

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

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 741/Kol/2022
Assessment Year : 2012-13

Jiwanram Sheoduttrai Industries Pvt. Ltd.	vs	ACIT, Range-8, Kolkata
AAACJ 7420 L		
Appellant		Respondent

Date of Hearing	26.10.2023
Date of Pronouncement	17.01.2024
For the Assessee	None
For the Revenue	Mr. P.P. Barman, Addl. CIT, Sr. DR

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2012-13 is directed against the order dated 20.10.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

"1. For that, the appellate Order of the Ld. CIT (A) NFAC dated 20/10/2022, rejected the grounds raised for disallowing the Rs 1,82,763/- u/s 14A r.w. ruled 8D which is wrong and unwarranted, uncalled for bad in law and hence should not be sustain under the facts and circumstances of the case.

2. For that, the order of the Ld. CIT (A) NFAC dismissing the appeal as per order dated 20/10/2022 OF Rs 6,65,523/- u/s 40(a) (ia) was also wholly unjustified and unwarranted and bad in law under the facts and circumstances of the case.

3. For that, the order of the Ld. CIT (A) NFAC dismissing the appeal as per order dated 20/10/2022 of Rs 4,12,988/- u/s 43B was also wholly

bad in law unwarranted and uncalled for under the facts and circumstances of the case.

4. For that, without considering the additional grounds filed before the Ld. CIT(A)-3 Kolkata dated 11/09/2018, passing order dated 20/10/2022 of Rs. 4,52,535/- u/s 36(1) (av) and u/s 2(24) (x) which is unwarranted and bad in law and therefore should not be sustain under the facts and circumstances of the case.

5. For that, the appellate order of the Ld. CIT (A) NFAC dated 20/10/2022 was decided on merit and records available, for non compliance the appellate which is unwarranted, uncalled for and bad in law hence should not sustained under the facts and circumstances of the case.

6. For that, the appellant craves leave to add, amend, alter, vary and/or withdraw any or all the above grounds of Appeal.”

2. At the time of hearing, no one turned up. Although repeated notices were issued to the assessee from time to time from the registry therefore, we have no other option but to decide the appeal ex-parte with the assistance of ld. DR.

3. Brief facts of the case are that assessee is a private limited company filed its return of income for the A.Y. 2012-13 by declaring an income of Rs. 3,13,63,999/- and book profit u/s 115JB of the Act at Rs. 1,88,63,790/-. The case of the assessee was selected for scrutiny through CASS followed by statutory notices issued under the provisions of the Act. In response to the notice, the ld. AR of the assessee appeared before the ld. AO time to time and furnishes various details and submissions as asked for. After considering the submission of the assessee, the ld. AO disallowed various expenses as claimed by the assessee in following manner:

- i. Disallowance of wrongly claimed expenditure u/s 14A/8D of Rs. 1,82,763/-.*
- ii. Disallowance of expenditure on unapproved gratuity scheme of Rs. 5,94,573/-.*
- iii. Disallowance of expenditure u/s 40(a)(ia) for failure to deduct tax of Rs. 6,65,523/-.*
- iv. Deposit of employees contribution to PF & ESI beyond due date of Rs. 4,52,535/-.*
- v. Disallowance of leave encashment not paid within specified date of Rs. 4,12,988/-.*
- vi. Disallowance of penal charges for default in payment of statutory dues of Rs. 3,07,830/-.*
- vii. Disallowance of donation expenditure not related to business of Rs. 4,25,000/-.*
- viii. Undisclosed commission income deducted from 26AS of Rs. 18,968/-."*

4. Based upon the above addition, the total income of the assessee for the A.Y. 2012-13 was assessed u/s 143(3) of the Act at Rs. 3,52,45,587/- and book profit which was assessed at Rs. 3,09,44,192/-.

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

6. Aggrieved by the above order, assessee is in appeal before the Tribunal. The first ground of appeal is in relation with disallowance of Rs. 1,82,763/- made u/s 14A r.w. rule 8D of the Act. On this issue, the ld. DR stated that assessee has invested in shares and claimed exempt income of Rs. 10,22,953/- by way of dividend. At the time of framing of assessment, the submission of the assessee was that no expenditure had been incurred for earning such income and assessee was unable to bifurcate the fund utilized for making

such investment from loans and its own sources. Therefore, the ld. AO computed the disallowance of expenditure as per section 14A r.w. rule 8D by disallowing sum of Rs. 1,82,763/- in the hands of assessee which was in accordance with CBDT's circular. Similarly while passing the impugned order, the ld. CIT(A) also look into the facts of the case and did not find any infirmity in the issue in relation with disallowance of Rs. 1,82,763/- as made by the AO by applying rule 8D and ground taken by assessee was rejected. Therefore, ld. DR prayed before this bench to sustain the order of ld. CIT(A) on this issue by rejecting the grounds taken by the assessee.

7. We after going through the facts of the case and perused the record find that instant disallowance of Rs. 1,82,763/- as made by AO which was applying rule 8D while framing the assessment order was correct since assessee has failed to furnish the details of fund utilized for making such investment whether those from loans and on its own funds before the AO as well as ld. CIT(A). Therefore, both the lower authority has no other option but to sustain the order passed by the ld. AO on this issue. Even before us, the assessee has failed to controvert the fact by producing any supported document to prove the fact in its favour. Therefore, we do not find any infirmity in the order passed by the ld. CIT(A) on this issue. Accordingly, the issue raised by the assessee is hereby dismissed.

8. Ground no. 2 is in relation to expenses incurred towards contractual payment for which TDS was not deducted and on which the ld. AO disallowed the expenditure amounting to Rs. 6,65,523/-

in the hands of assessee u/s 40(a)(ia) of the Act. The contention of the ld. DR on this issue is that at the time of hearing before the ld. AO, the assessee has failed to submit any fruitful submission as to why TDS was not deducted on the alleged payment made by the assessee. The assessee has only submitted before the AO by stating that it was inadvertent lapse and given small quantum involved could not deposit. They had no objection to the proposed disallowance and thus the AO added such expenditure amounting to Rs. 6,65,237/- in the hands of assessee. Similarly, when the matter was pending before the ld. CIT(A), assessee did not controvert the fact by submitting any supported document or objection in this regard and the ld. CIT(A) sustained the order passed by the AO. Therefore, there is no need to interfere on the above issue by this Tribunal as prayed by the ld. DR before the bench.

9. We after examining the facts of the case and considering the submission of the ld. DR find that when the assessee has failed to substantiate its ground before the AO as well as ld. CIT(A) on the issue involved. Therefore, the ld. CIT(A) sustained the order of ld. AO, as assessee stated before the AO that due to inadvertent lapse assessee could not deduct TDS and had no objection to the proposed disallowance made by the AO. Therefore, sustaining the order of AO by ld. CIT(A) is correct and accordingly we dismiss the ground taken by the assessee on the instant issue involved.

10. Ground no. 3 is in relation with leave encashment where assessee has failed to pay leave encashment to the employees

amounting to Rs. 4,12,988/- before the date of filing of return u/s 139(1) of the Act as required u/s 43B of the Act which according to the assessee is unjustified, unwarranted and bad in law. The contention of the ld. DR on this issue brought to our notice that while passing the order by the ld. AO, the assessee itself accepted its mistake and offer the same for disallowance before the ld. AO while framing the assessment order. Therefore, the ld. AO added an amount of Rs. 4,12,988/- in the hands of assessee. As the assessee failed to pay leave encashment to employees before due date of filing of return u/s 139(1) of the Act. Similarly, while passing the order, the ld. CIT(A) also did not find any infirmity in the order of AO and sustain the order of ld. AO on this issue.

11. We after considering the submission of ld. DR and examining the facts of the case find that the alleged leave encashment amounting to Rs. 4,12,988/- assessee had failed to deposit before due date of filing of return. Therefore, the ld. CIT(A) has no other option but to upheld the order passed by the ld. AO. Similarly, at the time of hearing before us, the assessee has failed to controvert the fact as stated by the authority below in the impugned order. Therefore, we reject the ground taken by the assessee and sustained the order passed by the ld. CIT(A) on this issue.

12. Ground no. 4 is in relation with on account of employees contribution of PF & ESI beyond due date as prescribed under the Act. Accordingly, the ld. AO while framing the assessment, the ld. AO added an amount of Rs. 4,52,353/- in the hands of assessee u/s 36(1)(va) and u/s 2(24)(x) of the Act. On this issue, the

contention of the assessee in its ground of appeal is that the above addition was unwarranted and bad in law. The ld. DR on the instant issue raised by the assessee stated that instant issue involved come to the rest by the recent verdict of the Hon'ble Supreme Court in Chekmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC) dated 12.10.2022 wherein it has been held that "*deduction u/s 36(1)(va) in respect of delayed deposit of amount collected towards employees' contribution to PF cannot be claimed when deposited within the due date of filing of return even when read with Section 43B of the Income-tax Act,1961.*"

13. Accordingly, we follow the decision of Hon'ble Supreme Court as in the case of Checkmate Services Pvt. Ltd. vs CIT (supra) decide the issue against the assessee.

14. In ground no. 5 & 6 is consequential and general in nature therefore need not required to the adjudicated.

15. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 17.01.2024.

Sd/-

Sd/-

(Dr. Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 17.01.2024
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant – Jiwanram Sheoduttrai Industries Pvt. Ltd., 30D, Jawaharlal Nehru Road, Park Street, Kolkata-700016.
2. Respondent – ACIT, Range-8, Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata