

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "A", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER

	ITA NO. 4863/Del/2019	
	A.YR. : 2014-15	
ALLIANCE INTEGRATED METALIKS LTD. DSC 260, 1 ST FLOOR, SOUTH COURT, DLF SAKET, NEW DELHI – 110 017 (PAN: AABCB7807L)	VS.	PR. CIT (CENTRAL)-3, JHANDEWALAN, NEW DELHI
(APPELLANT)		(RESPONDENT)

Appellant by : Sh. S. Krishnan, Adv. & Sh. Harshist
Chauhan, Adv.
Respondent by : Sh. Raghunath, Sr. DR.
Date of hearing : 01.10.2024
Date of pronouncement : 04.10.2024

ORDER

PER SHAMIM YAHYA, AM :

The Assessee has filed the Appeal against the Order of the Ld. Pr. Commissioner of Income Tax, Central-3, New Delhi dated 30.03.2019 passed u/s. 263 of the Income Tax Act, 1961 (hereinafter referred as Act), relating to assessment year 2014-15 on the following grounds:-

1. On the facts and circumstances of the case, the order passed by the learned Pr. CIT(central)-3 is bad both in the

eye of law and on facts.

2. That the Ld. Pr. CIT has erred in invoking the provisions of section 263 of the Income-tax Act without satisfying the preconditions necessary for passing revisionary order.

3. That the Ld. Pr. CIT has neither made any inquiry into the facts nor indicated the nature of inquiry to be made by the A.O while making fresh assessment.

4. That the order passed by the Ld. Pr. CIT u/s 263 is bad in law as it is based on general observations, not specific to the facts of the case of the appellant.

5. That the order passed by the Ld. Pr. CIT u/s 263 is liable to be set aside on the ground that submissions of the appellant have not been fully considered while passing order u/s 263.

6. That the order of the Id. Pr. CIT is required to be quashed as it has not been shown as to how conditions of sub-sections (2) and (3) section 14A are satisfied.

7. That the order of the Ld. Pr. CIT is liable to be quashed as computation of disallowance under rule 8D has never been furnished to the appellant.

8. That the appellant seeks leave to add, amend, alter, delete or substitute any of the above grounds during the hearing of the appeal."

9. That these grounds are independent of one another.

2. Briefly stated facts are that the assessee filed its e-return declaring loss of Rs. 34,05,16,817/- on 29.11.2014. Later, the case of the assessee was selected for scrutiny under CASS. Accordingly, notice u/s. 143(2) of the Act was issued upon the assessee on 31.08.2015 and further notice u/s. 142(1) alongwith questionnaire were issued on 08.08.2016. In response to the same, the AR of the assessee attended the assessment proceedings and furnished the necessary

details, information and documents. After examining the details filed by the assessee company, contention of the assessee was accepted and the income of the assessee company was assessed at returned income of loss at Rs. 34,05,16,817/- u/s. 143(3) of the Act vide order dated 21.12.2016. Subsequently, on perusal of the balance sheet, Ld. Pr. CIT while exercising his jurisdiction u/s. 263 of the Act has observed that assessee company has invested Rs. 4,04,23,38,400/- in equity shares in non-current investment and has earned dividend income amounting of Rs.1,13,04,224/-. Ld. Pr. CIT further noted that as per profit & loss account of the assessee, the assessee has made expense of Rs.25,35,72,066/- under head "Finance Costs" and has not disallowed any expenses u/s 14A of the Income-tax Act, 1961. The AO did not raise this issue pertaining to section 14A of the Act and did not disallow any expenses relating to exempt income. He further noted that in view of Circular No.5/2014 of CBDT, the expenses related to the exempt income had to be calculated as per section 14A read with Rule 8D, it is not material that assessee should have earned such exempt income during the financial year under consideration. Accordingly, a show cause notice dated 19.03.2019 was issued and served upon the assessee and also by e-mail dated 20.03.2019 and the assessee was asked to file any objection on 22.03.2019, if any, in respect of proposed action u/s 263 of the Income-tax Act, 1961. In response to show cause notice, the Ld. Authorized Representative of the assessee, appeared on 22.03.2019 and submitted his submissions dated 28.03.2019, wherein the Ld. A.R. of the assessee company

has objected for proceedings u/s 263 of the LT. Act, 1961. In his submission, the A.R. of the assessee company has stated that no amount is disallowable because no expenditure has been incurred for earning the exempt income and no satisfaction is recorded by the Assessing Officer before invoking Rule 8D and hence requested to drop the proceedings u/s 263 of the I.T. Act. The A.R. of the assessee company has further stated that it is not necessary that the proposed disallowance of Rs. 1,13,04,224/- is equal to the income earned by way of dividend in this year. However, it is not necessary that actual disallowance ought to be equal to or more than the exempt income of an year. The disallowance could be of an amount lower than the exempt income depending upon the facts of the case. Further the A.R. of the assessee company has also stated that the proposed revision does not result in any benefit to the revenue as tax has been paid u/s 115JB of the Act. The submission of the assessee was considered and the objections of the assessee held not tenable and, therefore, rejected. Thus, the assessment order passed by the A.O. is held to be erroneous and prejudicial to the interest of revenue and accordingly, the assessment order, was cancelled to the extent of disallowance of expenses related to exempt income by the Ld. Pr. CIT. The A.O. was directed to decide the issue afresh and pass speaking order as per law after giving proper opportunity of being heard to the assessee.

3. Aggrieved with the aforesaid Ld. Pr. CIT's order, Assessee is in appeal before us.

4. We have heard both the parties and perused the relevant records.

4.1 At the outset, Ld. Counsel for the assessee agreed that the issue of expenditure incurred for earning exempt income has not been examined by the AO. To this extent, he did not object to the PCIT's order. However, he pleaded that there is no case for *denovo* assessment. Ld. DR relied upon the order of the Pr. CIT.

4.2 Having considered the rival contentions and perusing the records, we find that Ld. Pr. CIT has passed the order u/s. 263 of the Act only on the issue that the expenditure incurred for exempt income has not been examined by the AO. But he has also directed the AO not only to examine this aspect, but also do the assessment afresh. We find nothing other than the lack of enquiry for expenditure incurred for earning the exempt income has been pointed out by the Pr. CIT in his order. Hence, we modify the directions and direct the AO to examine only the aspect as pointed out by the Ld. Pr. CIT regarding the expenditure incurred for earning the exempt income.

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

Order pronounced on 04/10/2024.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar