

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.601/Nag./2016
(Assessment Year : 2013-14)

Shri Govinddas Govardhan Daga
5, Temple Road, Civil Lines Appellant
Nagpur 440 001 PAN – AAWPD9591R

v/s

Asstt. Commissioner of Income Tax
Circle-2, Nagpur Respondent

ITA no.614/Nag./2016
(Assessment Year : 2013-14)

Dy. Commissioner of Income Tax
Circle-2, Nagpur Appellant

v/s

Shri Govinddas Govardhan Daga
5, Temple Road, Civil Lines Respondent
Nagpur 440 001 PAN – AAWPD9591R

Assessee by : None
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 27/01/2025

Date of Order – 05/02/2025

ORDER

PER K.M. ROY, J.M.

These cross appeal are emanating from the impugned order dated 26/10/2016, passed by the learned Commissioner of Income Tax (Appeals)-2, Nagpur, [“learned CIT(A)”], for the assessment year 2023-14.

ITA no.601/Nag./2016
Assessee's Appeal – A.Y. 2013–14

2. In its appeal, the assessee has raised following grounds:–

"1) The addition made by learned A.O. at Rs.1,75,00,000/- by disallowing deduction claimed u/s 35(1)(ii) of Income Tax Act 1961 is unjustified, unwarranted and bad in law.

2) The learned CIT(A) erred in confirming the addition made by learned A.O. at Rs. 1,75,00,000/- on account of disallowance of deduction claimed u/s 35(1)(ii) of Income Tax Act 1961.

3) The addition made by learned A.O. at Rs.2,17,500/- on account of agricultural income is unjustified, unwarranted and bad in law.

4) The learned CIT(A) erred in confirming the addition at Rs.2,17,500/- in respect to agricultural income.

5) Any other ground shall be prayed at the time of hearing."

3. The facts of the case, as culled out from the impugned order passed by the learned CIT(A), are reproduced herein below:–

"6.1 The AO, in the course of assessment proceedings found that assessee had given donation of Rs.100 lakhs to Human Genetics and Population Health, Kolkata. has claimed the The AO further found that assessee deduction of Rs.175 lakhs u/s. 35(1)(ii) of the IT Act, 1961 in respect of the said donation. In the course of enquiries as regards to the genuineness of the donation, the AO gathered that the conducted a Investigation Wing, Kolkata Survey action on three bogus Trusts which were found engaged in providing the bogus accommodation entries for such donation and collecting the commission in lieu thereof from the beneficiaries and the amount of donation received was routed back to the donor in cash. The AO also gathered that out of the three Trusts, the School of man Genetics and Population Health is one of such bogus Trusts through which the assessee got benefit of claiming deduction u/s. 35(1) (ii) to the tune of Rs.175 lakhs by making donation through the banking channel. The bogus donations were being made by cheque / RTGS and thereafter the deduction of commission the amount was returned back in cash to the donor. in Accordingly, the Trust was found engaged preparing the bogus billing and other accommodation entries in the books of the Trust with a motive to extend the benefit of bogus claim for deduction u/s. 35(1)(ii) in lieu commission. of charging The Ld. AO has explained the cycle of such transactions and modus operandi through diagrammatic illustration for bogus donations a on page no.3 of the assessment order. The Ld. AO found that the list of beneficiaries prepared by the Kolkata Investigation Wing also included the name of the appellant Shri Govinddas Daga as one of the beneficiaries. The AO caused the

further enquiries to which the assessee could not file a satisfactory explanation as regards to the genuineness of the donation and the claim for deduction. The assessee explained to AO that he knows the Trust through the third party but, no details of such third party were given. The assessee also submitted one letter issued by the Trust to him, requesting for donation wherein the Trust requested the assessee to deposit the amount of donation in one specific bank account but the assessee deposited the same in a different bank account to which the assessee failed to furnish any explanation. Further on perusal of computation of income the AO further noted that assessee had substantial interest income which has been reduced by making bogus claim of Rs. 175 lakhs u/s. 35(1)(ii) of the Act. Thus, taking into consideration all these cumulative factors, the Ld. AO has disallowed the claim of deduction of Rs. 175 lakhs u/s. 35(1) (ii) of the Act.

4. On appeal, the learned CIT(A) dismissed the appeal of the assessee by confirming the order passed by the Assessing Officer. The observations of the learned CIT(A) are reproduced below:–

"6.3 I have carefully considered the submissions of the AR of the appellant, the order of the AO and the material on record. The AR has contended that the donation of Rs. 1 crore given to the School of Human Genetics and Population Health, Kolkata is through the proper banking channel and the said Trust / Institution was holding approval from the Central Board of Direct Taxes u/s. 35(1) (ii) of the IT Act, 1961 which was valid at time of framing the assessment, therefore, according to the AR, the assessee is eligible for deduction of Rs. 175 lakhs u/s. 35(1) (ii) of the Act. The AR has further contended that there is no evidence on record to assert that the donation given by the assessee has been routed back in cash to the assessee.. The AR of the appellant in support of his contentions has relied on the decision of Hon'ble Apex Court in the case of CIT Vs. Daulatram Rawatmull reported in 87 ITR 349 (Supreme Court). The AR thus pleaded that the legal documents placed on record being receipt, certificate of approval to such Trust by CBDT and the payment through banking channel discharge the onus cast on the assessee to show that the apparent is real. Thus the appellant contended that the Ld. AO has not brought on record any evidence to show that the transaction made by the assessee is otherwise than as is appearing in the documents placed on record.

6.4 On careful examination of the material facts as emanated from the records, it is seen that the Central Board of Direct Taxes (CBDT) vide its notification in the order F.No. 203/09/2015/ITA.II dated 21st September, 2016 has withdrawn the approval anted u/s. 35(1)(ii) of the IT Act, 1961 d to M/s School of Genetics and Population Health, Kolkata. The CBDT vide the aforesaid office memorandum has withdrawn the approval granted to the three Kolkata based Institutions which are referred by the Ld. AO in his assessment order with reference to the investigations conducted by the Investigation Wing, Kolkata. Since the notification of approval granted u/s.35(1)(ii) Genetics and notification to the said M/s School of Population Hea

Health, Kolkata vide No. 4/2010/F.No.203/64/2009/ITA-II dated 28th January, 2010 has been withdrawn by CBDT vide order dated 21st September, 2016 with retrospective effect i.e. from 28th January, 2010 itself, the assessee is not eligible for deduction u/s. 35 (1) (ii) of the IT Act, 1961 in respect of the donation given to the said Trust of Kolkata. Therefore, the ratio of the judicial decision relied upon by the AR is not applicable to the facts of the present case of the appellant. confirm the addition of Rs.175 lakhs I, therefore, made by the AO by way of disallowance of claim u/s. 35(1) (ii) of the Act. This ground is dismissed."

5. None appeared on behalf of the assessee.
6. The learned Departmental Representative vehemently supported the order of the learned CIT(A) and requested the Bench for not disturbing the impugned order passed by the learned CIT(A), as the order passed by the learned CIT(A) is a reasoned order.
7. We have heard the arguments of the learned Departmental Representative, perused the material available on record and gone through the orders of the authorities below. During the course of hearing, there was no one present to assist the Bench in disposing off the appeal filed by the assessee. As such, in the absence of any arguments from the assessee's side and after hearing the learned Departmental Representative, we find that the order passed by the learned CIT(A) as reproduced above is a well-reasoned and speaking order wherein we do not find any scope to tinker with the well water tight order. We further place reliance on the Co-ordinate Bench decision of the Tribunal, Kolkata Bench, in Tarasafe International Pvt. Ltd. v/s DCIT, etc., ITA no.261/Kol./2020, etc., vide order dated 13/12/2022, in a group of cases. The identical issue decided by the said Bench of ITAT, Kolkata, is as under:-

"37. The stand of all these appellants right from the Id. Assessing Officer upto the Tribunal is that since Institution was approved by the Competent Authority to receive donation. This approval was intact when they have made the donation. Therefore, under bonafide belief, they have given the donations and on the basis of post donation, material collected by the Revenue should not be used against them for doubting the genuineness of the donation. The scheme of the Income Tax Act provides that a claim made by an assessee has to be proved by the assessee. Thus the first onus is upon the assessee about the claim made by him. This onus was discharged by the assessee by pointing out that Institution to whom donations were given. They are approved by the Income Tax Authority and, therefore, their claim is to be allowed. However, if the first onus discharged by the assessee was dispelled by the Id. Assessing Officer by confronting them with the material recovered during the survey and post survey enquiries, then the questions posed before us is, whether this belief harped by all the appellants was such a bonafide that could not be questioned in any circumstances. To our No. 136/KOL/2020, ITA No. 23/KOL/2020, ITA Nos. 132 & 133/KOL/2021, ITA No. 2247/KOL/2017, ITA Nos. 2316, 2317/KOL/2019, ITA No. 2385/KOL/2019, ITA Nos. 2448, 2449/KOL/2019 mind, it is a misplaced argument at the end of the appellants. It is to be appreciated that recipient came into existence in 1993, it might have been working on charitable objects and got approval for the purpose of recognition of Scientific and Industrial Research Organisation first time on 17.06.2010. There might be a good intention at the end of the recipient but it has detracted its objectives and indulged in fraudulent activities. The fraud of this magnitude cannot be done without an organised planning where involvements of alle ged brokers have come.

Thus operative force in the minds of all decision-maker in donors organisation/individual was acting with a fraudulent intent in giving donation through broker in this manner. The Id. CIT(Appeals) in the case of Tarasafe International Pvt. Limited has posed the following questions to the assessee:-

- (a) What was the purpose of this donation?
- (b) Whether such donation has been given to the School in the past or in the future?
- (c) How the assessee came to know about the activities of the Trust?

No. 136/KOL/2020, ITA No. 23/KOL/2020, ITA Nos. 132 & 133/KOL/2021, ITA No. 2247/KOL/2017, ITA Nos. 2316, 2317/KOL/2019, ITA No. 2385/KOL/2019, ITA Nos. 2448, 2449/KOL/2019

- (d) What influence the assessee to give this donation to this Institution other than deduction under section 35(1)(ii).

(e) The appellants are not in this line of business and, therefore, it is difficult to understand the very purpose of this transaction undertaken by them. They have failed to explain how the cheques in their case were given to the Society, whether it was given by post or directly to the Office bearer or through some agents.

- (f) If it was handed over to the office bearer, then name of such office bearer.

38. These are certain questions, which point a figure to the circumstances, which are to be explained by each appellant. Their first onus discharged by them has been dispelled by the Id. Assessing Officer with credible material. If the appellants are of such a spirited Corporate House, who wants to build the research organisation of the nation, then they have to demonstrate how such donations were given in the past or in the subsequent period. We have confronted them specifically, but none of the assesses except M/s. H.K. Dutta & Company could submit anything in this regard. In the case of this Company, Id. Counsel for the assessee No. 136/KOL/2020, ITA No. 23/KOL/2020, ITA Nos. 132 & 133/KOL/2021, ITA No. 2247/KOL/2017, ITA Nos. 2316, 2317/KOL/2019, ITA No. 2385/KOL/2019, ITA Nos. 2448, 2449/KOL/2019 has submitted that small amount of donation has been given to a different organisation in the next year. Therefore, if we weigh the simple plea of the appellants about their bonafide belief for giving such donations, vis- a-vis huge materials collected by the Revenue demonstrating the fact how such a belief is misplaced, then, the scale would tilt in favour of the revenue. It is to be appreciated that roughly 720 entities including individuals available in a part-list on pages no. 72 to 81 of the paper book compiled by the Revenue would have not formed a bonafide belief about giving donation to one entity across India in Kolkata. This material speaks in itself that under a criminal conspiracy, these donations have been arranged by the brokers across India for defrauding the nation. We do not find any credence in the belief of bonafide raised by the appellants.

39. We are aware of the facts that a large number of orders have been passed in favour of the assessee by ITAT and some of those were upheld by Hon'ble High Courts also. We have extracted one of the orders from Hon'ble Gujarat High Court. The Hon'ble Supreme Court in the case of CIT -vs.- Batanagar Education & Research Trust reported in 129 taxmann.com 30, whose copy has been placed on the record by the Id. CIT(DR), has considered the identical material, which has been placed before us also. In the case of Batanagar Education & No. 136/KOL/2020, ITA No. 23/KOL/2020, ITA Nos. 132 & 133/KOL/2021, ITA No. 2247/KOL/2017, ITA Nos. 2316, 2317/KOL/2019, ITA No. 2385/KOL/2019, ITA Nos. 2448, 2449/KOL/2019 Research Trust, the facts are that during the course of survey at the premises of SHG&PH, and in post survey inquiry statement of Shri Ramendra Lahiri, Managing Trustee of the assessee, i.e. Batanagar Society was recorded. The Secretary, Smt. Samadrita Mukherjee Sardar and Treasurer Smt. Moumita Raghavan of SHG&PH have categorically deposed in their statements that source of income of SHG&PH was the money received in the form of donations from Corporate Bodies as well as from individuals. The assessee Batanagar Society was selected by the brokers, who have arranged the donations to SHG&PH as a conduit for receiving the donations from SHG&PH. This donation was to be returned back to those Corporate Houses and individuals in cash after layering the transaction and the Batanagar Education & Research Trust would also retain commission income for such an activity. On the basis of that, its registration was cancelled by the Id. Commissioner (Exemption) by exercising the powers under section 12AA(3). This order was upheld by the ITAT. However, on further appeal, Hon'ble High Court has reversed this order but Hon'ble Supreme Court restored this order, in other words upheld the cancellation of the registration to Batanagar Education & Research Trust. In this judgment, Hon'ble Supreme Court has made reference to the outcome of the survey at SHG&PH coupled with the post survey enquiry conducted No.

136/KOL/2020, ITA No. 23/KOL/2020, ITA Nos. 132 & 133/KOL/2021, ITA No. 2247/KOL/2017, ITA Nos. 2316, 2317/KOL/2019, ITA No. 2385/KOL/2019, ITA Nos. 2448, 2449/KOL/2019 upon Batanagar Society and satisfied that it was an organized fraud to misuse the status of a charitable entity. This judgment has been pronounced on 02.08.2021. After this judgment, a judgment of the Hon'ble Calcutta High Court in the case of Mackaw Corporation has been passed, which has been relied upon by the Id. Counsel, but in this decision, Hon'ble High Court has not considered the judgment of the Hon'ble Supreme Court, because the judgment of the Hon'ble Supreme Court in the case of Batanagar Education & Research Trust was not cited by both the parties.

40. The Id. Counsel for the assessee, Shri Soumitra Chowdhury, during the course of argument submitted that in the decision rendered on 26.04.2022 in the case of Commissioner of Income Tax (Exemption), Kolkata - vs.- Sanskriti Sagar, this judgment of the Hon'ble Supreme Court was considered.

41. We find that in this case, the assessee was recipient of a small donation of Rs.85,000/- from Herbicare and on the basis of receipt of this donation, its registration was sought to be cancelled. The Hon'ble High Court has propounded that the decision in the case of Batanagar Education & Research Trust is not applicable on the facts of that case because Sanskriti Sagar has neither No. 136/KOL/2020, ITA No. 23/KOL/2020, ITA Nos. 132 & 133/KOL/2021, ITA No. 2247/KOL/2017, ITA Nos. 2316, 2317/KOL/2019, ITA No. 2385/KOL/2019, ITA Nos. 2448, 2449/KOL/2019 given any donation to this Trust and claimed deduction under section 35(1)(ii) nor it has returned the

money in cash out of a small donation received by it from Herbicare, a similar Trust to SHG&PH. Hon'ble High Court has held that Tribunal has rightly set aside the order passed by the Id. Commissioner vide which registration was cancelled. In our opinion, it is purely a fact-based decision without laying down any particular proposition of law, rather an inference could be drawn from it that if there is no element of fraud committed by an assessee, then such an assessee does not deserve to be punished. This case cannot buttress any of the contentions of the appellants before us.

42. It is also pertinent to note that it is not a simple case of claiming deduction on fulfilment of conditions under section 35(1)(ii) of the Income Tax Act, rather it is a case where Revenue has disproved this claim and proved that, with a criminal mind all such donors have layered their transaction in such a manner which apparently appears to be genuine, but in reality not genuine. They took such a step to commit fraud, an economic offence against the economy of the country.

43. The bonafide of the assesseees can be appreciated if they have demonstrated that they have given the donations in the past or subsequent periods to some No. 136/KOL/2020, ITA No. 23/KOL/2020, ITA Nos. 132 & 133/KOL/2021, ITA No. 2247/KOL/2017, ITA Nos. 2316, 2317/KOL/2019, ITA No. 2385/KOL/2019, ITA Nos. 2448, 2449/KOL/2019 Institution of national importance, such as Tata Research Centre, certain Hospitals, etc. but none of them has given such a donation except a small amount of few thousand in the case of Abhilasha Tradecom Pvt. Limited. The moment Assessing Officers have

dispelled onus discharged by the assessee, then it was their duty to prove the genuineness of their claim with circumstantial evidence as pointed out by the Id. Commissioner in the case of Tarasafe International Pvt. Limited, i.e. what was the purpose of the donation; whether such donation has been given to the School in the past or in the future; whether the Corporate Houses have discussed in the meeting and the Management Committee passed the Resolution for giving the donations; what influenced the assessee to give this donation to the Institution other than deduction under section 35(1)(ii) etc."

8. Consequently, we hold that the grounds no.1 and 2, raised by the assessee do not contain any merits which are accordingly dismissed.

9. Insofar as grounds no.3 and 4, are concerned, the issue raised by the assessee relates to the addition of ₹ 2,17,500, on account of agricultural income treating the same as not genuine.

10. The facts, as culled out from the order passed by the learned CIT(A), are reproduced below:–

"7.1 The AO has discussed this issue in para-4 of the assessment order. The appellant has claimed the agricultural income of Rs.2,17,500/- in the computation of income. The AO therefore, asked the assessee to explain the agricultural income with reference to bills for purchase and sale of agricultural products and 7/12 extracts. On perusal of the 7/12 extracts, the AO observed that there were no agricultural activities mentioned therein. The assessee explained that the authority concerned has not updated the data and it is but for this reason that 7/12 extracts does not give mention of agricultural activity and claimed that the agricultural activities were carried out on the land holding by the assessee.

11. In view of the above, the Assessing Officer treated the agricultural income shown by the assessee as not genuine and added the same to the total income of the assessee in the absence of any agricultural activity.

12. On appeal, the learned CIT(A) rejected the claim of agricultural income made by the assessee by observing as under:–

"7.3 On careful examination of material facts, it is seen that the AO has disallowed the claim of agricultural income mainly on the grounds firstly; that 7/12 extracts submitted by the assessee does not mention the agricultural activities which shows that no agricultural activities have been carried out by the appellant during the relevant financial year and secondly; submitted the bills assessee that the for sale of has not agricultural products. It is a fact emanated from records that the appellant' has not furnished the bills for sale of agricultural products or any other proof of having carried out the agricultural activities during the relevant financial year. The contention raised by the AR of the appellant that the concerned authority has before, the not updated the revenue records, the agricultural activities carried out assessee are not figuring in the 7/12 extracts also does not carry any substance in as much as that the appellant has not been able to furnish the updated 7/12 extracts. raised by The contentions that the AR of the appellant agricultural income declared by the the assessee has been accepted by the department in the order passed u/s. 153A r.w.s. 143 (3) also does not carry any substance for the reason that each assessment year is a separate assessment and acceptance of agricultural income in one particular year does not mean that the appellant had carried out the agricultural activities in the year under appeal in the absence of any proof filed on record by the appellant. Therefore, the claim of the appellant for agricultural income, under the facts and circumstances of the case, does not sustain. I, therefore, decline to interfere with the addition made by the AO. The addition made by the AO is confirmed. This ground is dismissed."

13. Having heard the learned Departmental Representative and on a perusal of the orders of the authority below, we find that the impugned order passed by the learned CIT(A) treating the agricultural income as non-genuine is impregnable and hence we decline to interfere as the same is a well-reasoned order and does not warrant any interference. Accordingly, grounds no.3 and 4, are dismissed.

14. In the result, appeal filed by the assessee for A.Y. 2013-14 is dismissed.

ITA no.614/Nag./2016
Revenue's Appeal – A.Y. 2013-14

15. Following grounds have been raised by the Revenue in this appeal:-

- "1. On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs. 8,10,99,937/- u/s 68 of the I.T. Act, without extending an opportunity to the AO to verify the fresh evidence as per the provisions of Rule 46A of the Income Tax Rules.
2. On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs. 1,02,508/- on account of delay payment charges.
3. On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs. 22,67,356/- on account of mark to market charges.
4. On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs. 2,35,229/- on account of commission payment.
5. On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs. 1,65,284/ on account of misc expenses.
6. On the facts and in the circumstances of the case and in law the learned CIT(A) has erred in deleting the addition of Rs. 27,46,986/- on account of interest expenditure.
7. Any other ground that may be raised at the time of hearing."

16. Ground no.1, relates to the addition of ₹ 8,10,99,937, under section 68 of the Act.

17. The Assessing Officer, vide Para-7 of the assessment order, made addition which is reproduced below:-

"7. In this the amount of capital brought in, the assessee not submitted anything for explanation. But in the return of income Schedule IF and EF showing share from partnership firm and claiming exemption. The two concern mention in ROI is AOP, not partnership and then the assessee is not a partner. The assessee simply brought income of AOP to capital account and deliberately hide the truth to avoid the tax. Therefore, Rs. 8,10,99,937/- is treated u/s 68 of I.T. Act as unexplained cash credit in the capital account of the assessee and added to the income of assessee."

18. On appeal, the learned CIT(A), vide Para-10.6, of the impugned order, has deleted the addition by observing as under:-

"10.6 On examination careful of the material facts, it is seen that the appellant being one of the members of the aforesaid two AOPs is not in dispute. It is also not disputed balance sheets of both the AOPS, that in the amount of Rs.8,10,99,937/- has been shown as advance given to the appellant by the said AOPS. The appellant has furnished the documentary evidence in the form of balance sheets of both the AOPs as on 31-03-2012 and as on 31-03-2013 wherein the assessee has been shown as debtors to the tune of Rs.8,10,99,937/- of the said two AOPs. In the balance sheet of the assessee as on 31st March, 2012 both the AOPs are appearing as creditors to the tune of Rs.7,77,37,735/-. Both the AOPs have regularly been assessed to tax and the copies of returns of income filed by the said AOPS were also filed before the Ld. AO as well as during the appellate proceedings. The fact that income has arisen to the said AOPs out of sale of shares in the financial year 2011-12 on which taxes have been paid is also not disputed. As per the P & L account as on 31-03-2012, Krishna & Associates and M/s Ridhi Sidhi Associates have paid advance taxes Rs.2,51,08,742/-Rs.5,02,17,484/- each, aggregating to It is thus established that both the AOPs had paid taxes at the maximum marginal rate. It is also the fact as emanated from the records that the maximum balance shown outstanding in the name of these two AOPs is brought forward balance as on 01-04-2012. Therefore, the contention raised by the AR of the being a bona-fide error of the Auditor, the amounts were shown as share of income from these two AOPS which, according to the AR of the appellant, in fact is the advance received by the assessee from the two AOPs carries substantial force and appears to be correct. It is also not the case of the AO that any fresh flow of funds are received during the year which is required to be explained by assessee and same remain unexplained. The entire record of assessee as well as of AOPs clearly indicate that no transaction remain unexplained so to bring the same to tax u/s. 68 of the IT Act, 1961. The AR has also taken an alternate plea that even otherwise in principle the share of income from AOPS to the member assessee is not exigible to tax by virtue of provisions of section 86 of the IT Act, 1961. Thus, looking to all the cumulative factors, the addition made by the Ld. AO cannot be held to be justified both on the grounds either assessee having received an advance or share of profit from the AOPS which are assessed to tax as per the Act because under both the situations, the said sum received from AOPS is not exigible to tax. The appellant has also satisfactorily explained the source of liability shown as advance in the balance sheet being out of profit of Rs.12,16,11,513/- in the hands of M/s Krishna & Associates and profit of Rs.12,15,89,697/- in the hands of M/s. Ridhi Sidhi Associates on which both the AOPS have been assessed to tax at maximum marginal rate. Therefore, to my considered opinion, the addition made by Ld. AO of Rs.8,10,99,937/- deserves to be deleted. These grounds are allowed."

19. Having heard the learned Departmental Representative, and after going through the record available before us, we find that the order passed by the learned CIT(A) is a detailed order which is reproduced above. We find no cogent reason to interfere in the impugned order. The learned Departmental

Representative could not bring out what additional evidences were relied upon. Accordingly, ground no.1, raised by the Revenue is dismissed.

20. Grounds no.2, 3, 4 and 5, raised by the Revenue relate to the following additions:-

<i>Delayed payment charges</i>	₹ 1,02,508
<i>Mark to market charges</i>	₹ 22,67,356
<i>Commission</i>	₹ 2,35,229
<i>Misc. Expenses</i>	₹ 1,65,284

21. Insofar as ground no.2, regarding delayed payment charges of ₹ 1,02,508, is concerned, the facts, as culled out from the impugned order passed by the learned CIT(A) dealing with the issue are reproduced below:-

"The AO has dealt with the issue in para-5 of the assessment order. The AO asked the appellant to explain the delayed payment charges debited to the tune of Rs.1,02,508/ under the head other expenses. The AO in para-5 has recorded a finding that the assessee submitted a ledger copy of delayed payment charges but did not submit any further details. Therefore, the Ld. AO inferred that in his opinion the delayed payment charges of Rs.1,02,508/- is 45 penal in nature which is not allowable u/s. 37 of the Act. The AR of the appellant has submitted that the sum of Rs.1,02,508/- has been debited to the account of the appellant by M/s India Infoline Commodities Ltd.: on account of delayed payment in respect to the business activities of the appellant. The aforesaid payment is stated to be in the nature of finance charges paid due to delay in making contractual payments for business activity. Thus, the appellant explained that the delayed payment charges are compensatory in nature and not penal in nature as the same has not been paid for infringement of any law. On careful examination of the material facts, it is seen that the delayed payment charges have been paid for delay in making the contractual payments and the same are not paid in lieu of infringement of any law. Therefore, the inference drawn by the Ld. AO that the delayed payment charges are penal in nature is not justified. The addition is therefore, directed to be deleted."

22. After hearing the learned Departmental Representative and while going through the impugned order passed by the learned CIT(A) as above, we hold that the learned CIT(A) has perfectly dealt with the issue by deleting the

addition made by the Assessing Officer and thus we decline to interfere. Accordingly, ground no.2, is dismissed.

23. Regarding ground no.3, which relates to the addition of ₹ 22,67,356, on account of mark to market charges included in other expense is concerned, the learned CIT(A) deleted the addition made by the Assessing Officer and the conclusion drawn by the learned CIT(A) while deleting the addition is as under:-

"On careful examination of the material facts, it is seen that the future trading in silver by the appellant through M/s India Infoline Commodities Ltd., has not been disputed by the Ld. AO. The appellant has also submitted a copy of ledger account of the appellant in the books of company in which no infirmity has been pointed out by the Ld. AO. Therefore, the mark to market expenses claimed by the appellant as having been incurred in the course of its future trading activity are allowable business expenditure. Therefore, keeping in view of the judicial decision of the Jurisdictional High Court relied upon by the AR and expenses being genuine business expenses the same are allowable business expenses in the absence of any evidence contrary to the records. Therefore, the addition made by the AO of Rs. 22,67,356/ on account of mark market charges included in other expenses is directed to be deleted."

24. While going through the above order passed by the learned CIT(A), we find that the same does not have any ambiguity to interfere. We find no cogent reason to reverse the impugned order as prayed by the learned D.R. Accordingly, we decline to interfere. The order of the learned CIT(A) is upheld by dismissing ground no.3, raised by the Revenue.

25. In ground no.4, the issue raised by the Revenue relates to the addition of ₹ 2,35,229, on account of commission.

26. The Assessing Officer and the learned CIT(A) dealt with the issue vide Para-8.4 (C) of the impugned order, which is extracted below:-

"The AO found that the assessee has paid commission to M/s India Infoline Commodities Ltd. which is found reflected in the ledger account submitted by the in the course of assessment proceedings. The AO Issued notice u/s. 133(6) to the said company, however, since there was no reply, the Ld. AO disallowed the entire commission of Rs. 2,35,229/- debited to the P & L account for want of confirmation from the said party. The AR has submitted that the commission paid was duly reflected in the ledger account submitted to the AO. The AR further submitted that the payment of commission is made by debiting the account of the assessee regularly maintained by the said M/s India Infoline Commodities Ltd. The AR has contended that the Ld. AO has accepted the transactions of trading activity reflected in the ledger account but disallowed the commission paid to the company on the ground of suspicion. The genuineness of the commission payment in respect to various transaction cannot be doubted on bare perusal of the financial statement of the assessee. Con careful examination of the material facts, the contention raised by the AR are found to be in order. The Ld. AO having accepted all the trading transactions of ledger account as genuine ought not to have doubted the genuineness of the small amount of commission paid to the said company in the absence of any corroborative evidence record, on more particularly; when the trading transactions of the appellant with the said company are established. Therefore, the addition made by the AO on account of commission deleted. of Rs.2,35,229/-is directed to be deleted."

27. Before us, the learned Departmental Representative could not make effective arguments and in the absence of any submissions on behalf of the assessee, we find that the order passed by the learned CIT(A) is an appropriate order which need no interference. Accordingly, we dismiss ground no.4, as well.

28. Regarding ground no.5, which relates to the addition of ₹ 1,65,284, on account of miscellaneous expenses, the issue dealt with by the learned CIT(A) vide Para-8.5 of the impugned order is as under:-

"As regards to the misc. expenses of Rs. 1,65,284/- the AO has stated that only ledger copy has been submitted by the assessee without any supporting evidence. The AO, therefore disallowed the misc. expenses as not genuine on this sole ground. The AR has submitted that the misc. expenses are properly recorded in the regular books of account which have been accepted by the Ld. AO. On careful examination of the material facts, it is seen that the Ld. AO has disallowed the expenses without a proper reason. Having accepted the audited books of account and without finding any infirmity with the ledger account for

such expenses, the disallowance cannot be held to be justified. Therefore, the addition made on trivial ground deserves to be deleted."

29. The aforesaid order of the learned CIT(A) is crystal clear while deleting the addition which does not warrant us to take a divergent view other than the view taken by the learned CIT(A). Accordingly, the order passed by the learned CIT(A) on this issue is hereby upheld by dismissing ground no.5, raised by the Revenue.

30. The last ground i.e., ground no.6, relates to estimated addition of ₹ 27,46,986, being 25% out of claim of deduction of interest payment of ₹ 1,09,87,945, under section 57 of the Act. We find that the Assessing Officer and the learned CIT(A) dealt with the issue which contained in Para-9.0 to 9.2 of the impugned order passed by the learned CIT(A) which is reproduced below:-

"In these grounds, the appellant has objected to the estimated addition of Rs.27,46,986/-being 25% out of claim of deduction of interest payment of Rs.1,09,87,945/- u/s. 57 of the IT Act, 1961.

9.1 The Ld. AO has discussed this issue in para-6 of his assessment order. computation of income, the AO On perusal of found that the has credited interest income of Rs.2,66,55,877/- under the head income from other sources and claimed deduction of Rs.1,09,87,945/-u/s. 57 of the I T Act, 1961. The AO asked the assessee to produce the details of interest received and paid and substantiate the nexus between borrowed funds and interest from that. The AO in para-6 has stated that the assessee failed to bring the nexus between the borrowed funds and interest income. The AO, therefore, made the estimated disallowance of out of total deduction of Rs.1,09,87,945/- which comes to Rs.27,46,986/-.

9.2 The assessee has shown the income from other sources at Rs.2,56,57,877/-, out of which a sum of Rs.1,09,87,945/- is claimed as deduction u/s. 57 of the IT Act, 1961. The deduction claimed u/s. 57 of the Act is total financial charges interest paid by the assessee which is not in dispute. The AR has submitted that the borrowed funds have been utilized for earning the income from the investment declared as income from other sources. Thus, the appellant submitted that the entire borrowed funds have been utilised for the purpose of making investment and the interest income

derived there from have been declared under the head income from other sources. The appellant has filed the submission before the AO but the Ld. AO has proceeded to disallow 25% out of total claim for deduction on estimated basis. The genuineness of the interest paid is not in dispute. The amount of interest paid is in respect to borrowed capital which is utilised for earning interest income. The AO has not faulted with the submissions made before him that interest paid on borrowed money is utilised for earning interest income but he proceeded to make Therefore, the adhoc addition made by the AO without any basis when the assessee is otherwise eligible for such deduction under the law is directed to be deleted, the same being devoid of any merits."

31. After hearing the learned Departmental Representative and on perusal of the material available on record, we find the learned CIT(A) has given a detailed reasoning while deleting the addition made by the Assessing Officer. Keeping this in view, we find no reason to interfere. Accordingly, the ground no.6, raised by the Revenue is dismissed. The learned Departmental Representative did not buttress any submissions to point out any infirmity in the impugned order passed by the learned CIT(A).

32. In the result, appeal filed by the Revenue for A.Y. 2013-14 is dismissed.

33. To sum up, both assessee's appeal as well as Revenue's appeal for A.Y. 2013-14 are dismissed.

Order pronounced in the open Court on 05/02/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 05/02/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur