

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

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री संजय अवरथी, लेखा सदस्य
के समक्ष
Before

**SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 1042/KOL/2024
Assessment Year: 2017-18**

***Allium Conclave Pvt. Ltd.....Appellant
[PAN: AAACH 6526 R]***

Vs.

ITO, Ward-5(4), Kolkata.....Respondent

Appearances:

Assessee represented by: S.K. Tulsian, Adv.

Department represented by: P.P. Barman, Addl. CIT, Sr. DR.

Date of concluding the hearing : August 7th, 2024

Date of pronouncing the order : October 16th, 2024

ORDER

Per Sanjay Awasthi, Accountant Member:

In this case the return of income for AY 2017-18 was filed by the assessee on 05.11.2007 at 'NIL' income. It is important to note that the case was selected for scrutiny through Computer Assisted Scrutiny Selection under limited scrutiny criteria. Again it needs to be repeated, since this fact would have some bearing on the ultimate outcome of this appeal before us, that the reasons for selection for scrutiny were:

a) "Low income in comparison to high loans/advances/investment in Shares appearing in balance sheet."

b) "Expenses debited to P&L A/c for earning exempt income as per schedule BP of ITR is significantly lower as compared to investments made to earn exempt income."

1.1. It has been recorded by the Assessing Officer (hereinafter referred to as ld. 'AO') that allegedly the assessee did not comply with notice u/s 142(1) of the Income Tax Act, 1961 (in short the 'Act') and therefore the assessment order had to be completed u/s 144 of the Act. Thereafter, the ld. AO proceeded to make additions on account of unexplained receipt of Rs. 1 Crore and an addition of Rs. 16,74,712/- on account of estimated income from investments.

1.2. Thereafter the assessee approached the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as ld. 'CIT(A)'] where both the additions were confirmed on the ground that though the assessee had contested the additions to income but allegedly had not filed any supporting documentary evidences even before the ld. CIT(A).

2. Before us the ld. A/R has filed a short paperbook in which the appellant's response to notice u/s 142(1) of the Act of the ld. AO, which contains the following information/documents:

- a) Reply to notice u/s 142(1) of the Act.
- b) Balance sheet of appellant for the present year.
- c) Copy of bank statement.
- d) Audited balance sheet of one Hemraj Mahabir Prasad Ltd.
- e) Copy of letter from Hemraj Mahabir Prasad Ltd. regarding refund of security deposit.
- f) Form 35, ITR etc.

2.1. Before us the ld. A/R vehemently challenged the contention of the authorities below that there was no compliance made at any stage and therefore went on to challenge the passing of order in an *ex-parte* manner. The ld. A/R pointed out that the addition of Rs. 1 Crore was on account of a refund of security deposit tendered in an earlier year to M/s. Hemraj Mahabir

Prasad Ltd., which was merely returned in this year. Secondly, it has been averred that there was no income from investments which would merit application of Section 14A of the Act.

2.2. The ld. D/R argued that since the appellant has not complied with the provisions of notice u/s 142(1) of the Act then an order u/s 144 of the Act was justified.

3. We have considered the documents placed before us, the orders of the authorities below and the averments of both ld. AR/DR. It is understood that the Income Tax Department has automated the process of selection for scrutiny and in this case, as mentioned earlier, the only two grounds on which the case was selected for scrutiny were as have been mentioned (*supra*). The ld. Counsel for the assessee has duly demonstrated that the assessee had duly replied and furnished the relevant documents in relation to both the issues. It was explained that the aforesaid amount of Rs. 1 Crore was out of the earlier security deposits which were received back in the year under consideration. The ld. Counsel for the assessee in this respect has invited our attention to page 22 of the paperbook which is a copy of the balance sheet as on 31.03.2017, wherein, short-term loans and advances as on 31.03.2016 have been mentioned at Rs. 1,00,25,000/- whereas, the same were at Rs. 25,000/- as on 31.03.2017. The ld. Counsel for the assessee invited our attention to page 30 of the paperbook which is 'Note-9' containing details of the short-term loans and advances wherein also, the same figures have been mentioned. The ld. Counsel for the assessee has further invited our attention to page 53 of the paperbook which is a copy of the bank account of HMP Ltd. reflecting the transaction of Rs. 1 Crore on 22.07.2016. Ld. Counsel for the assessee has also invited our attention to page 32 of the paperbook showing the corresponding receipt/deposits of Rs. 1 Crore in the bank account of the assessee. The ld. AO thus, totally ignored the aforesaid factual evidence on the file produced by the assessee. It is seen that the ld. CIT(A) has merely paraphrased the findings of the ld. AO without making any effort to appreciate the reply and evidences furnished by the assessee. In view of this, the addition

made by the lower authorities on this issue is not sustainable. The same is accordingly ordered to be deleted.

3.1. So far as the disallowance made by the lower authorities, u/s 14A of the Act on account of the disallowance of expenditure incurred for earning tax exempt income is concerned, the ld. Counsel for the assessee has demonstrated that the assessee during the year did not earn any tax exempt dividend income out of the investments made. Therefore, as per the law laid down by various Courts of the country, no disallowance u/s 14A of the Act is attracted. Reliance was placed in the cases of *Cheminvest Ltd. v. CIT* [2015] 61 taxmann.com 118/234 Taxman 761/378 ITR 33 (Delhi), *CIT v. Shivam Motors (P.) Ltd.* [2015] 55 taxmann.com 262/230 Taxman 63 (All.), *CIT v. Corrttech Energy (P.) Ltd.* [2014] 45 taxmann.com 116/223 Taxman 130/[2015] 372 ITR 97 (Guj.), *CIT v. Ashika Global Securities Ltd.* [GA No. 2122 of 2014, dated 11-6-2018], *Redington India Ltd. v. Addl. CIT* [2017] 77 taxmann.com 257/392 ITR 633 (Mad.) wherein, the Hon'ble High Courts have held that if the assessee during the year has not earned any tax exempt income, no disallowance u/s 14A of the Act will be warranted. In view of this, addition on this score is also not sustainable and the same is ordered to be deleted.

4. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open Court on 16th October, 2024.

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 16.10.2024

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Allium Conclave Pvt. Ltd., Ground Floor, 4, Fairlie Place, B.B.D. Bagh, Kolkata, West Bengal, 700001.**
- 2. ITO, Ward-5(4), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata