

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

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 301/Kol/2024
Assessment Year: 2018-19

Ganpati Industrial Private Limited Nicco House, 2, Hare Street Dalhousie, 3 rd Floor Kolkata - 700001 [PAN: AAACG9441Q]	Vs	Deputy Commissioner of Income Tax, Central Circle - 4(2), Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Ramesh Kumar Patodia, Advocate
Revenue by :	Shri Manas Mondal, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 30/04/2024
घोषणा की तारीख/Date of Pronouncement : 03/06/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The instant appeal is directed at the instance of the assessee against the order of the learned Commissioner of Income Tax (Appeals), Kolkata - 27, [hereinafter the "ld. CIT(A)"] dt. 16/12/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2018-19.

2. The first issue raised is against the disallowance u/s 36(1)(va) r.w.s. 2(24)(x) of the Act at Rs.2,41,350/-. Since there is a delay in the payment of delayed deposit of employees' contribution to PF & ESI. We find that this issue is no more *res integra* in view of the judgment of the Hon'ble Supreme Court in *Checkmate 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/ESI cannot be claimed even though deposited within the due date of filing of return of income read with Section 43B of the Income-tax Act, 1961". Under these circumstances, the amount is liable to be added as income in the hands of the assessee. The disallowance of Rs.2,41,350/- is hereby confirmed and the Ground No. 6 raised by the assessee is dismissed.

3. The next issue for our consideration is against the disallowance u/s 14A of the Act at Rs.28,45,042/-. Facts in brief relating to this issue are that the assessee is a private limited company and derives income from business and profession and income from capital gain. Declared income of Rs. 53,81,20,480/- in the e-return filed on 04/10/2018 during the course of assessment proceedings, carried out after serving notice u/s 143(2) and 142(1) of the Act. The ld. Assessing Officer noticed that the annual average monthly investment fetching/could fetch exempt income is Rs. 28,45,042/-. The ld. Assessing Officer observing that the assessee has not offered any *suo moto* disallowance applied Rule 8D(2) and calculated the disallowance at Rs.28,45,042/- by applying the rate of 1% on Rs.28.45 Crores. In the appellate proceedings before the ld. CIT(A), assessee failed to succeed.

4. Now, the assessee is now in appeal before this Tribunal.

5. The ld. Counsel for the assessee referred to the paper book, more particularly page 62 and stated that the average monthly investment which have given rise to the exempt income, should only be considered for computing the disallowance u/s 14A of the Act. Referring to page 62 of the paper book, he submitted that the ld. Assessing Officer has taken those investments also which have not given rise to any exempt

income. He thus prayed that the investments which have not yielded any exempt income should be excluded for calculating the disallowance. He also stated that the Hon'ble Delhi High Court in the case of *PCIT Vs. Era Infrastructure (India) Ltd. (ITA 204/2022) judgment dt. 20/07/2022* has held that the disallowance u/s 14A of the Act should not exceed the exempt income earned by the assessee during the year. Further reliance was placed on the decision of the Hon'ble Apex Court in the case of *PCIT vs Oil Industry Development Board (2019) 262 Taxmann 102 (SC)* wherein the Hon'ble Apex Court dismissed the revenues appeal referring to the decision of *Cheminvest Limited vs. Commissioner of Income Tax-VI, (2015) 378 ITR 33*, wherein it has been ruled that in absence of any exempt income, disallowance u/s 14A of the Act is not permissible. Referring to these judgments, he submitted that, since the disallowance u/s 14A of the Act is co-related to exempt income, similar analogy should be applied for selecting the investment which have given rise to the exempt income. Reference was also made to the judgment of the Hon'ble Jurisdictional High Court in the case of *CIT v. REI Agro Ltd. (ITAT 161 of 2013) Calcutta High Court decision dated 23/12/2013*.

On the other hand, the Id. D/R vehemently argued supporting the orders of the authorities below.

6. We have heard rival contentions and perused the material placed before us. We note that the Id. Assessing Officer has computed the disallowance @1% of the annual average of the monthly instalment made by the assessee in the following equities/funds:-

<i>Details of Investment</i>	<i>Annual Average of the monthly investment (Rs.)</i>
<i>MPC Properties Pvt. Ltd.</i>	2000000
<i>Nilachalrefactories Ltd.</i>	35227600
<i>Nilachalrefactories Ltd.</i>	8095000
<i>Pushpakdealcompvt ltd.</i>	49600000
<i>Pushpakdealcompvt ltd.</i>	50297000
<i>Emami Infra Ltd.</i>	9357283
<i>Ambit alpha fund scheme</i>	8333333
<i>Ashmoreindia opportunities fund</i>	11250000
<i>Avendusabsolute return fund</i>	77083333
<i>IIFL special opportunities fund</i>	875000
<i>India business excellence fund</i>	6085713
<i>India railway finance corporation</i>	7550000
<i>India opportunities portfolio</i>	7500000
<i>Invesco AMPL</i>	1125000
Total	284504262/-

Now, further on going through page 62 of the paper book, we note that out of the above referred investment some have fetched exempt income during the year and some have not. The claim of the assessee is that in case of the following investments no exempt income have earned:-

<i>Details of Investment</i>	<i>Annual Average of the monthly investment (Rs.)</i>
<i>Emami Infra Ltd.</i>	9357283
<i>Ambit alpha fund scheme</i>	8333333
<i>Ashmoreindia opportunities fund</i>	11250000
<i>IIFL special opportunities fund</i>	875000
<i>India business excellence fund</i>	6085713
<i>India railway finance corporation</i>	7550000
Total	Rs. 4,34,51,329/-

7. Thus, considering the ratio laid down by the Hon'ble Courts and submissions made by the assessee that investments which have not yielded exempt income deserve to be excluded for the purpose of average monthly investment and after excluding such investments, the calculation has to be done. Accordingly, this issue is restored to the file of the Id. Assessing Officer for calculating the disallowance u/s. 14A of the Act in light of our directions given hereinabove. Accordingly, Ground No. 7 is partly allowed for statistical purposes.

8. Other grounds raised by the assessee are general and consequential in nature and need no adjudication.

9. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the Court on 3rd June, 2024 at Kolkata

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 03/06/2024

SC SP

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

1. अपीलार्थी / The Appellant
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