

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'आई' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI

श्री राजेन्द्र, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI RAJENDRA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1659/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Indage Engineering Pvt. Ltd. 82, Indage House, Dr.A.B.Road, Worli, Mumbai - 400018	बनाम/ Vs.	Income Tax Officer 6(1)(3) Aayakar Bhavan, M.K.Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACI0965P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Department by:	Shri G. K. Mishra	

सुनवाई की तारीख / Date of Hearing: 07.11.2016
घोषणा की तारीख /Date of Pronouncement: 30.11.2016

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 23.12.2013 passed by the Commissioner of Income Tax (Appeals) 14, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10.

2. The assessee has raised the following grounds:-

“1. Against addition of Rs.2,973,874/- as per the provisions of section 14A read with rule 8D of the Income-tax Act, 1961 (Act)

- a) *The Commissioner of Income-Tax (Appeals) – 14, Mumbai [hereinafter referred to as CIT(A)] erred in enhancing the disallowance to Rs.2,973,874/- without considering the facts and circumstances of the case and ignoring the judicial pronouncements relied upon by the appellant.*
- b) *The CIT(A) erred in disregarding the fact that the appellant had provided the details of expenditure for earning the exempt income and in computing the disallowance under rule 8D without examining the correctness of the claim with the books of accounts of the appellant. The CIT(A) should have restricted the disallowance only to the extent of expenditure actually incurred by the appellant for earning the exempt income i.e. Rs.82,617/-.*

3. The brief facts of the case are that the assessee filed e-return of income at Rs.11,98,365/- claiming refund of Rs.23,150/-. The return was processed u/s.143(1) of the Income Tax Act, 1961 (in short “the Act”) on 31.12.2010 and the demand of Rs.4,27,153/- was raised. The case was selected for scrutiny and accordingly, notice u/s.143(2) of the Act was issued on 18.08.2010 and the same was served upon the assessee on 23.09.2010. Subsequently, notice u/s.142(1) was issued on 30.06.2011 calling for specific details / documents. The assessee company is engaged in the business of Wide-ranging, Multidisciplinary Consultancy, Know-how and Turnkey services spanning many diverse fields like Civil, Structural and Mechanical Engineering, Chemicals and Fertilizers. In the relevant assessment year, the assessee received the dividend income to the tune of Rs.14,52,000/- and claimed as exempt income. The assessee claimed the demat charges to the tune of Rs.82,617/- which was disallowed and added to the income of the assessee. The Assessing Officer was also of

the view that the assessee made the investments in quoted and unquoted shares to the tune of Rs.52,87,75,196/- during the said period. The Assessing Officer assessed the proportionate expenses to the extent of 9.97% of total expenses of Rs.52,52,100/- which comes to Rs.5,23,634/- and added to the income of the assessee. On appeal, the CIT(A) applied the section 14A r.w. Rule 8D of the Act and assessed the expenditure to the tune of Rs.29,73,874 – Rs.5,23,634/- = Rs.24,50,240/-. Therefore the assessee has filed the present appeal before us.

ISSUE NO.1:-

4. Under this issue the assessee has challenged the expenditure incurred to earn the exempt income to the tune of Rs.29,73,834/- The exempt income of the assessee was to the tune of Rs.14,52,000/- whereas the expenditure has been assessed to the tune of Rs.29,73,834/-. The expenses could not be assessed more than the exempt income i.e.14,52,000/-. The order of the Assessing Officer nowhere speaks about the discredit of the account books of the assessee. In this regard, in view of the **CBDT Circular no.14 of 2006 and Commissioner of Income Tax Vs. Reliance Utilities and Power Ltd 313 itr 340 (Bombay High Court)** we are of the of the view that the assessment made by the Assessing Officer and CIT(A) is without any reasonable basis, without discrediting the account book of the assessee, therefore, we set aside this issue and restore this issue on the file of the Assessing Officer to re-examine the matter afresh by giving an opportunity of being heard to the assessee in accordance with law. Accordingly, this issue is decided in favour of the assessee against the revenue.

5. In the result, the appeal filed by the assessee is hereby Allowed.

Order pronounced in the open court on 30th November, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 30 नवंबर, 2016 को की गई।

Sd/-

(RAJENDERA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 30 नवंबर, 2016 ,

MP

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt.

Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai