

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA

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

I.T.A. No. 1411 & 1412/Kol/2023
Assessment Year: 2018-19 & 2020-21

Syama Prasad Mookerjee Port 15, Strand Road Kolkata - 700001 [PAN : AAAJK0361L]	Vs	Deputy Commissioner of Income tax, Circle -34, Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri K. M. Sundaram, C.A.
Revenue by :	Shri Rakesh Kumar Das, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 21/02/2024
घोषणा की तारीख /Date of Pronouncement: 08/04/2024

आदेश/ORDER

PER BENCH :

Both these appeals are directed at the instance of the assessee against the order of the National Faceless Appeal Centre - Delhi (hereinafter the "1d. CIT(A)") dt. 27/10/2023 for the Assessment Year 2018-19 and dt. 06/11/2023 for the Assessment Year 2020-21 passed u/s 250 of the Income Tax Act, 1961 ("the Act").

2. The assessee has raised the following grounds of appeal for Assessment Year 2018-19:-

"1. Disallowance of Rs.68,13,600 u/s 14A r.w.r. 8D(2)(ii) is liable to be deleted for the following reasons since the undisputedly the appellant had NIL exempt income and that the entire investments are made in port related strategic entities out of its own funds.

a) As duly mentioned in Paragraph No.8.7 of the impugned order, the issue of whether the Explanation to section 14A inserted w.e.f. 01.04.2022 is prospective or retrospective is not settled and Hon'ble High Court of Delhi has held it to be applicable prospectively, namely w.e.f. AY 2022-23, which subsequent to the subject AY 2018-19.

b) This disallowance is to be restricted to Rs.NIL as per ratio held in the case of *PCIT v State Bank of Patiala* [2018] 99 [Taxmann.com](#) 285 (Haryana) affirmed by the Hon'ble Apex Court reported as [2018] 99 [taxmann.com](#) 286 (SC), since the undisputedly the appellant had NIL exempt income.

c) This disallowance is made @ 1 % of the "average of Opening balance and Closing balance of Investments" which is **other than what is prescribed in rule 8D((2)(ii))**, namely @ 1% of the "annual average of the monthly averages of the opening and closing balances of the value of investment".

2. The appellant prays the permission to add, modify any further grounds and to furnish additional evidences during the course of appellate proceedings."

2.1. The assessee has raised the following grounds of appeal for Assessment Year 2020-21:-

"1. Disallowance of Rs.21,13,100 u/s 14A r.w.r. 8D(2)(ii) is liable to be deleted for the following reasons since the undisputedly the appellant had NIL exempt income and that the entire investments are made in port related strategic entities out of its own funds.

a) As duly mentioned in Paragraph No.8.7 of the impugned order, the issue of whether the Explanation to section 14A inserted w.e.f. 01.04.2022 is prospective or retrospective is not settled and Hon'ble High Court of Delhi has held it to be applicable prospectively, namely w.e.f. AY 2022-23, which subsequent to the subject AY 2020-21.

b) This disallowance is to be restricted to Rs. NIL as per ratio held in the case of *PCIT v State Bank of Patiala* [2018] 99 [Taxmann.com](#) 285 (Haryana) affirmed by the Hon'ble Apex Court reported as [2018] 99 [taxmann.com](#) 286 (SC), since the undisputedly the appellant had NIL exempt income.

c) This disallowance is made @ 1 % of the "average of Opening balance and Closing balance of Investments" which is other than what is prescribed in rule 8D((2)(ii)), namely @ 1% of the "annual average of the monthly averages of the opening and closing balances of the value of investment".

2. Addition of Rs.5,35,626 u/s 41(1) is liable to be deleted for the following reasons.

a) *This addition is made solely based on the ledger sheets provided by 2 parties for the relevant previous year without verifying whether each of the transaction recorded in the ledger sheets (including opening balances) by these 2 parties leading to a debit balance in the name of the appellant is correct or not;*

b) *This addition is made without providing an opportunity to the appellant to cross examine these 2 parties to validate / negate the genuineness of each of the transaction recorded in these ledger sheets which led a debit balance in the name of the appellant.*

3. *The appellant prays the permission to add, modify any further grounds and to furnish additional evidences during the course of appellate proceedings."*

3. The first common issue involved in both these appeals is against the disallowance u/s 14A r.w.r. 8D(2) of the Act. Undisputedly, the assessee had not earned any exempt income during the year. We find that the ratio laid down in the case of *PCIT Vs. Era Infrastructure (India) Ltd. (ITA 204/2022) judgment dt. 20/07/2022*, wherein the Hon'ble Court has held that the amendment made in Section 14A of the Act by Finance Act, 2022, will be applicable prospectively and also held that *disallowance u/s 14A of the Act should not exceed the exempt income earned by the assessee during the year*, is squarely applicable and no disallowance is called for in the present case. The common issue raised in both the years are allowed.

4. Another issue solely raised for Assessment Year 2020-21, pertains to the addition u/s 41(1) of the Act at Rs.5,35,626/-. Facts in brief pertaining to this ground are that the assessee which is a Government of India undertaking filed its return of income for Assessment Year 2020-21 on 30/03/2021. Case selected for complete scrutiny followed by issuance of notice u/s 143(2) & 142(1) of the Act.

So far as the issue relating to addition u/s 41(1) of the Act is concerned at Rs.5,35,626/-, the Id. Assessing Officer was in possession of information as per which M/s. Premco Rail Engineers Ltd. and Ripley & Company Limited, booked the expenditure under the head bad debts written off at Rs.1,00,000/- and Rs.4,35,626/- claimed to be irrecoverable from the assessee company. Based on this information, the Id. Assessing Officer asked the assessee to reply as to whether it had booked any income in the books of accounts. However, the assessee stated that it had no closing balance of these concerns in its books but the Id. Assessing Officer was not satisfied and he made and addition u/s 41(1) of the Act at Rs.5,35,626/-.

5. Appeal against this addition before the Id. CIT(A) did not bring an relief to the assessee, even when the ledger accounts were filed, stating that no such balance is appearing and the last transactions which took place with these companies were before many years and the same were squared off.

6. Aggrieved the assessee is now in appeal before this Tribunal.

7. The Id. Counsel for the assessee submitted that they have not dealt with these two companies in the year under appeal nor there is any brought forward balance of these concerns as sundry creditors. Though there were certain transactions entered with these concerns in the past, but they were squared off. He further submitted that if an opportunity is granted, it can be explained before the lower authorities that no addition is called for u/s 41(1) of the Act as there was no liability standing in the name of the two companies, namely, M/s. Premco Rail Engineers Ltd. and Ripley & Company Limited.

8. On the other hand, the ld. D/R, vehemently argued supporting the orders of the lower authorities.

9. We have heard the rival contentions and perused the material placed before us. We notice that the assessee is a Government of India undertaking. Copies of ledger account of M/s. Premco Rail Engineers Ltd. and Ripley & Company Limited, have been filed demonstrating that last transactions which took place with M/s. Premco Rail Engineers Ltd. was upto FY 2013-14 and that with Ripley & Company Limited was upto FY 2017-18 and also as on the opening of the financial year 2019-20, relevant to Assessment Year 2020-21, there is no opening credit balance in the name of these two parties. Further no transactions were carried out during the year and, therefore, as on 31/03/2020, there is Nil balance in the account of both these companies. Therefore, in absence of any liability in the books of accounts, provisions of Section 41(1) of the Act cannot be invoked as the same refers to cessation of trading liability. In other words, liability standing in the books is *sine qua non* before proceedings to examine the transactions under Section 41(1) of the Act. Considering the prayer of the ld. Counsel for the assessee for admission of additional evidence under Rule 29 of the Income tax Rules and also considering the facts which *prima facie* suggests that there was no liability in the books of accounts in the name of the two concerns, namely, M/s. Premco Rail Engineers Ltd. and Ripley & Company Limited, we are inclined to restore the issue to the file of the jurisdictional Assessing Officer for a fresh adjudication in light of the submissions of the assessee as well as the additional evidence adduced by the assessee. Needless to mention

that the assessee shall produce all necessary documents/evidence, in support of its claim before the Assessing Officer and shall co-operate till the disposal of its appeal. Accordingly, this Ground relating to addition u/s 41(1) of the Act raised by the assessee is allowed for statistical purposes.

10. In the result, appeal of the assessee in ITA No. 1411/Kol/2023 for Assessment Year 2018-19 is allowed and ITA No. 1412/Kol/2023 for Assessment Year 2020-21 is partly allowed for statistical purposes.

Order pronounced in the Court on 8th April, 2024 at Kolkata.

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 08/04/2024

SJC S.P.

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Revenue
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