

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member

I.T.A. No.641/Kol/2024
Assessment Year: 2018-19

Shree Capital Services Ltd.....Appellant
21, Strand Road,
Kolkata – 700001.
[PAN: AAGCS5082D]

vs.

ACIT, Circle-5(1), Kolkata..... Respondent

Appearances by:

Shri Saurav Garg, AR, appeared on behalf of the appellant.

Shri P. P. Barman, Addl. CIT-Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 20, 2024

Date of pronouncing the order : July 23, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 30.01.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has agitated against the confirmation of disallowance of Rs.3,88,57,850/- made by the Assessing Officer on account of disallowance of expenditure incurred for earning of tax exempt income invoking the provisions of section 14A r.w.r 8D of the Income Tax Rules.

3. The Assessing Officer noted that the assessee during the year had earned tax exempt income of Rs.58,51,96,313/- comprising of long-term capital gains and dividend income. He further observed that the

assessee had offered disallowance of an amount of Rs.12,77,616/- u/s 14A of the Act. He observed that the said disallowance was very meagre as compared to the tax exempt income earned by the assessee. He applied Rule 8D(2) of the Income Tax Rules and computed the disallowance under Rule 8D(2) at Rs.4,01,35,466/-. After deducting the amount already offered by the assessee for disallowance/taxation u/s 14A of Rs.12,77,616/-, the Assessing Officer made the addition of Rs.3,88,57,850/-.

4. The ld. CIT(A) confirmed the addition so made by the Assessing Officer.

5. We have heard the rival contentions and gone through the record. At the outset, the ld. counsel for the assessee has brought our attention to the profit & loss a/c of the assessee, wherein, the detail of expenditure has been mentioned as under:

Particulars	Year ended 31.03.2018
Expenditure	
Employee Benefit Expense	12,307,196
Depreciation and Amortization Expense	580,504
Finance Costs	3,344
Donation	20,005,000
Other Expenses	10,276,840
Total Expenses	43,172,884

5.1 The ld. counsel has further submitted that the total expenditure booked in the profit & loss a/c for the year under consideration was Rs.43,172,884/-. He has further referred to the chart below:

SN	Particulars of expense	Debited to P & L	Disallowed in Return	Remarks
1	Employee Benefit Expenses	1,23,07,196	23,36,125	Disallowed amount of Rs. 12,48,564/- u/s 14A. Further provision for gratuity (Rs. 7,23,418/-) & Provision for Leave Salary

				(Rs.3,64,143/-) also disallowed.
2	Depreciation	5,80,504	5,80,504	Depreciation not to be considered u/s 14A as held in Emerald Company Pvt. Ltd. vs. DCIT (ITA No. 252/Kol/2024 dated 03.06.2024)
3	Finance Cost	3,344	-	Bank charges not related to Investment division
4	Donation	2,00,05,000	2,00,05,000	Not applicable for 14A. Further disallowed u/s 37(1).
5	Other admin Expenses (Rent charges, Professional Fees, Audit Fees etc.)	1,02,76,840	28,40,362	STT of Rs. 10,90,310/-, Admin expenses of Rs. 29,052/- & CSR of Rs. 17,21,000/- already offered to tax. Further, in M/s Agarwal Galvanising Pvt. Ltd. vs. ITO (ITA No. 1401/Kol/2012 dated 18.12.2014) , it has been held that no disallowance u/s 14A r.w.r 8D(iii) shall be made in relation to administrative expenditure such as audit fee, salary and bonus, legal fee, office rent, compliance retainership fees etc.
Total		4,31,72,884	2,57,61,991	

5.2 Referring to the aforesaid chart, the ld. counsel has demonstrated that out of the total expenditure of Rs.4,31,72,884/-, an amount of Rs.5,80,504/- was claimed on account of depreciation, which has nothing to do with the expenditure incurred by the assessee. Further, the donation expenses of Rs.2,00,05,000/- has nothing to do with the earning of tax exempt income. Moreover, the same have already been disallowed by the assessee u/s 37(1) of the Act. He has further demonstrated that out of the remaining amount of Rs.2,25,87,380/-, the assessee has suo moto disallowed a further sum of Rs.5176487/-.

Therefore, out of the total sum of Rs.4,31,72,884/-, only an amount of Rs.1,74,10,893/- was claimed as allowable expenditure. The total expenditure without any disallowance u/s 14A therefore would amount to Rs.18688509/-, out of which the assessee has already suo moto disallowed a sum of Rs.12,77,616/- incurred towards earning of exempt income. It is to be noted that the disallowance u/s 14A of the Act cannot exceed the total expenditure claimed by the assessee. The disallowance u/s 14A is made out of the expenditure incurred by the assessee by way of disallowance of proportionate expenditure, which can be attributed towards earning of tax exempt income. The assessee in this case has shown a total taxable income of Rs.11,80,86,220/- and therefore, the expenses claimed by the assessee of Rs.1,74,10,893/- seems to be reasonable. The assessee has suo moto disallowed a sum of Rs.12,77,616/- and in our view, no further disallowance is attracted in this case.

6. In view of the above discussion, the addition made by the lower authorities on this issue is not sustainable and the same is ordered to be deleted.

7. In the result, the appeal of the assessee stands allowed.

Kolkata, the 23rd July, 2024.

Sd/-

[Sanjay Awasthi]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 23.07.2024.

RS

Copy of the order forwarded to:

1. Shree Capital Services Ltd
2. ACIT, Circle-5(1), Kolkata

- 3.CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches