29.65 Lacs. However, the commission paid to two parties for Rs.1.45 Lacs was confirmed u/s 37(1) since the assessee did not provide any agreement in support of services rendered by these parties. Aggrieved, the assessee is in further appeal before us.

2.2 We find that the payment of commission is to foreign parties through banking channels. The assessee produced relevant invoices etc. and discharged the onus as required u/s 37(1). Therefore, impugned disallowance could not be sustained in law. We order so.

3. Disallowance u/s 14A

3.1 The assessee earned exempt income of Rs.33.14 Lacs and submitted that no disallowance is required u/s 14A since the investment in mutual fund was done in individual capacity. However, Ld. AO computed interest disallowance and indirect expense disallowance u/r 8D(2) for Rs.4.76 Lacs. The Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us.

3.2 We find that there the investment in mutual fund is in individual capacity. Nothing has been brought on record to show that borrowed

funds were used to make the investments or the assessee incurred any business expenditure to earn the exempt income. In the absence of such finding by Ld. AO, the impugned disallowance could not be sustained in law. We order so.

4. The appeal stand allowed.

Order pronounced on 27th June, 2023

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 27-06-2023
DS

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आकर आकृत/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF