

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER  
&  
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

**I.T.A. No. 1267/Kol/2019**  
**Assessment Year: 2014-15**

JCIT (OSD), CC - 2(1), Kolkata	Vs	M/s. Paharpur Cooling Tower Ltd. 8/1B, Diamond Harbour Road Kolkata - 700027 [PAN: AABCP8017C]
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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**C.O. No. 29/Kol/2019**  
**Assessment Year: 2014-15**

M/s. Paharpur Cooling Tower Ltd. 8/1B, Diamond Harbour Road Kolkata - 700027 [PAN: AABCP8017C]	Vs	JCIT (OSD), CC - 2(1), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Navin Verma, C.A. & Shri Nitesh Agrawal, C.A.
Revenue by :	Shri Kapil Mondal, Addl. CIT, D/R

सुनवाई की तारीख/Date of Hearing : 25/07/2023  
घोषणा की तारीख /Date of Pronouncement: 06/09/2023

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The appeal in ITA No. 1267/Kol/2019, has been filed by the revenue directed against the order of the Learned Commissioner of Income Tax (Appeals) - 20, Kolkata (hereinafter 'the Id. CIT(A)') passed u/s 250 of the Income Tax Act, 1961 (hereinafter 'the Act'), dt. 13/03/2019, for Assessment Year 2014-15.

The assessee has filed a cross-objection being C.O. No. 29/Kol/2019, against the appeal filed by the revenue.

2. Facts in brief are that the assessee is a limited company engaged in manufacturing, sale, export, renovation and direction of cooling towers, heat exchangers and part and components thereof, flexible packaging laminate and pouches etc. Case selected for scrutiny through CASS followed by issuance of notice u/s 143(2) and 142(1) of the Act. Various informations were called for to which necessary replies were made and after considering the same the Id. Assessing Officer completed the assessment making various additions assessing the income of the assessee at Rs.160,74,28,958/-. Book profit was also revised at Rs.1,22,67,50,660/-. Aggrieved the assessee preferred appeal before the Id. CIT(A) and partly succeeded.

3. Now, the revenue is in appeal before this Tribunal and assessee has filed cross objection.

4. First, we take up the appeal of the revenue wherein the following grounds of appeal have been raised:-

*"1. That on the facts and circumstances of the case, the Ld. CIT(A) erred by admitting the new evidences produced before the CIT(A) for the first time without directing AO to verify Form 3CM & 3CL as held in DCIT vs. Famy Care Ltd. (ITAT, Mumbai).*

*2. The Ld. CIT(A) erred in deleting the addition made by the AO on account of notional interest income of Rs.2,18,24,346/- received from M/s Swadeshi Polytext Ltd. (SPL) on which TDS on interest paid is also been deducted as per 26AS.*

*3. That on the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition of notional interest income of Rs. 2,18,24,346/- despite the fact that the assessee maintained its accounts on mercantile system of accounting and it was required to consider such interest income when it accrued, but did not consider the same.*

*4. That on the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition on notional interest income despite the fact that the assessee*

*did not file any revised return claiming such deduction on account of reversal entry on interest income as reflected on 26AS statement.*

5. *That the Department craves leave to add, alter or modify any grounds of appeal in the course of Appellate Proceedings."*

5. The ld. D/R vehemently argued supporting the orders of the ld. Assessing Officer as well as the grounds of appeal raised before us.

On the other hand, ld. Counsel for the assessee referred to the key submissions as well as various decisions including the one in the assessee's own case for Assessment Year 2013-14 in ITA No. 217 to 219/Kol/2018 & C.O. No. 94-96/Kol/2018; order dt. 28/02/2020.

6. We have heard rival contentions and perused the material placed before us.

7. Ground No. 1, raised by the revenue states that the ld. CIT(A) erred in admitting the new evidence without directing the Assessing Officer to verify Form 3CM and 3CL. We fail to find any merit in this ground of the revenue for the reason that the Form 3CM has already been placed before the Assessing Officer. In the assessment order at page no. 3 para 4, where the ld. Assessing Officer has dealt with the issue regarding deduction under section 35(2AB) of the Act, he has observed that vide letter dt. 2/12/2016, assessee has submitted the approval granted by the DSIR in Form 3CM. However, 3CL was yet to be obtained from DSIR. So it remains an admitted fact that Form 3CM was duly placed before the Assessing Officer. Thereafter, Form 3CL, was placed before the ld. CIT(A) because the same was not available at the time of carrying out of the assessment proceedings. Further, we

observe that the Co-ordinate Bench of ITAT Mumbai in the case of *DCIT vs. Famy Care Ltd. in ITA No. 1798/Mum/2013; Assessment Year 2009-10, order dt. 26/11/2014*, has held that where Form 3CL is given before the appellate authority since the same could not be submitted before the Assessing Officer, then the appellate authority should grant the relief for expenditure incurred on research and development facility. Respectfully following the same and observing that Form 3CL was filed before the Id. CIT(A), we find no merit in the ground raised by the revenue and the same is dismissed.

8. Ground Nos. 2, 3 & 4 of the revenue relates to the deletion of addition made by the Assessing Officer on account of notional interest income of Rs.2,18,24,346/-.

9. We notice that the assessee gave loan to Swadeshi Polytex Limited (SPL) vide loan agreement dt. 01/12/2007 and interest on the same was duly provided on an year to year basis. As per the loan agreement there was a clause of penal interest which gets triggered if the normal interest has not been paid on time. For the year under consideration, interest of Rs.6.85 Crores, was debited by SPL in its books and TDS was deducted thereon. The said sum included normal interest of Rs.5.17 Crores and penal interest of Rs.1.68 Crores. The assessee has accounted for only the normal interest but did not include the penal interest in its income. It was brought to our notice by the Id. Counsel for the assessee that on 06/03/2014, the assessee company entered into second addendum to the memorandum of understanding with SPL and as per which the assessee company condoned the

default of the borrower. The ld. Counsel for the assessee has referred to the decision of the Tribunal in its own case for Assessment Year 2011-12 to 2012-13, wherein also similar issue came up for consideration and the addition of penal interest was reversed. However, on perusal of the same as well as the orders of the lower authorities we notice that the alleged sum has been termed as notional interest but the facts of the case reveal that it is not notional interest because SPL has been charging it as an expenditure against its income year after year. Therefore, on one hand the borrower company i.e., SPL is booking the alleged amount of interest both including the normal interest and penal interest as an expenditure and on the other hand, the assessee is claiming that this is not real income and it is not received and further an agreement has been entered into. The ld. CIT(A) has deleted this addition based on this observation that it is a notional income and not real income but the ld. CIT(A) failed to consider the fact that it is not notional interest and it is a real interest income which the assessee had agreed with the borrower and it was on the basis of the clause of the original agreement that the penal interest was being charged and the beneficiary was the assessee who has received the penal interest. For all these years when the penal interest was charged, the borrower company was claiming it as an expenditure and in case it was having a positive income then tax benefit was taken. Now for the year under consideration it is claimed that all the penal interest has been reversed. But before us there is no confirmation of SPL being filed along with the income tax return and

financial statement which could prove that the said penal interest has been reversed and it has been offered as income by SPL. This verification is must because SPL is debiting the expenditure towards normal interest and penal interest and deducting tax at source for all these years. Since we are concerned for the year under appeal i.e., Assessment Year 2014-15, we find that the ld. CIT(A) erred in not correctly examining the facts in its entirety and rather the fact of observing notional interest is in itself wrong.

10. Thus, we restore the issue to the ld. CIT(A) with the direction to re-examine the same issue and call for the details of "SPL" from the assessee to satisfy as to whether the penal interest claimed as an expenditure during the year under appeal has been added back to the income and taxes duly offered. Failing to do such exercise will not be in the interest of the revenue. Needless to mention that the assessee be granted sufficient opportunity of being heard. The assessee is directed to produce all relevant documents in support of its claim. Accordingly, Ground Nos. 2, 3 & 4 are allowed for statistical purposes.

11. Ground No. 5 is general in nature.

12. Now we take of the Cross objection filed by the assessee for adjudication. The assessee has raised the following grounds of appeal:-

*"1. That on the facts and in the circumstances of the case, Ld. CIT(Appeals) was not justified and grossly erred in directing the AO to compute the disallowance as per Rule 8D(2)(iii) by excluding the investment from which no dividend income has been earned, without appreciating the fact that actual expenditure incurred towards earning exempt income has already been added back by the respondent.*

2. *That on the facts and circumstances of the case, and without prejudice to Ground No. 1.0 taken here-in-above, Ld. CIT(Appeals) was not justified and erred in not directing the AO to restrict the disallowance u/s 14A to 3% of gross dividend income, following the orders of his predecessor in earlier years in respondent's own case.*

3. *That on the facts and in the circumstances of the case, Ld. CIT(Appeals) was not justified and erred in law in upholding the disallowance of Education Cess debited to Profit & Loss Account amounting to Rs. 1,43,34,114/- on the contention that the same is a part of income tax and hence not allowable.*

4. *That the respondent craves leave to add, amend, modify, rescind, supplement or alter any of the grounds stated here-in-above either before or at the time of hearing of the appeal."*

13. Ground Nos. 1 & 2 relates to disallowance u/s 14A of the Act. So far as Ground No. 2 is concerned, the assessee has taken a plea that the ld. CIT(A) ought to have followed the order of his predecessor of restricting the disallowance only to the extent of 3% of gross dividend income. This ground of the assessee does not hold any merit because there is no method provided under the Act or Rules, which states that disallowance can be made @3% of the gross dividend and such exemption cannot be held to be justified. Accordingly, Ground No. 2 raised by the assessee is dismissed.

14. So far as Ground No. 1 is concerned, the claim of the assessee is that disallowance under Rule 8D(2)(iii), which the ld. Assessing Officer has computed @ 0.5% of the average value of investments, the same should be restricted only to those investments on which dividend income has been earned. To support this contention, reliance

has been placed on the decision of the Hon'ble Calcutta High Court in the case of *CIT vs. REI Agro Ltd.* (ITAT No. 161 of 2013 dt. 23/12/2013).

On the other hand, the Id. D/R opposed this request of the assessee and submitted that the matter be restored to the Id. Assessing Officer for doing necessary examination and verification of the details to be filed by the assessee and for doing the needful as prayed in the grounds of appeal.

15. We have heard rival contentions and perused the material available on record. We notice that during the year the dividend income earned by the assessee is to the tune of Rs.13.67 Crores. The dispute before us relates to the amount of disallowance under section 14A of the Act made on the basis of third limb of Rule 8D(2) i.e., 0.5% of the average value of investments. The Id. Assessing Officer calculated the said amount at Rs.1,85,52,022/- considering the average of total investments at the opening and closing of the year. The prayer of the assessee is that in view of the ratio laid down by the Hon'ble Jurisdictional High Court in the case of *CIT vs. REI Agro Ltd.* (*supra*), the matter may be remitted back to the Assessing Officer for carrying out the exercise to only those investments which fetched exempt income for applying 0.5% rate as per Rule 8D(2)(iii). We find merit in this contention of the assessee and thus restore this issue of computation of disallowance under section 14A r.w.r. 8D(2)(iii), in light of the ratio laid down by the Hon'ble Jurisdictional High Court in the case of *CIT vs. REI Agro Ltd.* (*supra*). The assessee is directed to file

necessary details before the Assessing Officer for doing the needful exercise for which reasonable opportunity shall be granted.

16. Ground No. 3 is dismissed as not pressed.

17. Ground No. 4 is general in nature.

18. **In the result, the appeal of the revenue as well as the cross-objection filed by the assessee are partly allowed for statistical purposes as per the terms indicated hereinabove.**

**Order pronounced in the Court on 6<sup>th</sup> September, 2023 at Kolkata.**

*Sd/-*  
**(SANJAY GARG)**  
**JUDICIAL MEMBER**

*Sd/-*  
**(DR. MANISH BORAD)**  
**ACCOUNTANT MEMBER**

Kolkata, Dated 06/09/2023

*SP SP*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Kolkata