

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवालेखा सदस्य के समक्ष ,
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.382/Kol/2023
Assessment Year: 2013-14

M/s Titagarh Capital Management Services (P) Ltd.....Appellant
C/o. M/s Salarpuria Jajodia & Co.,
7, C.R. Avenue, 3rd Floor,
Kolkata-700072.
[PAN: AACCT5853F]

vs.

ITO, Ward-7(2), Kolkata..... Respondent

Appearances by:

Shri S. Jhalaria, AR, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT- Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : August 30, 2023

Date of pronouncing the order : November 21, 2023

आदेश / ORDER

संजय गर्ग, न्यायिकसदस्यद्वारा/ Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 22.02.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The sole issue raised by the assessee through its grounds of appeal is relating to the confirmation of disallowance of Rs.72,84,803/- u/s 14A of the Act r.w.r 8D of the Income Tax Rules on account of notional expenditure for earning of tax exempt income.

3. At the outset, the ld. Counsel for the assessee has submitted that the assessee in the return of income inadvertently out of mistake made

suo moto disallowance of entire expenditure of Rs.72,84,803/- u/s 14A of the Act. However, the assessee realising its mistake, during the assessment proceedings brought to the knowledge of the Assessing Officer that the assessee had also earned interest income of Rs.54,00,207/- and therefore, net interest expenditure was only Rs.18,81,370/-. That the notional interest disallowance u/s 14A r.w.r. 8D of the Income Tax Rules was required to be worked on the net expenditure of Rs.18,81,370/- only. However, the Assessing Officer ignoring the submissions of the assessee, calculated the disallowance u/s 14A of the Act r.w.r 8D of the Income Tax Rules at Rs.51,34,346/- but retained the disallowance at Rs.72,84,803/- only, observing that the assessee, itself, has offered the said amount as disallowance u/s 14A of the Act.

3.1 The ld. Counsel for the assessee, in this respect, has relied upon the decision of the Hon'ble Supreme Court in the case of Commissioner Of Income Tax-LTU vs Reliance Industries Ltd reported in 410 ITR 466. The ld. counsel has further made the following submissions:

1. Ld. AO failed to consider the claim of appellant and in such respect it is submitted that :-

a) Article 265 of the Constitution of India reads that No tax shall be levied or collected except by the authority of law." In terms of the Article 265 of the Constitution, tax can be levied only if it is authorized by law. The taxing authority cannot collect or retain tax that is not authorized. Any retention of tax collected, which is not otherwise payable, would be illegal and unconstitutional.

b) The Supreme Court of India in CIT V. Shelly Products [2003] 261 ITR 367/129 Taxman 271 held that if the assessee has by mistake or inadvertence or on account of ignorance, included in his income any amount which is exempted from payment of income-tax or is not income within the contemplation of law, the assessee may bring the same to the notice of the assessing officer, which if satisfied, may grant the assessee necessary relief and refund the tax paid in cess, if any.

c) In *CIT v. Bharat General Reinsurance Co. Ltd* [1971] 81 ITR 303 (Delhi), this court held that merely because the assessee wrongly included the income in its return for a particular year, it cannot confer jurisdiction on the department to tax that income in that year even though legally such income did not pertain to that year.

d) The Bombay High Court in *Balmukund Acharya v. Dy. CIT, Special Range* [2009] 310 ITR 310/176 Taxman 316 held that Tax can be collected only as provided under the Act. If any assessee, under a mistake, misconception or on not being properly instructed is over assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected.

e) The Bombay High Court in *Nirmala L. Mehta v. A. Balasubramaniam, CIT v.* [2004] 269 ITR 1/139 Taxman 394 held that there cannot be any estoppel against the statute. Article 265 of the Constitution of India unmistakable terms provides that no tax shall be levied or collected except by authority of law. Acquiescence cannot take away from a party the relief that he is entitled to .here the tax is levied or collected without authority of law.

f) Circular No. 14(XL-35) of 1955, dated 1 1.4.1955, issued by the Central Board Direct Taxes and relied upon by the Petitioner reads as under:

"Officers of the department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the department, for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rests with the assessee on whom it is imposed by law, officers should -

(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other:

(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs".

g) A reading of the circular shows that a duty is cast upon the assessing officer to assist and aid the assessee in the matter of taxation. They are

obliged to advise the assessee and guide them and not to take advantage of any error or mistake committed by the assessee or of their ignorance. The function of the Assessing Officer is to administer the statute with solicitude for public exchequer with an inbuilt idea of fairness to taxpayers. ACIT v. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) 291 ITR 500/161 Taxman 316 (SC).

Hence the claim of the appellant as made before the AO should have been considered by the A.O and allowed accordingly.”

4. The ld. DR, on the other hand, has relied upon the findings of the lower authorities.

5. We have considered the rival submissions. It has been held time and again by the Hon'ble Apex Court and various High Courts that the Income Tax Authorities are supposed to charge legitimate taxes from an assessee. Income Tax Authorities are not supposed to punish the taxpayers for their bona fide mistakes, rather, it has been held time and again that the Assessing Officer/Income Tax Authorities should assist the assesseees for determining and charging their correct tax liability. They are not supposed to work as post office to put stamp on the mistakes of the assessee and charge higher tax than that they are not statutorily entitled to. In case in hand, the counsel of the assessee has demonstrated that there was interest income of Rs.54,00,207/- and in view of the law laid down by the Hon'ble Supreme Court in the case of Commissioner Of Income Tax-LTU vs Reliance Industries Ltd reported in 410 ITR 466, wherein, the Hon'ble Supreme Court confirmed the proposition of law that if the own funds/interest free funds are available with the assessee to meet the investment, presumption will be that the assessee has used own interest free funds for the said investment. In view of this, the interest expenditure disallowance u/s 14A was required to be worked on the balance interest expenditure of Rs.18,81,370/- only. Further, as held by the various High Courts, the

disallowance u/s 14A has to be worked by taking the investment yielding dividend income if there is no exempt income, no disallowance is attracted. The ld. counsel, in this respect, has relied upon the following case laws:

Cheminvest Ltd. vs. CIT 378 ITR 33 (Del).

CIT vs. M/s. Holcim India Pvt. Ltd. in ITA no. 486/2014 and ITA no. 299/2014; Judgment dt. 5-9-2014

CIT v. Shivam Motors (P.) Ltd. [2015] 230 Taxman 63

CIT vs. Ashika Global Securities Ltd. (G.A. No. 2122 of 2014) dt. 11/06/2018

We accordingly direct the Assessing Officer to work out the disallowance on the net interest expenditure of Rs.18,81,370/- by taking the investments which yielded dividend income. The Assessing Officer is also directed to work out disallowance u/s 115JB accordingly as per directions given above.

6. In the result, the appeal of the assessee stands allowed.

Kolkata, the 21st November, 2023.

Sd/-

[गिरीश अग्रवाल/Girish Agrawal]

लेखा सदस्य/Accountant Member

Sd/-

[संजय गर्ग/Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 21.11.2023.

RS

Copy of the order forwarded to:

1. M/s Titagarh Capital Management Services (P) Ltd
2. ITO, Ward-7(2), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches