

आयकर अपीलीय अधिकरण, कोलकाता पीठ "सी", कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. No. 181/Kol/2024
Assessment Year: 2018-19

ITO, Ward-9(1), Kolkata	Vs.	Manish Company Pvt. Ltd. (PAN: AABCM 8092 J)
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	18.03.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	03.04.2025
For the assessee / निर्धारिती की ओर से	Smt. Priyanka Salarpuria, A.R
For the revenue / राजस्व की ओर से	Smt. Ranu Biswas, Addl. CIT DR

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is the appeal preferred by the revenue against the order of Commissioner of Income Tax (Appeals)- NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)] dated 20.09.2023 for AY 2018-19.

2. It appears from the report of the registry that the appeal has been filed after a delay of 71 days, for this the assessee has filed condonation petition, which are as follows-

"1. The Ld. CIT(A) has passed an order in Appeal NO. NFAC/2017-18/10041816 order dated 20.09.2023 through ITBA.

2. The order of the Ld. CIT(A) has neither been communicated to this stakeholder nor any alert on passing the order by the Ld. CIT(A) has been sent either through SMS or through e-mail or through any other mode by the Departmental system network to this stakeholder.

3. Orders of Ld. CIT(A)'s are downloaded from the Departmental system on manual checking basis. During the period from September, 2023 to November, 2023 this stakeholder was under pressure of disposing time barring matters. For this reason and due to non-availability of sufficient system resources, the searching of appeal order in ITBA systems could not be done on regular basis.

4. the appellant submits that there were sufficient causes for non-presenting the appeal within due time and the appeal may kindly be heard on merit for the interest of Revenue."

On perusal of the condonation petition, the reason for delay in filing the appeal seems to be genuine and bonafide. The Ld. D.R did not raise any objection in condoning the delay. Keeping in view, the condonation petition as well as judicial pronouncement that the case should be decided on merit not on technical issue, the delay is hereby condoned.

3. Brief facts of the case of the assessee are that the assessee is NBFC company engaged in the business of advancing loan and investing in shares and securities. The assessee company filed its return of income for AY 2018-19 declaring total income of Rs. 30,64,750/- and book profit of Rs. 30,16,151/-. The case was selected for limited scrutiny on the issue of unsecured loan and expenses incurred for earning exempt income and a notice u/s 143(2) was issued. In compliance to the same the assessee filed relevant documents. The AO after going over the submission and documents filed by the assessee, an amount of Rs. 4,47,45,000/- treated as unexplained cash credit in the books of account and it brought to tax us/ 68 of the Act. The AO has further added an amount of Rs. 18,79,636/- u/s 14A of the act.

4. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been allowed on addition/s 68 of the Act and disallowance made by the AO u/s 14A of the Act.

Being aggrieved and dissatisfied the revenue has preferred an appeal before us.

5. The ld. D.R challenges the very impugned order thereby submitting that the Ld. CIT(A) did not consider the case relying on the recently based the verdict of Hon'ble Apex Court in the case of PCIT vs. NRA Iron & Steel Pvt. Ltd. (2019) 412 ITR 161 (SC) in which it has been held that if the enquiries and investigations reveals that identity of the creditors to be dubious or doubtful or lack of creditworthiness, then the genuineness of the transaction would not be established. The ld. Counsel further submits that in the present case the assessee would not have discharged the primary onus and as well as the Ld. CIT(A) erred in deleting the addition made by the AO u/s 68 of the Act as well as sales 14A of the Act.

6. Contrary to that the Ld. A.R supports the impugned order thereby submitting that the assessee has proved identity, creditworthiness of the loaner and genuineness of the transaction were proved. His further submission is that transaction with the same loan party who is also group concern of the assessee has already been accepted in earlier assessment but in the year under reference the AO has erred in making an addition in respect of loan taken by the assessee from the same loan party M/s Dalmia Laminators limited (in short DLL). The Ld. Counsel further submits that the tax audit report clearly reveals that all the transactions were conducted through banking channels that establishes the genuineness of the transaction. The Ld. Counsel submits that the Ld. CIT(A) has not only appreciated the facts rather discuss the documentary evidence filed by the assessee and then passed an order in favour of the assessee, so there is no illegality in the impugned order.

7. Upon hearing the submission of the counsel of the respective parties. We have perused the order passed by both the lower authorities and find that the AO has added an amount of Rs. 4,47,45,000/- treated as unexplained cash credit in the books of

account and further disallowance made u/s 14A of the Act. We have gone through the order passed by the Ld. CIT(A) and find that the Ld. CIT(A) in its order has deleted the addition made u/s 14A of the Act, going over the judgment passed by the Hon'ble Calcutta High Court. The operative portion of the order of Ld. CIT(A) is essential to reproduce herein below:

“5. Grounds No. 1, 2 and 3 of the appeal are against the disallowance made by the AO u/s 14A r.w. Rule 8D. No exempt income was earned by the appellant during the year under reference, therefore, as per appellant's version it has not made disallowance u/s 14A of the income tax Act. However, the Ld. AO made a disallowance of Rs. 18, 79,636/- applying rule 8D and following CBDT circular dated 11 February 2014. The question as to whether disallowance u/s 14A can be made even in a situation in which the assessee has not earned any tax-exempt income has been a debatable issue, most of the decisions of different high courts and ITATs. are in favour of the taxpayer.

5.1 Hon'ble Supreme court in the case of PCIT vs. Oil Industry Development Board SLP Civil Diary No. 2755 of 2019 dismissed the SLP of the Revenue on merits and held that no disallowance could be made u/s 14A when no exempt income is earned.

5.2. Hon'ble Supreme Court, in April 2019 dismissed the Revenues SLP in case of Cheminvest Ltd. vs CIT (2015) (378 ITR 33) following the decision of the Delhi High Court held that no question of law arose from the order of the Income-tax Appellate Tribunal, thereby deleting the disallowance under section 14A of the Income-tax Act 1961 in absence of any exempt income. Similar view was held by the Apex court and SLP filed by the Revenue was dismissed in the case of CIT vs. Chettinad Logistics (P.) Ltd. [SLP (Civil) Diary No. 15631 of 2018]

5.3. Apex Court vide its order dated 03.05.2019 in the case of PCIT Vs GVK Project and Technical Services Ltd (2019) (106 taxmann.com181) dismissed the SLP filed by the Revenue on merits and upheld the High Court decision that in the absence of any exempt income reported by the assessee disallowance u/s 14A could not be made.

5.4 The Jurisdictional Calcutta High Court in the case of CIT vs Ashika Global Securities Ltd [ITAT 100 of 2014, GA 2122 of 2014] has ruled that in absence of exempt income, question of disallowance u/s 14A read with Rule 8D does not arise.

6. In the assessment order, the AO, while making disallowance has relied on the decision of Supreme Court in the case of Maxopp Investment Limited vs CIT [Civil Appeal No. 104-109 of 2015]. In the assessment order, the AO himself is stating that the fact in assessee's case and that of Supreme Court are not one and the same. In the case of Maxopp Investment Limited (supra) the Supreme Court observed that the action of the AO in the case of State Bank of Patiala ((2017] 391 ITR 218) restricting the disallowance of expenditure to the amount which was claimed as exempt income by applying Section 14A r.w. Rule 8D was reasonable. Following the decision of Supreme Court, in the case of appellant the disallowance of expenditure should be restricted to the amount which has been claimed as exempt income which will be Nil. Thus, following the decision stated by AO himself, the disallowance u/s 14A should be restricted to amount claimed as exempt i.e NIL.

7. I have perused the assessment order and considered the written submission of the appellant on this issue. From the facts of the case, it appears that opening amount and the closing amounts of the investment are exactly same. It means the appellant did not make any

transaction on account of investment during the financial year under reference. It is natural that hardly any expense could have been incurred by the appellant with respect to the investment. In such circumstances, making addition u/s 14A by applying rule 8D seems not justified. Considering the facts of the case and respectfully following the decisions of hon'ble Supreme Court and Jurisdictional Calcutta High court, as described above, on this issue, I am of the considered opinion that the captioned addition made by the Ld. AO u/s 14A r.w.r. 8D is not justified and deserves to be deleted. Therefore, the grounds no. 1, 2 and 3 of the appeal are allowed."

8. It is a fact that no exempt income earned by the assessee during the year under reference and it is further important to mention here that the transaction with the same loan party being a group concern of the assessee has already been accepted in the earlier assessment by the AO. The Ld. CIT(A) has rightly held in its order that making addition u/s 14A by applying the Rule 8D is not justified.

9. So far the next issue with regard to the addition of amount of Rs. 4,66,40,000/- u/s 68 of the Act is concerned we find that during the assessment proceedings, the copy of amount confirmation of relevant bank statement of M/s Dalmia Laminators Limited, confirmation letter from M/s Dalmia Laminators Limited confirming the transaction and proving the details of their source and fund had been provided to the AO. It is further pertinent to mention here that the assessee has opted loan of Rs. 4,66,40,000/- from M/s Dalmia Laminator Limited during the year under consideration, this was repaid in fully. The assessee has also provided a detailed report on the identity and creditworthiness of M/s Dalmia Laminators Limited being public company having registered office at Kolkata. It is important to mention here that the transaction with M/s DLL being a group concern has already been accepted in the earlier assessment so the transaction with captioned party was to be accepted in the captioned year too. The assessee company has also filed details of DLL regarding his net worth turnover in the AY 2016-17 to 2018-19 which is as under:

Details of Dalmia Laminators Limited

<i>Particulars</i>	<i>AY 2016-17</i>	<i>AY 2017-18</i>	<i>AY 2018-19</i>
<i>Net worth</i>	<i>8157.94 lacs</i>	<i>8499.73 lacs</i>	<i>9890.76 lacs</i>
<i>Turnover</i>	<i>21875.17 lacs</i>	<i>22113.49 lacs</i>	<i>23231.37 lacs</i>

<i>Profit</i>	<i>314.69 lacs</i>	<i>548.13 lacs</i>	<i>564.50 lacs</i>
<i>Tax paid</i>	<i>71.30 lacs</i>	<i>123.94 lacs</i>	<i>115.46 lacs</i>

10. Going over the aforesaid facts as well as the order passed by the Ld. CIT(A), we find that the identity of loaner has fully been established by the assessee by providing PAN card, copy of ITR etc. The creditworthiness of the DLL is also established from its audited balance sheet, profit and loss account and IT acknowledgment of every year. The genuineness of the transaction has been made through banking channel. It is also important to mention here that the loan taken from a sister concern was repaid during the year under reference through banking channel. The Ld. CIT(A) has rightly held its order that the assessee company has discharged its onus proving the identity of the loan creditor, established the creditworthiness of DLL.

Keeping in view the above discussion, we do not find any infirmity in the impugned order of Ld. CIT(A). According the appeal of the revenue is dismissed.

In the result, the appeal filed by the revenue is dismissed.

Order is pronounced in the open court on 3rd April, 2025

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 3rd April, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO, Ward-9(1), Kolkata
2. Respondent – Manish Company Pvt. Ltd., 139, Cotton Street, Barrabazar HO, Kolkata-700007.

3. Ld. CIT(A)- NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata