

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No. 785/KOL/2024
Assessment Year: 2018-19**

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|--|----|---|
| Sri Ram Commercial Co., 21, Strand Road Dalhousie, Kolkata - 700001 (PAN: AAMFS4086Q) | Vs | Income Tax Officer, Ward 36(1), Kolkata, Aayakar Bhawan Poorva, 110, Shanti Pally, Kolkata - 700107 |
| (Appellant) | | (Respondent) |

Present for:

Appellant by : Shri Saurav Garg, A.R.
Respondent by : Shri Vineet Kumar, Addl. CIT, Sr. DR

Date of Hearing : 08.07.2024
Date of Pronouncement : 26.08.2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Addl./Jt. Commissioner of Income Tax (Appeal) (hereinafter referred to as “the Ld. Addl./Jt.CIT(A)”) passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2018-2019 dated 23.02.2024, which is passed against the intimation u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), by the Deputy Commissioner of Income Tax, CPC, dated 07.06.2019.

2. The grounds of appeal raised by the assessee are reproduced as under:

“1. That on the facts and in the circumstances of the case, the Ld. Addl/Joint CIT(A)-2, Coimbatore, has erred in upholding the taxability of dividend income under the head Income from Business or Profession and again including the said income while computing Gross Total Income thereby resulting in double addition.

2. That on the facts and in the circumstances of the case, the Ld. Addl/Joint CIT(A)-2, Coimbatore, has erred in not considering the fact that dividend income

under section 115BBDA is taxable at the rate of 10% instead of 30% as applied by Deputy Commissioner of Income Tax, CPC vide intimation dated 07-06-2019.

3. *That on the facts and in the circumstances of the case consequential relief may please be granted while computing interest under section 234B & 234C.*

4. *That the appellant craves leave to add, to amend, modify, rescind, supplement or alter any of the Grounds stated here-in-above, either before or at the time of hearing of this appeal.”*

3. Brief facts of the case are that the assessee is a partnership firm engaged in the business of financing, bill discounting, investment in shares and securities etc. The assessee filed its return of income on 29.01.2019 after the extended due date 31.10.2018. The assessee declared gross total income for the AY 2018-19 at Rs. 5,00,682/-. The return was processed and an intimation was issued u/s 143(1) of the Act on 07.06.2019 wherein the CPC disallowed Rs. 16,72,749/- on account of excess claim of exemption claimed u/s 10(34) of the Act and added back to the business income of the assessee. The assessee had claimed set off of current year's business loss of Rs. 94,823/- against income from other heads and set off of brought forward Long-Term Loss of Rs. 1,537/- against Long Term Capital Gains of the current year. While proceeding the return, the CPC Bangalore has assessed Rs. 15,77,826/- under the head 'Income from Business' although the assessee did not have any income under this head at all and total income was computed at Rs. 38,46,180 as against Rs. 5,00,680/- which was shown by the assessee in the return of income. Aggrieved with the computation, the assessee filed an appeal before the Ld. CIT(A) and the Ld. Addl./Jt.CIT(A) called for a remand report from the Ld. AO and as mentioned in para 7.1, the Ld. AO was unable to ascertain the reason of Rs. 16,72,749/- and the appellant was also unable to figure it out as per the reply against the intimation u/s 143(1) of the Act, therefore, after perusing the remand report and the reply of the appellant, the Ld. Addl./Jt.CIT(A) has mentioned in para 7.2 that the Appellant claimed an amount of Rs. 26,72,749/- as income from dividend and claimed the entire amount as exempt u/s 10(34) of the Act while the CPC disallowed Rs. 16,72,749/- on account of excess claim of exemption u/s 10(34) of the Act

and added back to the business income of the assessee. The Ld. CIT(A) also went through the provisions of section 115BBDA and held in para 7.4 that if the total income of a specified assessee [substituted for “an assessee being an individual, a HUF or a firm” by the Finance Act, 2017 w.e.f. 01.04.2018] exceeds Rs. 10 lakh by way of dividend declared, the appellant is liable to tax at the rate of 10 per cent. The appellant is a specified assessee as per section 115BBDA 2(b) of the Act. As the appellant is a specified assessee, the appellant cannot claim exemption u/s 10(34) of the Act exceeding Rs. 10 lakhs. As the appellant got exemption for Rs. 10 lakh in intimation u/s 143(1) of the Act, the disallowance of Rs. 16,72,749/- in excess of Rs. 10 lakhs was confirmed and the appeal was dismissed. Aggrieved with the order of the Addl./Jt.CIT(A), the assessee has filed the appeal before the Tribunal.

4. We have heard the rival contentions and also gone through the facts of the case. During the course of the appeal, the assessee filed a chart mentioning the following details relating to double addition of dividend income of Rs. 16,72,749/- and requested that he was pressing only ground no. 1 and not pressing ground nos. 2 and 3 and requested for deletion of double addition. The reply is reproduced as under:

“1.0 Double addition of Dividend Income [Rs. 16,72,749/-]

1.1 During the year under consideration, the appellant has earned dividend income of Rs. 26,72,749/- which was claimed as exempt income u/s 10(34) of the Act while filing return of income. However, as per the provisions of Sec. 115BBDA of the Income Tax Act, tax on dividend income exceeding ten lakh Rs. Shall be chargeable at the rate of 10% for specified assessee. Thus, the appellant, being the specified assessee (partnership firm), inadvertently claimed excess exempt income to the extent of Rs. 16,72,749/- [Rs. 26,72,749 – Rs. 10,00,000] in its return of income.

1.2 Though, CPC vide intimation u/s 143(1) dated 07-06-2019 disallowed the excess claim of dividend income amounting to Rs. 16,72,749/-, however, it inadvertently added the said amount twice while computing Gross Total Income (GTI) which is shown as below:

| SI.No. | Particulars | As per Return | As per Intimation u/s 143(1) | Reference of Intimation |
|--------|-------------|---------------|------------------------------|-------------------------|
| | | | | |

| | | | | |
|----|---|-----------------|------------------|------------------------------------|
| 1 | Income under the head PGBP | (94,923) | (94,923) | |
| 2 | Additions made on account of Dividend Income in excess of Rs. 10,00,000/- | - | 16,72,749 | |
| 3 | Revised Income under the Head PGBP [1+2] | (94,923) | 15,77,826 | SI No. 2 of Page No. 1 |
| 4 | Income under the Head Capital Gain | 5,97,142 | 5,97,142 | SI No. 3 of Page No. 1 |
| 5 | Total Income after inter head adjustment of Loss [3+4] | 5,02,219 | 21,74,968 | |
| 6 | Less: Brought Forward Losses | 1,537 | 1,537 | SI No. 8 of Page No. 1 |
| 7 | Total Income after adjustment of b/f Loss [5-6] | 5,00,682 | 21,73,431 | |
| 8 | Inadvertent double addition on account of Dividend Income | - | 16,72,749 | Already included in SI No. 2 above |
| 9 | Revised GTI Including Special Income [7+8] | 5,00,682 | 38,46,180 | SI No. 9 of Page No. 1 |
| 10 | Total Income | 5,00,680 | 38,46,180 | SI No. 13 of Page No. 2 |

1.3 In view of the above it is humbly prayed before your goodself, to kindly direct AO to delete the inadvertent double addition made by CPC on account of dividend income being included twice while computing GTI.”

5. The Ld. Sr. DR could not controvert the claim of the Appellant but relied on the order of the Ld. CIT(A). It is noticed that the dividend received in excess of Rs. 10,00,000/- was subject to the provision of Section 115BBDA at the rate of 10% along with the other income of the assessee. The CPC not only added this amount of Rs. 16,72,749/- as the business income of the assessee but also included it in the column relating to income chargeable to tax at special rate other than 115BBE, thereby adding it twice to the income of the assessee while the assessing at no business income

amounting to Rs. 16,72,749/- which was dividend liable to be taxed u/s 115BBDA of the Act. Hence, the Assessing Officer is directed to delete the amount of Rs. 16,72,749/- from the total income computed at Rs. 38,46,180/- after necessary verification. Ground No. 1 of the appeal is therefore, allowed.

6. Ground No. 2 does not emanate from the order of the Ld. Addl./Jt.CIT(A) nor the same was pressed by the assessee along with the Ground No. 3. Hence, these grounds of appeal are rejected. Ground No. 4 is general in nature does not require any separate adjudication.

In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 26th August, 2024.

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Rakesh Mishra)
Accountant Member

Dated: 26th August, 2024

AK, P.S.

Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(A)
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata