

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 152/PAN/2023
Assessment Year : 2019-20

<p>M/s. Mangalore Refinery and Petrochemicals Ltd., Kuthethoor P.O, Via Katipalla, Mangaluru. Karnataka – 575 030. PAN: AAACM5132A</p>	Vs.	<p>The Addl./Joint/Deputy/Assistant Commissioner of Income Tax/Income tax officer / National Faceless Assessment Centre, Delhi.</p>
APPELLANT		RESPONDENT

&

ITA No. 714/Bang/2023
Assessment Year : 2019-20

<p>The Deputy Commissioner of Income Tax, Circle – 1(1) TPS, Mangaluru.</p>	Vs.	<p>M/s. Mangalore Refinery and Petrochemicals Ltd., Kuthethoor P.O, Via Katipalla, Mangaluru. Karnataka – 575 030. PAN: AAACM5132A</p>
APPELLANT		RESPONDENT

Assessee by	:	Shri Ronak G Doshi, CA & Ms. Aktha Shah, CA
Revenue by	:	Shri D.K. Mishra, CIT-DR

Date of Hearing	:	29-04-2024
Date of Pronouncement	:	28-06-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present cross appeals arise out of order dated 21.07.2023 passed by NFAC, Delhi for A.Y. 2019-20.

2. At the outset, the Ld.AR submitted that assessee had filed appeal before Hon'ble Panaji Bench of the Tribunal on 11.09.2023 as assessee was under a bonafide belief that the jurisdiction of ITAT for assessee falls with Panaji Bench. It is submitted that subsequently on 04.10.2023, assessee was in receipt of the notice of hearing from this Tribunal in respect of Departmental appeal fixed for hearing on 23.11.2023. The assessee made a petition for clubbing of appeals before the Hon'ble President, ITAT was heard on 02.02.2024. Hon'ble President directed for transfer of assessee's appeal to ITAT, Bangalore for consolidation of appeal with the appeal filed by the department.

2.1 Based on the order passed by the Hon'ble President, both the appeals has been heard on 29.04.2024.

3. The grounds raised by the assessee in its appeal are as under:

GROUNDS OF APPEAL

GROUND NO. I: VIOLATION OF PRINCIPLES OF NATURAL JUSTICE:

1. On the facts and circumstances of case and in law, the Ld. CIT(A) erred in upholding the order passed by the Ld. AO u/s 143(3) r.w.s 144B of the Act by observing that due process of law as prescribed by the Act has been followed.
2. The Ld. CIT(A) erred in not granting opportunity of hearing despite further requests by the Appellant in the course of the Appellate proceedings.
3. The Appellant prays that the order passed by the Ld. AO in violation of principles of natural justice be held as void ab initio and bad in law.

WITHOUT PREJUDICE TO GROUND NO. I ABOVE:

GROUND NO. II: DISALLOWANCE U/S 40(a)(ia) OF THE ACT AMOUNTING TO RS. 99,66,204/-:

1. On the facts and circumstances of case and in law, the Ld. CIT(A) has erred in not allowing Rs. 99,66,204/- being the amount of disallowance made by AO @30% of Rs. 3,32,20,680/- u/s 40(a)(ia) of the Act on account of failure to deduct tax at source.
2. The CIT(A) *inter alia* failed to appreciate and ought to have held that the Appellant has deducted tax at source at rates specified in the Act or in compliance with the lower/Nil tax deduction certificates issued u/s 197 of the Act.
3. The Appellant prays that the disallowance of Rs. 99,66,204/- made u/s 40(a)(ia) of the Act be deleted.

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Not pressed

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WITHOUT PREJUDICE TO GROUND NO. I ABOVE:

GROUND NO. III: DISALLOWANCE U/S 43B OF THE ACT AMOUNTING TO RS. 27,74,89,745/-:

1. On the facts and circumstances of case and in law, the CIT(A) erred in confirming the disallowance made by AO of Rs. 27,74,89,745/- u/s 43B of the Act, relying on the decision in the case of Union of India vs. Ms. Exide Industries Ltd.
2. The Appellant prays that the aforesaid disallowance be deleted.

WITHOUT PREJUDICE TO GROUND NO. I:

GROUND NO. IV: NOT ALLOWING DEDUCTION OF EXCEPTIONAL CLAIM AMOUNTING TO RS. 4,32,38,538/--:

1. On the facts and circumstances of case and in law, the CIT(A) erred in upholding the AO's action of not allowing deduction to the extent of Rs. 4,32,38,538/- [Rs. 22,87,28,193/- Contribution to MRPL Pension Scheme (+) Rs. 23,50,45,405/- Provision/ expenses for procurement of REC (-) Rs. 42,05,35,060 Reclaim of ITC under GST] while computing income chargeable to tax under the head 'Profit and gains of business or profession' on the alleged ground that the nature of such claim along with rationale behind the same has not been furnished by the Appellant.
2. The Appellant prays that the deduction of Rs. 4,32,38,538/- be allowed while computing the income chargeable under the head 'Profit and gains of business or profession'.

WITHOUT PREJUDICE TO GROUND NO. I AND IV:

GROUND NO. V: NOT ALLOWING DEDUCTION OF CONTRIBUTION TO MRPL DEFINED CONTRIBUTION PENSION SCHEME ("MDCPS") AMOUNTING TO RS. 22,87,28,193/--:

1. On the facts and circumstances of case and in law, the CIT(A) erred in confirming the AO's action of disallowing Rs. 22,87,28,193/- being contribution made towards the MDCPS.
2. The Appellant prays that the deduction of Rs. 22,87,28,193/- be allowed while computing the income chargeable under the head 'Profit and gains of business or profession'.


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WITHOUT PREJUDICE TO GROUND NO. I AND IV:**GROUND NO. VI DISALLOWANCE OF COST INCURRED/ PROVISION CREATED TOWARDS PROCUREMENT OF RENEWABLE ENERGY CERTIFICATE ("REC") AMOUNTING TO RS. 23,50,45,405/-**

1. On the facts and circumstances of case and in law, the CIT(A) erred in confirming the AO's action of disallowing Rs. 23,50,45,405/- being cost incurred/ provision created towards procurement of REC.
2. The Appellant prays that the deduction of Rs. 23,50,45,405/- be allowed while computing the income chargeable under the head 'Profit and gains of business or profession'.

WITHOUT PREJUDICE TO GROUND NO. I AND IV:**GROUND NO. VII DISALLOWING RECLAIM OF ITC UNDER GST OF RS. 42,05,35,060/- TREATING THE SAME AS AN EXPENSE**

1. On the facts and circumstances of case and in law, the CIT(A) erred in making disallowance on account of treating the reclaim of ITC under GST of Rs. 42,05,35,969/- as expense without considering the fact that the same forms part of Profit/ (Loss) before tax as per Profit and Loss account under the PGBP head of Computation of Income.
2. The Appellant prays that the disallowance of Rs. 42,05,35,969/- be deleted.

GENERAL:

The Appellant craves leaves to add, alter and/or amend, withdraw or vary all or any of the above grounds of appeal either before or at the time of hearing of this appeal.

DATE: SEPTEMBER 02, 2023

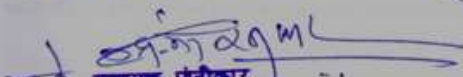
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PLACE: MANGALURU

STATUS: COMPANY



प्रति प्रत्यर्था को बेजी जाय।


 सहायक कंपनीकार
 आन्तरिक अपीलीय अभिकरण
 कंपनी (बेना)

3.1 In the appeal filed by the revenue, only one issue arises which is in respect of the 14A claim partly allowed by the Ld.CIT(A) based on the assessee's working.

<i>Grounds of Appeal</i>		<i>Tax effect relating to each ground of appeal(see note below)</i>
1.	<p>1. CIT(A) erred in restricting the disallowance u/s. 14A to Rs.52,51,373/- when assessee itself admitted such disallowance at Rs.1,90,18,417/- as evident from page 11&12 of the order of CIT(A).</p> <p>2. CIT(A) erred in restricting the disallowance u/s. 14A to Rs. 52,51,3734 without discussing the components of such computation and without distinguishing the same with computation made by the AO u/r. 8D(ii).</p> <p>3. CIT(A) erred in restricting the disallowance u/s. 14A to only direct expenses like salary, interest etc. for which Rule 8D(ii) is applicable and ignoring the purpose of Rule 8D(ii).</p>	44809118
2.	<p>4. Whether the Ld.CIT(A) is correct in allowing exceptional expenses to the tune of Rs. 10,47,00,747/- based on a wrong belief that it is of previous year expense whereas it pertains to the F.Y 2017-18.</p> <p>5. Whether the Ld.CIT(A) is correct in allowing expenses pertaining to earlier year when the CIT(A) himself has stated that provisions or expenses for earlier</p>	32352530

	<i>years are not allowable as an expense.</i>	
	<i>6. Whether the Ld. CIT(A) is correct in overlooking the fact that the Renewable Energy Certificate has been procured during the F.Y 2017-18 and therefore is an allowable expense in the AN 2018-19 and not in the assessment year under consideration.</i>	
	<i>Total Tax Effect</i>	<i>Rs.7,71,61,648</i>

4. Brief facts of the case are as under:

4.1 Assessee is a company incorporated under the Companies Act and a Schedule A Category – I Miniratna Central Public Sector Enterprises under the aegis of Ministry of Petroleum and Natural Gas, Govt. of India and a subsidiary of Oil and Natural Gas Corporation.

4.2 The assessee has crude petroleum refinery at Mangaluru in Karnataka and is engaged in the business of refining of crude oil, manufacturing and selling of petroleum products and captive generation, distribution of electric power. It is submitted that the books of accounts of the assessee stands audited by the Joint Statutory Auditors appointed under the Companies Act, 2013 as well as by the Comptroller and Auditor General of India.

4.3 For the year under consideration, the assessee filed return of income on 29.11.2019, declaring total income under normal provisions of the act at Rs.1,59,68,37,320/- and book profits u/s. 115JB of the act amounting to Rs.5,69,31,87,138/-.

Subsequently a revised return was filed by assessee on 30.06.2020, wherein there was a difference in the income declared under the normal provisions of the act.

4.4 Assessee was subsequently in receipt of notice u/s. 143(2) of the act and notice u/s. 142(1) was also issued. Various details were called for to support the claims of assessee. The assessee had subsequently vide letter dated 08.09.2021, 18.09.2021, 27.09.2021 and also placed request for personal hearing through video conferencing on 18.09.2021.

4.5 A draft assessment order u/s. 143(3) was forwarded to assessee on 24.09.2021 and along with an intimation for personal hearing through video conferencing was scheduled.

4.6 The assessee submitted that vide notice u/s. 24.09.2021, assessee was required to furnish details / submissions which was never raised or that any details were specifically called upon on any previous occasions. Assessee was also called upon to file the objections to the proposed addition in the draft assessment order on or before 26.09.2021 which was only two days before passing of the final assessment order dated 28.09.2021.

4.7 The assessee submitted that the Ld.AO passed the final assessment order u/s. 143(3) r.w.s 144B of the act by making following disallowances.

- *Disallowance U/S 14A read with rule 8D of the Income-tax Rules, 1962 ("the Rules") amounting to Rs.15,02,64,700/-*

- *Addition of disallowance made u/s 14A of the Act read with rule 8D of the Rules amounting to Rs. 15,02,64,700/- while computing book profits u/s 115JB of the Act*
- *Disallowance u/s 40(a)(ia) of the Act amounting to Rs. 99,66,204/-*
- *Disallowance u/s 43B of the Act amounting to Rs. 27,74,89,745/-*
- *Disallowance of interest paid on late payment of tax deducted at source amounting to Rs. 4,562/-*
- *Non-admissibility of deduction of exceptional claim amounting to Rs. 14,79,00,000/-*

4.8 Being aggrieved by the assessment order passed by the Ld.AO, the assessee preferred appeal before the Ld.CIT(A).

4.9 Primary ground raised by the assessee is in respect of violation of principles of natural justice, as assessee was not provided with sufficient opportunity on the issues that was raised four days before the passing of the final assessment order. The assessee submitted that, in respect of disallowance made u/s. 43B, disallowance of the exceptional claim disallowing the deduction of contribution through MRPL defined pensions scheme, disallowance of cost incurred / provision created towards procurement of renewable energy certificate and disallowance of reclaim of ITC under GST, the assessee was not granted proper opportunity of being heard and that no details were called for in respect of these issues in any of the show cause notices issued to the assessee prior to 24.09.2021.

4.10 The assessee submitted that, the Ld.CIT(A) dismissed the ground by holding that, there is no infirmity in the assessment

order. The Ld.CIT(A) thereafter decided the issue on merits by upholding the disallowances made on all these issues.

4.11 In respect of the disallowance u/s. 14A, the Ld.CIT(A) was of the opinion that the Ld.AO accepted the scientific computation furnished by the assessee in the preceding years. Accordingly for the year under consideration, the computation provided by the assessee in respect of disallowance u/s. 14A was restricted to Rs.52,51,373/- as against the disallowance made by the Ld.AO of Rs.15,02,67,700/-.

4.12 Aggrieved by this order of Ld.CIT(A), assessee as well as revenue are in appeal before this Tribunal.

5. At the outset, the Ld.AR submitted that **Ground no. II** is not pressed by the assessee and accordingly no argument has been filed / made before this Tribunal by the Ld.AR.

Accordingly, ground no. II stands dismissed.

6. Ground no. I

6.1 Before us the Ld.AR vehemently submitted that in respect of Ground no. III-VII, assessee was not provided with proper opportunity of being heard, as the notice proposing the addition was issued and received by the assessee on 24.09.2021 along with the draft order.

6.2 The Ld.DR on the contrary relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

7. We note that there is gross violation of principles of natural justice in making the addition without providing opportunity of being heard to the assessee, regarding issues alleged in ground no. III to VII. There is a fundamental flaw of inadequate opportunity. An assessment proceeding demands that it should be conducted with a reasonable opportunity in accordance with law. The additions made by the Ld.AO as per notice dated 24.09.2021 is not based on evidences / submissions adduced by the assessee in accordance with law.

7.1 We therefore remand all these issues back to the Ld.AO for considering it afresh. The assessee is directed to file all relevant information / details in support of the claim which shall be properly verified by the Ld.AO and consider the issues in accordance with law.

Needless to say that proper opportunity of being heard must be granted to assessee.

Accordingly, the appeal filed by the assessee stands partly allowed for statistical purposes.

8. In the Departmental appeal, the only issue contested is in respect of the disallowance being restricted by the Ld.CIT(A) as

per the computation provided by the assessee amounting to Rs.52,51,373/-.

8.1 The Ld.AR has submitted that in the preceding assessment years, starting from A.Y. 2008-09 to 2018-19, the authorities have accepted the *suomoto* disallowance offered by the assessee and no appeal has been preferred. He submitted that for the year under consideration, the exempt income earned by the assessee was Rs.10.44 crores against which the *suomoto* disallowance computed by the assessee was Rs.52,51,373/-. He placed reliance on the decision of *Hon'ble Karnataka High Court* in case of *Essilor India Pvt. Ltd. vs. DCIT* reported in (2022) 137 *taxmann.com* 60 wherein *Hon'ble High Court* upheld the *suomoto* disallowance offered by the assessee as there was no satisfaction recorded by the Ld.AO as to why the *suomoto* disallowance offered by assessee was not acceptable. He placed reliance on the following observations in support of the submissions.

“7. We have considered the submissions made on both sides and have perused the record. Section 14A of the Act deals with expenditure in relation to income not includable in total income. Section 14A(2) provides that assessing officer shall determine the amount of expenditure incurred in relation to such income which does not form part of total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer having regard to the accounts of the assessee is not satisfied with the correctness of the claim of assessee in respect of such expenditure in relation to income which does not form part of total income under this Act. It is well settled in law that assessing officer has to record reasons for disagreeing with the claim of the assessee that it had incurred no expenditure for earning such exempt income. Even rule 8D(1) requires the assessing officer to mandatorily record his satisfaction that the claim made by the assessee that no expenditure has been incurred in earning the exempt

income is incorrect. [See. Godrej & Boyce Mfg. Co. Ltd. (supra)]

8. *Now we may advert to the facts of the case and examine whether the assessing officer has recorded satisfaction with regard to the correctness of the claim made by the assessee in respect of such expenditure in relation to the exempt income. The assessee has made disallowance of Rs. 1,61,035/- under section 14A of the Act read with rule 8D of the Rules. From the perusal of the order passed by the assessing officer and in particular paragraphs 7 to 14, it is evident that the assessing officer has failed to record its satisfaction with regard to the claim of the assessee that it had incurred any expenses in earning the exempt income except a sum of Rs. 1,61,035/-. Therefore, in the absence of any satisfaction recorded by the assessing officer, the substantial question of law has to be answered in the negative. However, as fairly stated by learned Senior counsel that disallowance to the extent of Rs. 1,61,035/- which was proposed by the assessee itself has to be upheld. Therefore, the disallowance under section 14A of the Act read with rule 8D of the Rules is confined to the extent of Rs. 1,61,035/-. To the aforesaid extent, the orders passed by the Income-tax Appellate Tribunal, Commissioner of Income-tax (Appeals and the Assessing Officer are modified. The Assessing Officer is directed to disallow a sum of Rs. 1,61,035/- under section 14A of the Act read with rule 8D of the Rules.”*

8.2 On the contrary, the Ld.DR relied on the orders passed by authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

8.3 Admittedly, in the present facts of the case, the assessing officer has not recorded satisfaction as to why the *suomoto* disallowance offered by the assessee, is not acceptable. It is also to be noted that, in the preceding assessment years, the *suomoto* disallowance offered by assessee u/s. 14A has not been subject

to challenge before the *Tribunal* by the Revenue. Respectfully following the view taken by *Hon'ble Karnataka High Court* in case of *Essilor India Pvt. Ltd. vs. DCIT (supra)*, we do not find any infirmity in the view taken by the Ld.CIT(A) and the same is upheld.

Accordingly, the grounds raised by the revenue stands dismissed.

In the result, the appeal filed by the revenue stands dismissed and assessee appeal stands partly allowed for statistical purposes.

Order pronounced in the open court on 28th June, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 28th June, 2024.
/MS /

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| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore