IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

ITA No.177/Bang/2024
Assessment Years: 2017-18

The Dy. Commissioner of Income Tax, Circle – 7(1)(1), Bengaluru.	Vs.	Tally Solutions Private Limited, No.331-336, Raheja Arcade, Koramangala, Bengaluru. **PAN – AAACP 7879 D**
APPELLANT		RESPONDENT

Assessee by	:	Ms. Tanmayee Rajkumar, Advocate
Revenue by	:	Shri Subramanian S, JCIT

Date of hearing	:	14.08.2024
Date of Pronouncement	:	30.08.2024

O R D E R

PER WASEE M AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the revenue against the order passed by the NFAC, Delhi dated 24/11/2023 vide DIN No. ITBA/NFAC/S/250/2023-24/1058202664(1) for the assessment year 2017-18.

2. At the outset, we note that there was a delay in appeal filing for 9 days by the revenue which was duly explained in the condonation petition filed by the revenue dated 23rd February 2024. It was stated by the revenue that there was a delay in obtaining approval from the ld. PCIT for filing the appeal. The ld. AR appearing on behalf of the

assessee raised no objection if the delay in filing the appeal by the revenue is condoned. Considering the length of delay and the concession accorded by the assessee, we condone the delay in filing the appeal by the revenue and proceed to adjudicate the issue on merit of the case.

The revenue has raised following grounds of appeal:

> *"i. Whether GIT(A) was right in fact and in law in restricting the disallowance made for excess deduction claimed by assessee uls. 35(2AB) to the extent of expenditure made, when AO has rightly made the addition after allowing the deduction uls. 35(2ABj to the extent assessee was eligible?*
> *ii. Whether CIT(Aj was right in fact and in law in deleting the disallowance made by the AO when assessee failed to establish that the said expense is incurred wholly and exclusively for the purpose of business:'*
> *iii. Whether on the facts and in the circumstances of the case and in law. CIT(A) was right in holding that no disallowance u's. 14A can be made it there is no exempt income and thereby deleting the disallowance made contrary to provisions under section 14A read with rule SD of the Act and Circular 1lro.5/2014 dated 11.02.2014 of the CBDT which has clarified that rule 8D nss 14A provides for disallowance of the expenditure even when the assessee is a particular year has not earned any exempt income?*
> *iv. Whether CIT(A) was right in fact and in law in deleting the disallowance made by the AO when the payment made was liable for deduction ofTDS ws. 194J and assessee failed to deduct TDS?"*

3. The first issue raised by the revenue is that the learned CIT(A) erred in reducing the disallowance made by the AO from Rs. 2,44,62,762/- to Rs. 1,22,31,381/- of the claim made by the assessee under section 35(2AB) of the Act.

4. The facts in brief are that the assessee, a private company, is engaged in the business of development and sale of accounting & business management software and incidental services. The assessee for the year under filed return of declaring income at NIL which was selected for scrutiny under CASS.

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5. The AO found the assessee claimed weighted deduction under section 35(2AB) of the Act @ 200% on the expenditure incurred on scientific research for Rs. 40,74,06,726/- (Rs. 20,37,03,363/- actual expenses). However, the DSIR in form 3CL approved only an amount of Rs. 19,14,72,000/- as expenditure incurred on scientific research. Therefore, deduction u/s 35(2AB) of the Act shall be allowed to the extent of Rs. 38,29,44,000 only i.e. 200% of Rs. 19,14,72,000/-. Accordingly, the AO disallowed excess deduction of Rs. 2,44,62,762/- and added to the total income of the assessee.

6. The aggrieved assessee preferred an appeal before the learned CIT-A/NFAC and contended that the total expenses incurred on scientific research was Rs. 20,37,03,363/- only and out of such expenses an expense of Rs. 19,14,72,000/- was approved by DSIR in Form 3CL. In other words, the DSIR did not approve an expense on scientific research for the purpose of deduction to the extent of Rs. 1,22,31,381/- only. The DSIR approval is relevant only for the claim of weighted deduction u/s 35(2AB) @ 200% on the expenses incurred on the scientific research. Hence, it is only part of the weighted deduction on such expenses of Rs. 1,22,31,381/- shall be disallowed by making addition and not the entire amount of deduction of Rs. 2,44,62,762/- only. As there was no finding that the expenses of Rs. 1,22,31,381/- was not genuine, therefore the same shall be allowed as business expenses.

7. The learned CIT-A/NFAC concurred with the contention of the assessee and restricted the addition to the extent of Rs. 1,22,31,381/- only.

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8. Being aggrieved by the order of the learned CIT(A)/NFAC, the Revenue is in appeal before us.

9. The learned DR before us reiterated the findings contained in the assessment order. On the other hand, the learned AR before us filed a paper book running from pages 1 to 1636 and vehemently supported the order of the learned CIT-A.

10. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the assessee claimed having incurred expenses of Rs. 20,37,03,363/- on scientific research which was eligible for deduction under section 35(2AB) of the Act @ 200%, but DSIR approved expenses eligible for deduction to the extent of Rs. 19,14,72,000/- only, meaning thereby, the DSIR did not approve expenses of Rs. Rs. 1,22,31,381/- to be eligible for deduction u/s 35(2AB) of the Act which does not mean that the expenses incurred were not genuine or not incurred for the purpose of business. The only consequence of DSIR approval is that the weighted deduction u/s 35(2AB) of the Act which is allowed @ 200% will not be allowed on such expenses, however such expenses continued to be allowed as business expenses under section 37 of the Act unless AO brings some contrary facts either such expenses are not genuine or in personal nature or in violation of law etc. In the case on hand, there is no such finding recorded by the AO. Therefore, in our considered view, in the present facts, the addition of Rs. 1,22,31,381/- only shall be made on account of disallowance of weighted deduction of Rs. 2,44,62,762/- under section 35(2AB) of the Act. Accordingly, we do not find any infirmity in the

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finding of the learned CIT(A)/NFAC. Hence, the ground of appeal raised by the revenue is hereby dismissed.

11. The next issue raised by the revenue is that the learned CIT(A) erred in deleting the disallowance made by the AO for Rs. 14.40 lacs representing the rent paid to the directors.

12. The assessee claimed expenses on account of rent paid for guest house at Kolkata and Mumbai for Rs. 14.40 Lakh which was paid to the directors namely Smt. Nupur Goenka and Shri Tejas Goenka. The AO disallowed the same by holding that such expenses were not incurred wholly and exclusively for the purpose of the business. Thus, the AO added the sum of Rs. 14.40 lacs to the total income of the assessee.

12.1 The aggrieved assessee preferred an appeal before CIT(A)/NFAC and contended it has offices at Mumbai and Kolkata. For official purposes, the employees regularly visit Kolkata and Mumbai, and they stay at guest houses instead of hotels to save unnecessary hotel charges. Further, its employees visit different cities including Kolakata and Mumbai for various purposes such as to meet the sales agent, conduct workshop, take part in industry event, take part in trade show etc. These traveling and stay expenses are allowable u/s 37 of the Act. Accordingly, the guest house rent, and maintenance expenses shall be allowed for deduction. The assessee in support of his contention furnished logbook of guest house for verification for the use of guesthouse by the employees.

13. In view of the above, the learned CIT(A)/NAFC observed that the assessee was able to explain the use of guest house by furnishing

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logbook and other details. There is no evidence brought on record by the AO suggesting the guest house was used by the director for personal purposes. Hence the learned CIT(A)/NFAC allowed the ground of appeal of the assessee.

14. Being aggrieved by the order of the learned CIT(A)/NFAC, the revenue is in appeal before us.

15. The learned DR before us, besides reiterating the findings contained in the assessment order, further submitted that there was no property owned by the directors either in Kolkata or Mumbai. Therefore, there is no question for the company to make the payment of the rent to the directors. The ld. DR further submitted that in the return of income of the directors no detail of the property of Mumbai or Kolkata is appearing. On the other hand, the learned AR before us submitted that the assessee has been claiming the deduction of such expenses consistently which was also accepted by the revenue. The learned AR also furnished the details of the employees who visited the cities of Kolkata and Mumbai to justify that the expenses were incurred in the course of the business. The learned AR vehemently supported the order of the learned CIT-A.

16. We have heard the rival contentions of both the parties and perused the materials available on record. It is an admitted position of facts that the assessee has paid Guest House rent and maintenance charges to its Director as discussed in preceding paragraph for the properties located at Kolkata and Mumbai. The grievance of the Revenue is that perusal of the return of income of the Directors would show that

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they were not having any property in Kolkata & Mumbai. When the Bench put a query to the Id. Counsel for the assessee about the veracity of the absence of address of Kolkata and Mumbai property in the return of income of the Directors, the counsel for the assessee simply said that she has not idea about this veracity, therefore, considering the facts and circumstances of the case, we remit this issue to the file of AO for examining afresh. We are conscious that we are not examining the cases of Directors before us however, it is equally true that if the Directors would not have any property in Mumbai or Kolkata then these expenses would be termed as bogus expenses in the hands of the assessee. We also observed that the Revenue has not tinkered with these expenses in the previous years. However, it is the settled position of law that to perpetuate an error is not heroism as held by Hon'ble Apex Court in the case of Baroda Distributor's case 155 ITR 120 therefore, we remit this issue to the file of the AO for examination afresh. Hence the ground of appeal of the revenue is allowed for statistical purposes.

17. The next issue raised by the revenue is that the learned CIT(A) erred in deleting disallowance made by the AO under section 14A r.w.r. 8D of the IT rules for Rs. 26,05,150/- only.

18. The AO in the assessment proceeding observed that the assessee had made investment in equity shares of subsidiary, associates, and other company for Rs. 2,39,80,119/- and in Mutual Fund for Rs. 24 Cr which are capable of yielding exempted income u/s 10(34) of the Act. Hence the AO invoked the provisions of section 14A of the Act and worked out the amount of disallowance under rule 8D(2)(ii) of IT Rules at Rs. 26,05,150/- being 1% of annual average of monthly average of

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opening and closing value of investment and added to the total income of the assessee.

19. On appeal by the assessee, the learned CIT(A)/NFAC deleted the addition made by the AO by holding that no disallowance u/s 14A of the Act is required to be made in the absence of exempted/dividend income. In holding so, the learned CIT(A)/NFAC referred the judgment of Hon'ble Supreme Court in the case of ITO vs. GVK Project and Technical Services reported in 106 taxmann.com 181 and in the case of PCIT vs. Caraf Builders and Constructions Pvt Ltd. reported in 112 taxmann.com 322.

19.1 Being aggrieved by the order of the learned CIT(A)/NFAC, the revenue is in appeal before us.

20. The learned DR before us reiterated the findings contained in the assessment order. On the other hand, the learned AR before us vehemently supported the order of the learned CIT-A.

21. We have heard the rival contentions of both the parties and perused the materials available on record. From the perusal of the order of the authorities below, we note that the assessee for the year under consideration has not claimed any exempted income. The AO merely on the reasoning that the assessee has investments capable of yielding exempted income invoked the provision of section 14A of the Act and worked out the amounts of disallowance as specified under rule 8D(2)(ii) of the IT Rules. In this regard, we note that it is settled position of law by the various Hon'ble Courts including the Hon'ble Delhi High Court in the case CIT vs. GVK Project and Technical Services Ltd reported in 106 taxmannn.com 180 which was subsequently confirmed by the Hon'ble

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Supreme Court reported in 106 taxmann.com 181 that the provisions of section 14A of the Act cannot be made applicable in the absence of exempted income. The relevant finding of the Hon'ble Delhi High Court in the case discussed above is extracted as under:

> **1.** The Revenue's appeal is with respect to the disallowance made by the Assessing Officer ('AO') under Section 14A of the Income-tax Act, 1961 (hereafter 'the Act'). The AO had proceeded to calculate the disallowance based upon the investments made by the assessee. The CIT(A) and the Income Tax Appellate Tribunal (ITAT) allowed the assessee's appeals by following the ruling in *'Cheminvest Ltd.* v. *CIT* [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33 (Delhi); the Court had then held that in the absence of any exempt income disallowance was impermissible. For the relevant Assessment Year (2013-14), concededly, the assessee did not report any exempt income. Consequently, no substantial question of law arises; the appeal is therefore dismissed alongwith the pending application.

21.2 In view of the above discussion and settled position of law, we do not find any infirmity in the finding of learned CIT(A)/NFAC. Hence, the ground of appeal of the revenue is hereby dismissed.

22. **The last** issue raised by the revenue is that the learned CIT(A) erred in deleting disallowance made for non-deduction of TDS on the communication expense of Rs. 94,42,341/- only.

23. The AO during the assessment proceedings found that the assessee has debited communication expenses of Rs. 94,42,341/- without deducting TDS. Therefore, the AO invoked the provision of section 40(a)(ia) and disallowed 30% of the expenses amounting to Rs. 28,32,702/- and added to the total income.

24. The aggrieved assessee preferred an appeal before the learned CIT(A)/NFAC. In the appellate proceeding, it was contended that the impugned expenses are in the nature of telephone and internet charges

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on which the provisions of TDS are not applicable. However, the AO made disallowances in arbitrary manner without considering the nature of the expenses.

25. The learned CIT-A/NFAC after considering the facts in totality accepted the assessee's contention and deleted the addition made by the AO by holding that the assessee has provided entire details of telephone and internet charges. The assessee has also furnished the details of TDS deducted and the reason where no TDS was deducted.

25.1 Being aggrieved by the order of the learned CIT(A)/NFAC the Revenue is in appeal before us.

26. Both the learned DR and the learned AR before us vehemently supported the order of the authorities below as favourable to them.

27. We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the necessary details regarding the communication expenses, placed on page 1491 of the paper book, we note that wherever the expenses, exceeding the threshold limit specified under section 194J and 194C of the Act, were incurred, the TDS was duly deducted by the assessee. It is only the expenses under the head communication cost, where threshold limit was not exceeding, the TDS was not deducted on the ground that the assessee was not liable for the deduction of TDS. Thus, the finding of the AO that the assessee failed to deduct TDS from the commission expenses is based on wrong assumption of facts and therefore the same is not sustainable. At the time of hearing, the learned DR appearing on behalf of the revenue has also not brought anything contrary to the

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finding recorded by the learned CIT-A. Hence, we do not find any infirmity in the order passed by the learned CIT-A. Thus, the ground of appeal of the revenue is hereby dismissed.

28. In the result, the appeal filed by the revenue is partly allowed for statistical purposes.

Order pronounced in court on 30th day of August, 2024

Sd/-	Sd/-
(PRAKASH CHAND YADAV)	**(WASEEM AHMED)**
Judicial Member	Accountant Member

Bangalore
Dated, 30th August, 2024

/ vms /

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore

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