

IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA BENCH 'SMC' KOLKATA

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

**ITA No.804/Kol/2023
Assessment Year: 2014-15**

RIG Consultants Private Limited 6 th Floor, New India Assurance Building, 4 th Lyons Range, Kolkata- 700001. PAN: AADCR 1618 R	Vs.	ITO, Ward-4(1), Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Sunil Surana, AR
Respondent by : Shri S.B. Chakraborty, JCIT, Sr. DR

Date of Hearing : 20.09.2023
Date of Pronouncement : 09.10.2023

ORDER

PER SONJOY SARMA, JM:

This appeal of the assessee for the assessment year 2014-15 is directed against the order dated 27.01.2023 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

- "1. For that the ld. CIT(A) erred in confirming the action of AO in disallowing the expenses u/s 14A when there was no exempt income.*
- 2. For that the ld. CIT(A) erred in confirming the action of AO in adding a sum of Rs. 12,46,264/- as income not credited in the P/L A/c on assumptions.*
- 3. For that the ld. CIT(A) erred in confirming the action of AO in disallowing miscellaneous expenses of Rs. 77,089/- when the same were allowable as per law.*
- 4. For that the ld. CIT(A) erred in confirming the action of AO in disallowing ROC fees of Rs. 1,50,000/- as not allowable when the same was allowable as per law.*

5. For that the order of ld. CIT(A) may be modified and relief be provided to the assessee.”

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2014-15 by declaring loss of Rs. 29,80,712/-. The case of the assessee was selected for scrutiny under CASS followed by notices issued u/s 143(2) and 142(1) of the Act. In pursuance to notices, ld. AR appeared before the AO from time to time. However, the assessing officer while framing the assessment, the assessed income due to not disclosing the following interest income which are as under:

<i>i. U/s 194A</i>	<i>Rs. 2,25,464/-</i>
<i>ii. U/s 193</i>	<i>Rs. 9,97,617/-</i>
<i>iii. U/s 194C</i>	<i>Rs. 19,146/-</i>
<i>iv. U/s 194J</i>	<i>Rs. 4,037/-</i>

Besides the ld. AO disallowed sum of Rs. 18,27,590/- u/s 14A of the Act and also miscellaneous expenses of Rs. 21,27,089/- in the hands of assessee.

3. Dissatisfied with the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

4. Feeling aggrieved by the above order, assessee is in appeal before the Tribunal.

5. The first ground of appeal is that ld. CIT(A) erred in sustaining the addition made u/s 14A of the Act though the assessee company is not received any exempt income during the year under consideration. Therefore, the ld. AR prayed before the bench for deleting the addition made by the authorities below. On this issue, ld. DR submitted that the assessee is not received any exempt income during the year but has made substantial investment during the year. In this context reliance

was placed on the judgment of the Hon'ble Supreme Court in the case of PCIT vs Oil Industry Development Board (2019) 262 Taxmann 102 (SC) wherein it is held that in the absence of any exempt income, disallowance u/s 14A Rule 8D of the Act is not permissible. Further reliance was placed on the following cases:

“(i) Bombay High Court in the case of PCIT vs Ballarpur Industries Ltd. (85 taxmann.com 13)

ii. Cheminvest Limited vs CIT-4 (Delhi HC) (378 ITR 33)”

6. On the other hand, ld. DR supports the decision rendered by the authorities below.

7. We, after hearing the rival submissions of the parties and perusing the material available on record, find that assessee had not earned any exempt income during the year under consideration and it was also accepted by the ld. AO while framing the assessment order that no such exempt income was earned by the assessee. Therefore, in view of the various judicial pronouncements, the addition made by the AO cannot be sustained and we respectfully following the decision rendered by the Hon'ble Supreme Court in the case of PCIT vs Oil Industry Development Board (supra), the instant ground of appeal is hereby allowed. Further, we direct the AO to delete a sum of Rs. 18,25,590/- as made in the case of assessee.

8. The other issue raised by the assessee is that the ld. AO has made an addition of Rs. 12,46,264/- as an income in the hands of assessee on wrong belief. Since the assessee duly reflected alleged income in its financial statement under the head of other income by showing as income from mutual fund investment of Rs. 12,27,114/-. Therefore, the impugned addition made by the ld. AO is uncalled for. The ld. AR in order to substantiate its claim placed before us a copy of balance sheet

along with profit and loss account by showing the income of Rs. 12,27,114/- under the head of other income which is clearly reflected while preparing its profit and loss account.

9. We after hearing the rival submission of the parties and on perusal of the record along with document filed by the assessee, notice that the ld. AO has made an addition of Rs. 12,46,264/- in the hands of assessee. However, while going through the documents placed before us by the ld. AR, we observe that Rs. 12,27,114/- has been clearly shown in its financial statement. However, from the facts of the case, we find that there is still remain a difference of Rs. 19,150/-. Accordingly, we direct the AO to delete a sum of Rs. 12,27,114/- in the hands of assessee as it has already been shown as income in the financial statement of assessee and sustain the remaining sum of Rs. 19,150/-. In terms of above, the issue is partly allowed as indicated above. Since remaining grounds no. 3, 4 and 5 are not pressed by the assessee therefore need not required to adjudicate any more.

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

Order pronounced in the open court on 09.10.2023

Sd/-

**(RAJESH KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated: 09.10.2023
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: RIG Consultants Private Limited.
2. The Respondent: ITO, Ward-4(1), Kolkata.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata