

आयकर अपीलिय अधिकरण, कोलकाता पीठ 'एसएमसी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “(SMC)” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 926/Kol/2023
Assessment Year : 2013-14

M/s Sunny Motors pvt. Ltd. (PAN: AA ECS 9247 G)	Vs.	ITO, Circle-5(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	02.11.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	30.11.2023
For the Appellant/ निर्धारिती की ओर से	Shri Siddharth Jhajharia, FCA
For the Respondent/ राजस्व की ओर से	Shri Manoj Kr. Pati, JCIT

ORDER / आदेश

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)- NFAC [hereinafter referred to as 'Ld. CIT(A)'] dated 20.07.2023 for the assessment year 2013-14.

2. The First issue raised in ground nos. 1 and 2 is against the order of Ld. CIT(A) confirming the addition of Rs. 33,500/- as made by the AO u/s 14A read with Rule 8D by ignoring the fact that during the year the assessee has not earned any income.

3. After hearing the rival contentions and perusing the material on record, we find that during the year the assessee has not earned any exempt income and finding to this

effect has been recorded in the appellate order. However despite the assessee not having any exempt income the AO has made addition of Rs. 33,500/- which was affirmed by the Ld. CIT(A). In our opinion, the said addition is unwarranted as the issue is clearly settled in favour of the assessee . Since the assessee did not have any exempt income and therefore disallowance cannot be made. The case of the assessee is squarely covered by the decision of the Hon'ble Apex Court in the case of Maxopp Investment Pvt. Ltd. vs. CIT, New Delhi in [2018] 91 taxmann.com 154 (SC) wherein similar issue has been allowed by the Hon'ble Apex Court. Consequently we set aside the order of Ld. CIT(A) on this issue and direct the AO to delete the addition. The ground no. 1 and 2 are allowed.

4. Second issue raised in ground nos. 3,4 & 5 is against the part confirmation of addition to the extent of 33% of total car washing expenses thereby affirming the addition to the extent of Rs. 27,63,307/- while deleting the addition of Rs. 18,42,204/- out of Rs. 46,05,511/-.

5. Facts in brief are that the AO observed from the profit and loss account that the assessee has charged a sum of Rs. 92,11,020/- as the car washing expenses and accordingly called upon the assessee to furnish the details which were also filed before the AO. The assessee is a dealer and was in the business of selling vehicles and spares and providing after sales services to its customers. It was contended before the AO that the assessee has regular employees who used to carry out these services for the customers however when the vehicles increasing beyond a point and lining up for washing, then the assessee used to hire the casual labours who are paid on daily basis after completion of job. This is done as the regular staff of the assessee was not able to attend to these services beyond a point. The assessee furnished before the AO the details as desired however the AO observed that the assessee in respect of outsourcing the services prefer to employee to casual workers for which the assessee has not given any evidences and consequently disallowed 15% of the total expenses which comes to Rs. 46,05,511/- and added the same to the income of the assessee in the assessment framed.

6. In the appellate proceedings the Ld. CIT(A) partly allowed the appeal of the assessee by deleting the addition to the tune of Rs. 18,42,294/- which comes 20% of the total car washing by sustaining the addition to the tune of 30% which comes to Rs. 27,63,950/-. The Ld. CIT(A) recorded a finding that the part sustaining of addition to the tune of 30% of the total expenses would automatically cover leakage if any as well as the violation of provisions of Section 194C of the Act. The Ld. CIT(A) also noted in the appellate order that though the similar expenses were allowed fully in the preceding and succeeding assessment years, however there is no bar on disallowing these expenses during the year.

7. After hearing the rival contentions and perusing the material on record, we observe that the AO has disallowed 50% of the car washing expenses purely on hypothetical basis without giving any cogent findings. The assessee has regular employees who are rendering services in respect of car washing. However the assessee chose to employ workers on daily basis to do the job instead of giving work on contractual basis. In our opinion the AO's observation are not based on any facts and also that no deficiency or shortcoming was pointed out in the books of account. Similarly the Ld. CIT(A) has partly sustained the addition on presumption and conjectures that the sustaining of addition to the tune of 30% of the total expenses would cover overbooking of expenses if any as well as violation of provision of Section 194C which is again purely on hypothetical basis by not even bring any thing record any solitary evidence of over booking of expenses or failure of assessee in deduction of tax at source . We are also mindful of the fact that in the preceding and succeeding years the similar expenses claimed by the assessee were fully accepted even in the scrutiny proceedings. Considering these factual matrix, we are not in a position to sustain the order of Ld. CIT(A) affirming the part addition. Accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete the entire addition. Accordingly the ground no. 2 to 5 are allowed.

8. In the result, appeal of the assessee is allowed.

Order is pronounced in the open court on 30th November, 2023

Sd/-

(Rajesh Kumar/राजेश कुमार)

Accountant Member/लेखा सदस्य

Dated: 30th November, 2023

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Sunny Motors Pvt. Ltd., C/o, M/s Salarpuria Jajodia & Co., 7, C.R. Avenue, 3rd Floor, Kolkata-700072
2. Respondent – ITO, Circle-5(1), Kolkata
3. Ld. CIT(A)- NFAC
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata