

**IN THE INCOME TAX APPELLATE TRIBUNAL “DB” BENCH: GAUHATI
VIRTUAL HEARING AT KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No.63/Gau/2020
Assessment Year: 2012-13**

Nortech Power Projects (P) Ltd. (PAN: AABCN 7084 P)	Vs.	DCIT, Circle-4, Guwahati
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	25.04.2023
Date of Pronouncement / आदेश उद्घोषणा की तिथि	31.05.2023
For the Appellant / निर्धारिती की ओर से	Shri Sanjay Mody, FCA
For the Respondent / राजस्व की ओर से	Shri N. T. Sherpa, JCIT

ORDER/ आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)- Guwahati-2, Guwahati [hereinafter referred to as ‘Ld. CIT(A)’] dated 12.12.2019 for the assessment year 2012-13.

2. Issue raised in ground no. 1 is against the order of Ld. CIT(A) confirming the disallowance of Rs. 14,11,692/- as made by the AO by invoking the provisions of Section 14A of the Act.

3. Facts in brief are that during the year the assessee had not earned any exempt income and finding to this effect has been recorded by the AO in para 3 of the assessment order but despite that the AO invoked the provisions of Section 14A of the Act thereby making a disallowance of Rs. 14,11,692/- comprising of Rs. 9,61,667/- under Rule 8D2(ii) and Rs. 4,50,025/- under Rule 8D(2)(ii).

4. The Ld. CIT(A) upheld the addition upon wrongly appreciation of facts that the assessee has earned dividend income of Rs. 64,98,835/- which has been camouflaged under the head income from loans and hire charges and thus dismissed the appeal of the assessee.

5. After hearing the rival contentions and perusing the material on record, we find that both the authorities below have given a conflicting finding as to earning of exempt income. The AO has observed that there is no exempt income during the year which has been strongly supported by the A.R during the course of hearing whereas the Ld. CIT(A) has observed that the assessee has earned exempt income of Rs. 64,98,835/- which was strongly objected by Ld. D.R by submitting that this has been wrongly appreciated by the AO whereas the finding of the Ld CIT(A) is correct. It is undisputed and settled position of law that once if no exempt income during the year then no disallowance is called. However in view of the conflicting findings we restore the issue back to the file of AO with the direction to ascertain the exempt of income of assessee and if the assessee has not earned any exempt income during the year no disallowance is to be made. The AO is directed to decide the issue in terms of aforesaid observations of the Bench. The ground is allowed for statistical purpose.

6. Issue raised in ground no. 2 is against the non-allowance of credit of TDS amounting to Rs. 7,08,549/-.

7. After hearing the rival contentions and perusing the material on record, we find that the total TDS deducted as per the assessee during the year was Rs. 46,15,261/- whereas the TDS appearing in Form 26AS was Rs. 43,06,711/-. We note that the AO has allowed credit of Rs. 39,06,712/-. Thus credit was short granted to Rs. 7,08,549/-. Now it was brought to our notice that the total credit appearing in Form 26AS is Rs.

46,15,261/-. The Ld. A.R submitted before us that the AO may be directed to allow the claim of TDS on the basis of TDS certificate which may be filed by the assessee before the AO pursuant to direction of Tribunal and credit may be allowed in terms of the decision of Hon'ble Delhi High Court in the case of Court of its Own Motion vs. CIT [2013] 352 ITR 273 (Delhi). Accordingly we direct the AO to decide the issue and allow the credit to the assessee of TDS of Rs. 7,08,549/- after following the decision in the Hon'ble Delhi High Court in the case of Court of its own motion (supra). The ground is allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order is pronounced in the open court on 31st May, 2023

Sd/-

(Sonjoy Sarma /संजयशर्मा)
Judicial Member /न्यायिक सदस्य

Sd/-

(Rajesh Kumar / राजेश कुमार)
Accountant Member / लेखा सदस्य

Dated: 31st May, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Nortech Power Projects pvt. Ltd. , 602, Lords, 7/1, Lord Sinha Road, Kolkata-700071
2. Respondent – DCIT, Circle-4, Guwahati
3. Ld. CIT(A)-Guwahati-2, Guwahati
4. Ld. PCIT- , Gauhati
5. DR, Gauhati Bench, Guwahati

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata