

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.1419/KOL/2024
Assessment Year: 2010-11**

Eastern Investments Ltd. Plot No.255, Pristine Green, Pokhariput, Bhubaneswar- 751020 (Odisha). (PAN: AABCE0830E)	Vs.	ACIT,Circle-2(1),Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri S. Bhattacharya, AR
Respondent by : Shri P. P. Barman, Addl. CIT, Sr. DR

Date of Hearing : 19.09.2024
Date of Pronouncement : 19.11.2024

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as "the Ld. CIT(A)") passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2010-11 vide Appeal No. ITBA/NFAC/S/250/2024-25/1064565417(1) dated 02.05.2024 which has been passed against the order giving effect to the appellate order of Ld. CIT(A) by the ACIT, Circle-1, Kolkata on 12.02.2021.

2. Grounds of appeal raised by the assessee are as under:

"1. That the Commissioner (Appeals), NFAC was wrong in dismissing the appeal of the appellant.

2. That without prejudice to the contention raised in Ground No.1 above, the Ld. Commissioner of Income-tax (Appeals), NFAC failed to appreciate that there could not be any disallowance of any amount which had not been claimed for deduction and thus the Commissioner of Income-tax (Appeals) was wrong in not holding that the disallowance u/s. 14A could not exceed Rs.17,17,861/- being the amount of expenses which had remained as expenses claimed for deduction.

3. That the Appellant craves leave to add, modify or withdraw any Ground or Grounds of Appeal before or at the time of hearing of the appeal.”

3. We have heard the rival contentions and also perused the material available on record and the paper book filed.

4. Ground Nos. 1 and 3 are general in nature and do not require any adjudication.

5. Ground No.2 is the only effective ground of appeal and it is contended that the Ld. CIT(A) failed to appreciate and was wrong in not holding that the disallowance u/s. 14A of the Act could not exceed Rs.17,17,861/-, being the amount of expenses which remained as expenses claimed for deduction. The scrutiny assessment of the assessee was completed vide order dated 26.03.2013 passed u/s. 143(3) of the Act by making the following additions:

“1. Rs.6,09,000/- being filing fees paid to the ROC .

2. Rs.64,69,000/- u/s.14A read with Rule 8D of the I. T. Rules,1962.

6. Aggrieved by the same, the assessee preferred an appeal before the Ld. CIT(A) and the Ld. CIT(A) vide order dated 20.04.2015 confirmed the addition of Rs.6,09,000/- and issued a direction to the Ld. AO for calculation of the disallowance u/s.14A read with rule 8D(2) of the I. T. Rules,1962. In consequence of the same, the Ld. AO passed the impugned order and again made the disallowance of Rs.64,69,000/- u/s. 14A read with Rule 8D(2) of the Income Tax Rules,1962. Aggrieved with the order of the Ld. AO, the assessee again preferred an appeal before the Ld. CIT(A), who vide order dated 02.05.2024, discussed the submission of the assessee, the direction of the Ld. CIT(A) in the appeal order dated

20.04.2015, the order giving effect passed by the Ld. AO in consequence of the direction received and has observed in the order that examination of the details available on record indicate that identical contention was raised by the assessee in its appeal against the assessment order dated 26.03.2023 for AY 2010-11 and the same already stands adjudicated by the Ld. CIT(A)-5, Kolkata in the first appellate order dated 20.04.2015 (incorrectly mentioned as 20.40.2015) and by observing as under has dismissed the ground of appeal of the assessee:

“Thus, it is clearly forthcoming from the above extract of the order dated 20.04.2015 that exactly identical contentions raised by the appellant have already been deliberated upon and stand adjudicated by not accepting such contentions by the then CIT(A)-5, Kolkata in his Order passed u/s 250 [supra]. In view of the above, the merits of the same cannot be revisited again in the present appellate proceedings arising from the appeal filed against the OGE Order passed by the Ld. AO on 20.03.2013. This is also clear from the fact that in this respect the Ld. AO has dutifully given effect to/followed this decision of the Ld. CIT(A) contained in the first appellate order dated 20.04.2015 while giving effect to such order and hence, there is no cause to interfere on this count with the impugned order which is only an Order Giving Effect Order. Thus, the corresponding grounds cannot be accepted and are DISMISSED.”

7. Thus, it is evident that the Ld. CIT(A) has not adjudicated upon the contention raised by the assessee that the disallowance u/s. 14A cannot exceed the expenses claimed. Before us, the assessee filed the audited Balance Sheet and P&L Account for the year ended on 31.03.2010 and the computation of the total income for the AY 2010-11 and brought our attention to the fact that the total expenditure of Rs.25,21,000/- was claimed before arriving at the profit before tax at Rs.1,19,265/-. The details of the expenditure are as per Schedule 12 to the P & L Account. Since the issue has not been adjudicated by the Ld. CIT(A), the Ld. AR requested that the matter may be remitted back to the file of the Ld. CIT(A) for adjudicating afresh on this ground of appeal. Accordingly, the order of the Ld. CIT(A) is set aside to decide this limited issue of disallowance being limited to Rs.17,17,861/- as against Rs.64,69,000/- made by the Ld. AO in accordance with law. The assessee shall file the

relevant details before the Ld.CIT(A) in support of its claim that the disallowance could not exceed Rs.17,17,861/- as claimed. Thus, this ground of appeal of the assessee is allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19th November, 2024.

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Rakesh Mishra)
Accountant Member

Dated: 19th November, 2024

JD, Sr. P.S.

Copy to:

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

//True Copy//

By Order
Assistant Registrar
ITAT, Kolkata Benches, Kolkata