

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B' JAIPUR

श्रीसंदीपगोसाई, न्यायिकसदस्य एवं श्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 40 & 41/JP/2024
निर्धारण वर्ष/Assessment Year : 2015-16 & 2016-17

M/s. Anamika Conductors (P) Ltd B-70, Upasana Tower, Rajendra Marg Bapu Nagar, Jaipur 302 015	बनाम Vs.	The ACIT Circle-6 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCA 5681 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri G.M. Mehta, CA
राजस्व की ओर से / Revenue by: Shri Anoop Singh, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 14/08/2024
उदघोषणा की तारीख / Date of Pronouncement: 30/09/2024

आदेश / ORDER

PER BENCH:

Both these appeals have been filed by the assessee against two different orders of the Id. CIT(A)-4, Jaipur dated 05-12-2023 and 30-11-2023 for the assessment year 2015-16 and 2016-17 respectively raising therein following grounds of appeal.

ITA NO.40/JP/2024 – AY 2015-16

“1. The Id. CIT(A) was not justified in not disposing of Ground No. 1 in respect of non-application of provision of Section 145(3) of the I.T. Act having effect in acceptance or non-

acceptance of book results declared by the assessee and by treating it as general in nature.

2. The ld. CIT(A) has erred in law and on facts in sustaining disallowance of Rs.85,124/- by applying provisions of Section 14A of I.T. Act for the investment in equity shares of other companies made in earlier years out of much higher interest free funds available with the assessee company.”

ITA NO.41/JP/2024 – AY 2016-17

“1. The ld. CIT(A) was not justified in not disposing of Ground No. 1 in respect of non-application of provision of Section 145(3) of the I.T. Act having effect in acceptance of book results declared by the assessee and by treating it as general in nature.

2. The ld. CIT(A) has erred in law and on facts in sustaining disallowance of Rs.17,23,212/- without pointing out any specific disallowance or unvouched business expenses by restricting the disallowance from 30% made by the AO to 15%

2.1 First of all, we take up the appeal of the assessee for the assessment year 2015-16 for adjudication. The Bench noted that the assessee has raised two grounds of appeal.

2.2 As regards the Ground No. 1, it is stated at bar by ld. AR that since no additions of the nature was made in book results, therefore this Ground number 1 is not pressed. Hence, in view of statement of ld. AR, the Ground No. 1 stands dismissed as not pressed.

3.1 Through this Ground No. 2, the ld. AR AR has challenged the order of ld. CIT(A) in sustaining disallowance of Rs.85,124/- by applying provisions of section 14A of the Income Tax Act. The ld. AR reiterated the same arguments as were raised by him before the revenue authorities and also relied on his written submissions. The contents of the written submissions are reproduced here in below

‘Brief facts of the case is that Assessee Company has made investment in equity shares of M/s. Anamika Oil Pvt. Ltd. and State Bank of Bikaner & Jaipur (SBBJ) in A.Y. 2012-13 & in earlier year out of interest free funds available with it and not in current year. No dividend was ever received from the investment in equity shares of M/s. Anamika Oil Pvt. Ltd. The dividend received from equity shares of SBBJ was a meager amount of Rs.1,430/- The issued has been considered by this Hon'ble Tribunal in A.Y 2012-13 and in A.Y. 2014-15 and decided in favour of the assessee.

GROUND OF APPEAL:

GROUND No. (1) Ld. CIT(A) was not justified in not disposing of ground No. (1) in respect of non-application of provisions of sec. 145(3) of L.T. Act having effect in acceptance of book results declared by the assessee and by treating it as general in nature.

The above ground of appeal though raised before Id. CIT(A) was not disposed of by him, Since no addition of the nature was made in book results, this ground of appeal is not pressed.

GROUND No. (2) Ld. CIT (A) has erred in law and on facts in sustaining disallowance of Rs.85,124/- by applying provisions of section 14A of L.T. Act for the investment in equity shares of other companies made in earlier years out of much higher interest free funds available with the assessee company.

The final finding of this Hon'ble Tribunal in A.Y. 2014-15 on the addition made/sustained by lower authorities is as under (para 8 at page 6 & para 9 at page 9) (P. B. page 3 to 10).

"The assessee is also aggrieved from disallowance of Rs. 6,66,228/- under sec. 14A of the Act with respect to investment made in equity shares of M/s. Anamiika Oil Pvt. Ltd. and State Bank of Bikaner and Jaipur. It was contended by the AR of the assessee that all the investments were made earlier to the year under consideration and also placed before us, the order of the Tribunal dated 26/10/2017 in assessee's own case for the A.Y. 2012-13 wherein similar disallowance so made by the A.O. was deleted. We also found that no dividend or exempt income was received from the investment made in equity shares of M/s. Anamika Oil Pvt. Ltd. therefore, no disallowance of interest can be made in view of the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Lakhani Marketing Industries (2014) 272 CTR 265 (P&H), Hon'ble Delhi High Court decision in the case of CIT Vs. Holcim India Pvt. Ltd. (2014) 272 CTR 282 (Del). Hon'ble Allahabad High Court decision in the case of Shuvam Motors Pvt. Ltd. (2014) 272 CTR 277 (All) and the decision of the Hon'ble Gujarat High Court in the case of CIT Vs. Corrttech Energy Pvt. Ltd. (2015) 376 ITR 97 (Guj). Respectfully following the propositions of law laid down in these judicial pronouncements, no disallowance of expenditure is required when there is no income from such investment.

Similarly in respect to investment of Rs.5,400/-in the shares of State Bank of Bikaner and Jaipur, we found that such investment was being carried forward from A.Y. 2012-13 and the Tribunal in its order dated 26/10/2017 for the A.Y. 2012-13 in assessee's own case had held that the assessee was having sufficient interest free funds, accordingly, no disallowance is warranted. Respectfully following the judicial pronouncement, we direct the AO to delete the disallowance of Rs.6,66,228/-made under sec. 14A of the Act."

On the facts, the addition of Rs.85,124/- made by applying provisions of section 14A of Income tax Act for equity shares of M/s. Anamika Oil Pvt. Ltd. and State Bank of Bikaner & Jaipur, the purchases of which were made in earlier years and considered by this Hon'ble Tribunal was not justified action of both the lower authorities.'"

3.2 On the contrary ld. DR relied upon the orders passed by the revenue authorities. It was submitted that although assessee has relied upon the decision of

the Co-ordinate Bench in assesses own case yet the facts of those years are distinguishable as in the earlier year there was no exempt income during the year, however in the assessment order for the impugned assessment year the AO in para number 3. 2 has clearly stated that the appellant has earned exempt income during the year.

3.3 We have heard the counsel for both the parties and we have also perused the material placed on record, judgements cited before us and also the orders passed by the revenue authorities. From the records we noticed that Assessee Company has made investment in equity shares of M/s. Anamika Oil Pvt. Ltd. and State Bank of Bikaner & Jaipur (SBBJ) in A.Y. 2012-13 & in earlier year out of interest free funds available with it and not in current year. No dividend was ever received from the investment in equity shares of M/s. Anamika Oil Pvt. Ltd. The dividend received from equity shares of SBBJ was a meager amount of Rs.1,430/-. The issue has been considered by this Hon'ble Tribunal in A.Y 2012-13 and in A.Y. 2014-15 and decided in favour of the assessee. The final findings of the co-ordinate bench of the Tribunal in assessee's own case in assessment year 2014 – 15 on the addition made/sustained by lower authorities is as under (para 8 at page 6 & para 9 at page 9) (P. B. page 3 to 10).

"The assessee is also aggrieved from disallowance of Rs. 6,66,228/- under sec. 14A of the Act with respect to investment made in equity shares of M/s. Anamiika Oil Pvt. Ltd. and

State Bank of Bikaner and Jaipur. It was contended by the AR of the assessee that all the investments were made earlier to the year under consideration and also placed before us, the order of the Tribunal dated 26/10/2017 in assessee's own case for the A.Y. 2012-13 wherein similar disallowance so made by the A.O. was deleted. We also found that no dividend or exempt income was received from the investment made in equity shares of M/s. Anamika Oil Pvt. Ltd. therefore, no disallowance of interest can be made in view of the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Lakhani Marketing Industries (2014) 272 CTR 265 (P&H), Hon'ble Delhi High Court decision in the case of CIT Vs. Holcim India Pvt. Ltd. (2014) 272 CTR 282 (Del). Hon'ble Allahabad High Court decision in the case of Shuvam Motors Pvt. Ltd. (2014) 272 CTR 277 (All) and the decision of the Hon'ble Gujarat High Court in the case of CIT Vs. Corrttech Energy Pvt. Ltd. (2015) 376 ITR 97 (Guj). Respectfully following the propositions of law laid down in these judicial pronouncements, no disallowance of expenditure is required when there is no income from such investment.

Similarly in respect to investment of Rs.5,400/-in the shares of State Bank of Bikaner and Jaipur, we found that such investment was being carried forward from A.Y. 2012-13 and the Tribunal in its order dated 26/10/2017 for the A.Y. 2012-13 in assessee's own case had held that the assessee was having sufficient interest free funds, accordingly, no disallowance is warranted. Respectfully following the judicial pronouncement, we direct the AO to delete the disallowance of Rs.6,66,228/-made under sec. 14A of the Act."

After analysing the decisions of the Co-ordinate bench in assessee's own case, we found that the only difference for the year under consideration pointed before us is that during the year under consideration the Appellant has earned exempt income. In this regard from the records we found that no dividend was ever received from the investment in equity shares of Anamika oil Private Limited during the year under consideration. However the dividend received from equity shares of SBBJ was a meager amount of Rupees 1,430 only. In this regard learned AR has placed on record a chart depicting investments in equity shares by the appellant and also

the statement of interest free funds available with the appellant and the same is reproduced below:-

Investments in equity shares by assessee

Equity shares#	31-03-2012*	31-03-2013	31-03-2014	31-03-2015
Anamika Oil Pvt Ltd.	85,07,000	85,07,000	85,07,000	85,07,000
State Bank of Bikaner & Jaipur	5,400	5,400	5,400	5,400
Total investment	85,12,400	85,12,400	85,12,400	85,12,400

(#Repeated by Id. CIT(A) at page No. (5) of his order dated 05.12.2023- appealed against)

Statement of interest free funds available with Assessee

Interest free funds	31-03-2012*	31-03-2013	31-03-2014	31-03-2015
Share capital	2,95,31,610	2,95,31,610	2,95,31,610	2,95,31,610
Reserves and surplus	18,59,20,100	21,07,03,479	23,11,57,326	24,27,34,024
Securities premium	4,26,42,240	4,26,42,240	4,26,42,240	4,26,42,240
Total interest free funds	25,80,93,950	28,28,77,329	30,33,31,176	31,49,07,874

From the above figures, it is clear that Appellant has not made any investment in equity shares during the year under consideration and moreover The Appellant had sufficient interest free funds available with him. We are also of the view that Hon'ble Supreme Court in the case of Pr. CIT versus Craft Builders and

Constructions Private Limited (2020) 268 taxman 317 has categorically held that disallowance under section 14A cannot exceed exempt income of the relevant year. Apart from this any disallowance without finding how much administrative expenditure incurred to earn exempt income is not justified, as has been held by Hon'ble Supreme Court in the case of CIT versus UTI Bank Limited (2022) 447 ITR 662 (SC). Since as per the facts of the present case no such findings have been recorded with regard to incurring of Administrative expenditure for earning exempt income, therefore in our view additions of Rs. 85, 124 made by applying provisions of section 14A of the Income Tax Act is not sustainable in the eyes of law. Accordingly we direct the AO to delete the same.

4.1 In ITA No.41/JP/2024, the assessee has raised the following grounds of appeal.

“1. The ld. CIT(A) was not justified in not disposing of Ground No. 1 in respect of non-application of provision of Section 145(3) of the I.T. Act having effect in acceptance of book results declared by the assessee and by treating it as general in nature.

2. The ld. CIT(A) has erred in law and on facts in sustaining disallowance of Rs.17,23,212/- without pointing out any specific disallowance or unvouched business expenses by restricting the disallowance from 30% made by the AO to 15%

4.2 Apropos Ground No. 1 and 2, it is noted from the assessment order that the AO has disallowed the expenses to the extent of Rs.34,46,415/- which comes to 30% of the total expenses claimed by the assessee under different heads, by observing as under:-

“4. Unverifiable Expenses

4.1 It is noted that during the year the assessee has claimed to have incurred expenses under the heads of labour wages of Rs. 5789084, salaries and incentives of Rs. 4393977/-, conveyance expense of Rs. 394306/-, staff welfare expenses of Rs. 245947/-, office expenses of Rs. 33396/-, travelling expenses of Rs. 631340/-.

During the course of proceedings, it was noted that in certain cases under the above mentioned heads the assessee had self made vouchers and that majority of these expenses were incurred in cash. In view of the same, the claim of the assessee is seen to be not substantiated and suffer from various defects. In the case of labour and wages payments and salary payments, no proof of identity of the persons was produced either, No log book in the case of conveyance expenses was maintained.

There was no proof that the travelling and conveyance expenses were incurred for business purpose. In view of same, 30% of the said expenses being Rs. 34,46,415/- is hereby disallowed and added in the income of the assessee.”

4.3 In first appeal,, the ld. CIT(A) has partly allowed the appeal of the assessee holding that *the issue of section 145(3) is general in nature and treated as disposed off* and further sustained the addition to the extent of 15% holding that the disallowance of 40% made by the AO is on higher side.

4.4 Aggrieved by the order of the Id. CIT(A), the assessee preferred an appeal before the Bench and submitted that the Id. CIT(A) is not legally correct in avoiding his finding by stating that ground No. 1 of appeal is general in nature and further submitted that restricting the addition from 30% to 15% is not justified by the Id. CIT(A) without pinpointing out any specific disallowance. Thus the appeal may kindly be allowed.

4.5 On the other hand, the Id.DR supported the order of the Id.CIT(A).

4.6 We have heard both the parties and perused the material available on record including the written submission filed by the Id. AR of the assessee. Brief facts of the case are that Appellant Company is manufacturer of Aluminum Alloys Conductors, ACRS and Arial Bunch Cable and wire which are mainly sold to Electricity Supply companies of the State Governments. Books of account are audited under sec. 44AB of Income tax Act. Return of income was submitted at taxable income of Rs.5,55,52,320/-. It is noticed that while accepting the book results and without pointing out any disallowable or unvouched expenses, the AO disallowed 30% of few expenses treating them to be unverifiable expenses. It is noted that the above ground of appeal raised before Id. CIT(A) was not disposed of but treated as general in nature. Section 145(3) of Act is a provision in the statute the application of which depends on books of account maintained by the assessee

in respect of genuineness of expenses or other entries in the books of account. In Assessee's case, no defect was noticed or pointed but additions/disallowances were made for business expense on mere estimation avoiding the fact that on identical maintenance of accounts, no disallowances were made in any of the earlier years. Therefore Id. CIT(A) was not legally correct in avoiding his finding by stating that ground of appeal is general in nature. Thus the Ground No. 1 of the assessee is allowed.

4.7 As regards the ground No. 2 of the assessee, it is noted that following business expenses were disallowed by AO to the extent of 30% and disallowance restricted by Id. CIT(A) to the extent of 15% on mere estimation without pointing out any expenses of disallowable or unvouched in nature.

S.No.	Head of expenses/payment	Total expenses	Disallowance 30% AO	CIT(A) @ 15%
1.	Wages to Laborers	57,89,084	17,36,725	8,68,363
2.	Salaries & Incentives	43,93,977	13,18,193	6,59,097
3.	Conveyance expenses	3,94,306	1,18,292	59,150
4.	Staff welfare expenses	2,45,947	73,784	36,892
5.	Office expenses	33,396	10,019	5,009
6.	Travelling expenses	6,31,340	1,89,402	94,701
	Totals	1,14,88,050	34,46,415	17,23,212

From the facts of the case, the Bench observed that Wages and salary are cross verifiable from PF and ESI payment records. Therefore, it cannot be treated as unverifiable. It is also noted that other expenses were incurred by employees of the assessee company and therefore cannot be disallowed in Assessee Company's

hands. The Books of account are audited under section 44AB of Income tax Act and no defect or deficiency or unvouched nature of expenses or payment was found or pointed out by the Auditors. Thus Ad-hoc disallowance, without pointing out any disallowable or unvouched expense in nature is not justified. Hence, in view of the above facts and circumstances of the case, we do not concur with the findings of the Id. CIT(A). Thus the appeal of the assessee is allowed.

5. In the result, the appeals of the assessee are allowed with no orders as to cost
Order pronounced in the open court 30/09/2024.

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाई)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30 /09/2024

***Mishra**

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

1. The Appellant- M/s. Anamika Conductors (P) Ltd., Jaipur
2. प्रत्यर्था / The Respondent- The ACT, Circle -6, Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No.40 & 41 /JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar