

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

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

I.T.A. No. 795/Kol/2023
Assessment Year: 2012-13

M/s. S.R. Traders Pvt. Ltd. Goenka House 6, Alipore Park Road Kolkata - 700027 [PAN : AAEC52655N]	Vs	Income Tax Officer, Ward - 11(3), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Smt. Puja Somani, A/R
Revenue by :	Shri P.P. Barman, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 26/09/2023
घोषणा की तारीख /Date of Pronouncement: 01/11/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The above captioned appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "Id. CIT(A)") dt. 06/06/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2012-13.

2. Brief facts of the case are that the assessee is a private limited company engaged in the business of investment in shares, mutual fund, intercorporate deposit etc. Income of Rs.27,42,770/- declared in the return of income for Assessment Year 2012-13 furnished on 26/09/2012. Case selected for scrutiny and after making certain additions/disallowances, income assessed at Rs.65,90,380/-. Aggrieved the assessee preferred appeal before the Id. CIT(A) and partly succeeded.

3. Now, the assessee is in appeal before this Tribunal raising following grounds:-

"1. That, the Ld. CIT(A), NFAC, Delhi vide his impugned appellate order dated 06.06.2023 has directed the Ld. A.O. to verify the issues involved in each of the grounds of appeal when the documents etc. filed before the A.O. in respect of each of the issues were also available with the Ld. C.I.T.(A) and in such circumstances as per provisions of sec. 250(6) of the Act, he ought to have decided the grounds on merits of the case by passing a speaking order.

2. That, without any prejudice to the above, the Ld. CIT(A) erred in directing the A.O. to verify the deduction and deposit of TDS on the professional fees paid of Rs.55,000/- before the due date u/s 139(1) of the Act which was disallowed u/s 194J r.w.s. 40(a)(ia) of the Act in spite of the fact that Form 16A clearly specifying the details of deduction and payment of TDS u/s 194J Form 26Q filed before the A.O. had also been filed before the ld. C.I.T.(A) and the same ought to have been allowed at the appellate stage.

3. That, similarly the Ld. CIT(A) ought to have deleted the disallowance of statutory and obligatory expenditure of Rs.2,90,800/- incurred for business purposes on land revenue tax instead of directing the AO to allow on verification whether Depo rent on letting the shed on the land was brought to tax as income from house property when the audited P/L Account showed the said rent as income from house property.

4. That, the Ld. A.O. erred in disallowing the management fees on PMS of Rs. 1,10,754/- incurred in relation to two debentures portfolios assuming it attributable to exempt income u/r 8D(2)(i) of the Rules and the Ld. CIT(A) even after verifying the ledger of portfolio wise management expenses and admitting this management fees directly related to the taxable interest income has not deleted the disallowance and instead directed the A.O. to verify whether the said management fees on PMS was attributable towards the said two portfolios of debentures.

5a). That, the Ld. A.O. erred in disallowing interest of Rs.32,54,001/-u/s 14A r.w.r. 8D(2)(ii) of the Rules and the Ld. CIT(A) also was not justified in directing the A.O. to restrict the disallowance on loans which were for general purpose u/s 14A on the assessee's alleged failure to demonstrate that no borrowed fund was used for making such investment in spite of the admitted fact that no loan fund was diverted for the purpose of investment in the dividend yielding scrip and the investment in shares was out of sufficient own funds.

5b). That, without prejudice to the above ground, even if it is still to be considered that the loan fund was invested in shares, the disallowance as per settled

law can only be net of interest expenditure with interest income and as the interest earned admittedly was more than the interest paid resulting in no net expenditure, the ld. CIT(A) ought to have deleted the disallowance of interest of Rs.32,54,001/- made u/s 14A r.w.r. 8D(2)(ii) of the Rules instead of directing the A.O. to verify the details.

6a). That, the Ld. A.O. erred in disallowing the sum of Rs.1,37,056/- u/s 14A r.w.r. 8D(2)(iii) of the Rules in spite of the fact that as per Note-14 of the Audited P/L Account no administrative expenditure had been incurred which could even indirectly be attributed to exempt income and the Ld. CIT(A) was, therefore, not justified in not deleting the said arbitrary and unlawful disallowance/addition to the income when he did not find any irregularity in the claim of the assessee.

(b) That, the Ld. CIT(A) was also not justified in directing the A.O. to verify the dividend yielding investment made during the A.Y. under appeal before disallowing Rs.1,37,056/- u/r 8D(2)(iii) of the Rules when the details of dividend yielding investments as appearing in the audited accounts were submitted before the CIT(A) and the assessee's case of PCIT vs. REI Agro Ltd., 140 Taxmann.com 71.

7. That, as the order of the Ld. CIT(A), NFAC, Delhi, restoring the issues raised in appeal back to the A.O. for further verification on the same facts, circumstances and evidences on record is unjust and contrary to provision of sec. 250(6) of the Act, the same should be modified and the appellant be given such relief(s) as prayed for.

8. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or or rescind any or all of the above grounds."

4. The ld. Counsel for the assessee vehemently argued referring to the detailed written submissions filed at the time of hearing, paper book containing 55 pages and also referred to the case-laws in the case-laws paper book containing 20 pages.

4.1. On the other hand, the ld. D/R vehemently argued referring to the orders of the lower authorities.

5. We have heard rival contentions and perused the records placed before us. Ground No. 1 is general in nature. The first issue raised in

Ground No. 2 is regarding disallowance u/s 40(a)(ia) of the Act, for non-deduction of tax at source on the professional fees paid at Rs.55,000/-. We on perusal of the records notice that out of the alleged sum Rs.35,000/- was paid to B H Prasad Sharma on which TDS of Rs.3,500/- was deducted u/s 194J of the Act and balance amount of Rs.20,000/- was paid to Universal Legal on which TDS of Rs.2,000/- was deducted. Copy of Form 16A has been placed on record and the tax at source has been deducted and deposited before the due date of filing of the return of income. All these facts are discernible from records. Therefore, we set aside the findings of the Id. CIT(A) and allow Ground No. 2.

6. Ground No. 3 is raised against disallowance of land revenue tax of Rs. 2,90,800/-. Lower authorities have denied the claim stating it to have been not incurred for business purposes. We find that there is no dispute to the fact that the land revenue tax has been paid during the year on the property on which assessee is earning rental income. The assessee is eligible to claim this deduction against the income from house property. Therefore, even though the claim is not allowable as business expenditure but it is allowable as an expenditure against the house property income and thus there will be no effect on the total income on account of this particular item of expenditure. Thus, the finding of the Id. CIT(A) is set aside and Ground No. 3 is allowed.

7. Ground No. 4 relates to disallowance u/s 14A of the Act of management fees paid on portfolio management services (PMS). On perusal of the records, we notice that the PMS charges has been

incurred by the assessee to manage investment portfolio in relation to investment in IIFL Assets Management Co. Ltd. which was divided between two debenture portfolios, namely, Sri Kodikar NCD and Wadha Unlisted NCD. Interest income earned on said investment at Rs.10,79,605/- stands duly offered to tax. The ld. D/R failed to controvert this fact and, therefore, in our view, since the alleged PMS charges have been incurred for earning interest income, which is not exempt from tax disallowance of management fees paid for PMS is not justified. Accordingly, the finding of the ld. CIT(A) is set aside and Ground No. 4 raised by the assessee is allowed.

8. Ground Nos. 5a) and 5b) relate to disallowance of interest expenditure u/s 14A r.w.r 8D(2)(ii) at Rs.32,54,001/-. On perusal of the audited financial statements, we find that as on 31/03/2012 the own interest free funds available with the assessee in the form of share capital and reserves and surplus is Rs.4,27,89,997/- which is much more than the investment in the equity share which stood at Rs.2,75,07,951/-. We also find that there is no satisfaction recorded at the end of the Assessing Officer so as to indicate that interest bearing funds have been applied during the year or preceding years for making the investments in equity shares and in absence thereof and in light of the judgment of Hon'ble Supreme Court in the case of *CIT vs. Reliance Utilities and Power Ltd. (2009) 313 ITR 340*, it can be safely presumed that entire investment in dividend yielding shares were made out of its own funds. We accordingly delete the disallowance of

interest of Rs.32,54,001/-, made by the Assessing Officer u/s 14A r.w.r. 8D(2)(ii) and allow Ground No. 5a).

8.1. Ground No. 5b) being alternative in nature becomes infructuous as we have already allowed Ground No. 5a).

9. Ground No. 6a) and 6b) pertain to disallowance u/s 14A r.w.r. 8D(2)(iii) of Rs.1,37,056/-. The prayer made by the Id. Counsel for the assessee is that, only the investments which have yielded dividend income should be considered for the purpose of this disallowance and in support reliance was placed on the decision of this Tribunal in the case of *REI Agrol Ltd. vs. DCIT (ITA No. 1331/Kol/2011)* which was subsequently confirmed by the Hon'ble Jurisdictional High Court in *G.A. No. 3581 of 2013*. A working to this effect has also been placed on record by the assessee. On considering the same and also the smallness of the amount which is easily verifiable from the records, we find that disallowance under Rule 8D(2)(iii) of the Rules needs to be restricted only to Rs.22,415/- as against Rs.1,37,056/- made by the Assessing Officer. Thus, the assessee gets part relief. Ground No. 6a) and 6b) are partly allowed.

10. Remaining grounds are general in nature.

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

Order pronounced in the Court on 1st November, 2023 at Kolkata.

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 01/11/2023

Sd/-

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

1. अपीलार्थी / The Assessee
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