

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Shri N.V.Vasudevan, JM & Shri M.Balaganesh, AM]

I.T.A No. 1146/Kol/2015

Assessment Year : 2011-12

Shree Bidyanath Ayurved Bhawan P Ltd. -vs- DCIT, Circle-12(2), Kolkata
[PAN: AA ECS 5408 D]
(Appellant) (Respondent)

I.T.A No. 1279/Kol/2015

Assessment Year : 2011-12

DCIT, Circle-12(2), Kolkata -vs- Shree Bidyanath Ayurved Bhawan P Ltd.
[PAN: AA ECS 5408 D]
(Appellant) (Respondent)

For the Appellant : Shri Sunil Surana, FCA

For the Respondent : Shri Kalyan Nath, Addl. CIT

Date of Hearing : 19.09.2017

Date of Pronouncement : 17.10.2017

ORDER

Per M.Balaganesh, AM

1. These cross appeals by the Assessee and Revenue arise out of the orders of the Learned Commissioner of Income Tax (Appeals) -4, Kolkata [in short the Id CITA] in Appeal No. 476/CIT(A)-4/R-12/14-15 dated 20.07.2015 against the order passed by the ACIT, Range-12, Kolkata [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 24.01.2014 for the Assessment Year 2011-12.

Both these appeals are taken together and disposed off by this common order for the sake of convenience.

2. The only issue involved in the appeal of the revenue is as to whether the Id CITA was justified in deleting the disallowance made on account of claim of scholarship expenses, in the facts and circumstances of the case.

2.1. The brief facts of this issue is that the assessee is a private limited company engaged in the business of manufacturing and marketing of Ayurvedic and herbal medicines and other products through its manufacturing facilities scattered over a number of states like Maharashtra, Uttar Pradesh, Bihar and West Bengal. The Id AO observed that the assessee had debited a sum of Rs 36,02,803/- towards the cost of scholarship expenses and assessee was confronted with the same to prove as to how the same was linked with the business activity of the assessee.

2.2. The assessee replied before the Id AO as under:-

“Schedule-15 of Audited Accounts under Miscellaneous Expenses contains Rs. 36,02,803.00 incurred on account of Scholarship Expenses.

Shree Baidyanath Ayurved Bhawan Pvt. Ltd. is a Private Company and is being run by active involvement of family members over a period of generations. The company incurs expenditure on educating the next generation members so that, when they take over, they will take the company in same growth path. If not, the company might suffer and not cope with the then race. That is why we have a presence in the market for more than 100 years vice versa there are so many companies in the market which vanishes over a period of time due to change of techniques. More so these next generation members will be future directors of the company .

As a matter of policy the company prefers educating the executives who will be seriously involved in the business of the company. If at all comparison is to be made between the general employees and relative employees it is obvious the relative employees are expected to put more effort than normal employees.

Due to the endeavour and expenditures on Scholarship, operations and business are performed with ease. Further, the company undertakes from these relatives who pursues foreign education, will serve the company for a minimum period of 5 to 10 years when they complete their education. The company is a closely held private limited company and it is most desirable that senior executives post and presence be manned by members belonging to entrepreneur’s family who are qualified and fit for the post. Thus, in the financial year 2010-11 relating to the assessment year 2011-12 presently

under assessment review, a sum of Rs. 36,02,803.00/- has been expended on Scholarship who are relatives of the directors. Breakup of expenditure are Rs. 31,00,776.00/- has been for Mr. Rishi Raj Sharma and Rs. 5,02,027/- for Mr. Yadu Raj Joshi. Further, Mr. Rishi Raj Sharma and Mr. Yadu Raj Joshi have completed their studies and have joined the company at Naini Branch as Management Trainees & Business Analyst respectively of the Company. Presently their remuneration is Rs. 20,000/- pm which is much below the market rate of the professional had the company hired outsiders.”

2.3. The Id AO observed that the assessee itself had admitted that the scholarship expenses to the tune of Rs 36,02,803/- was incurred for the education of Sri Rishi Raj Sharma and Sri Yadu Raj Joshi who are relatives of the directors / promoters fo the company and further observed that the same cannot be said to be incurred wholly and exclusively for the purpose of business of the assessee. He further observed that there is no concept of allowing expenses for the development of future managerial staff. Hence the expenditure incurred towards scholarship would only tantamount to personal expenses of the directors and accordingly disallowed the same in the assessment. The Id CITA by placing reliance on the order of his predecessor for the Asst Years 2009-10 & 2010-11 in assessee’s own case deleted the disallowance. Aggrieved, the revenue is in appeal before us on the following ground:-

I.T.A. No. 1279/Kol/2015

1. That in the facts and circumstances of the case and in law, the Ld. CIT(A) erred by allowing the claim of scholarship expenses ignoring the fact that there is no concept for allowing expenses for the development of future managerial staff in the statute.

2. That the appellant craves leave to add, delete or modify any of the grounds of appeal before or at the time of hearing.

2.4. We have heard the rival submissions. We find that the issue under dispute is squarely covered in favour of the assessee in its own case by the order of this tribunal for the Asst Year 2010-11 in ITA No. 90/Kol/2015 dated 23.8.2017 wherein it was held as under:-

“2. After hearing the rival contentions we find that the Tribunal in assessee’s own case in I.T.A. No. 1314/Kol/2014 for A.Y. 2009-10 order dated 23.02.2017 had considered the very same issue in the earlier assessment year at para 4.3 held as follows:

“4.3. Having heard the rival submissions, perused the material on record, we are of the view that there is merit in the submissions of the assessee, as the propositions canvassed by Ld. AR for the assessee are supported by the judgment cited by him and facts narrated by him above. As Ld. AR for the assessee has pointed out that after completion of the higher study they joined the company and served the company therefore the expenditure is for the purpose of business. Hence, considering the factual position, we are of the view that the order passed by the Ld. CIT(A) is a reasoned order and does not require interference. Therefore, we confirm the order of Ld. CIT(A).”

Respectfully following the aforesaid decision of this tribunal in assessee’s own case, we find no justifiable reason to interfere with the order of the Id CITA in this regard. Accordingly, the grounds raised by the revenue are dismissed.

3. The only issue to be decided in the appeal of the assessee is as to whether the Id CITA was justified in confirming the disallowance made in the sum of Rs 15,75,737/- u/s 14A of the Act, in the facts and circumstances of the case.

3.1. The brief facts of this issue is that the Id AO observed that the assessee had claimed exemption on dividend of Rs 8,82,661.47 and Long Term Capital Gains of Rs 15,38,282.90 aggregating to Rs 24,20,944.37. He observed that no disallowance has been made in respect of expenditure incurred by the assessee company in relation to income which does not form part of the total income under the Act. When the same was confronted to the assessee, it replied that investments in shares and mutual funds were made by the assessee only out of own funds as could be evident from the balance sheet of the assessee and no part of the borrowed funds were utilized for the same. The interest paid on loans is related to the core business activities of the assessee company and was never disallowed in the past. The secured and unsecured laons were taken long back and considerable portion of these loans were taken from banks. Apart from Bank, the other major component of the loans is security deposits from agents taken

long back. Moreover, no expenditure was actually incurred for the purpose of deriving these exempt income and hence no disallowance u/s 14A of the Act read with Rule 8D of the Rules was made by the assessee. The assessee vide its letter dated 15.1.2014 reiterated the aforesaid submissions and also submitted the copy of appellate order for Asst Year 2006-07 wherein full relief was granted for disallowance made u/s 14A read with Rule 8D of the Rules. However, it submitted the calculation for disallowance u/s 14A of the Act read with Rule 8D of the Rules **under protest** for the Asst Year 2011-12. The Id AO based on these workings for disallowance provided by the assessee, proceeded to disallow the sum of Rs 15,75,737/- u/s 14A of the Act read with Rule 8D of the Rules in the assessment.

3.2. The Id CITA observed that the reliance placed by the assessee on the order of his predecessor for the Asst Year 2006-07 is of no relevance as at that point of time, the provisions of Rule 8D of the Rules could not have been made applicable as the said Rule was introduced only with effect from 24.3.2008. Accordingly the Id CITA rejected the plea of disallowance of 1% of exempt income for the year under appeal. It was the contention of the assessee that for the year under consideration that on the observation of the balance sheet of Nagpur Branch of the company for the year ended 31.3.2011, the loan taken had increased without any corresponding increase in investments and while observing the balance sheet of Jhansi & Kolkata Branch for the same accounting year as aforesaid stated, it was observed that quantum of loan taken in earlier previous years had reduced in the financial year in which the assessee company is in appeal but the investment portion had shown upward rise. By this the assessee pleaded that the increase in investments were not sourced by the borrowed funds and hence there cannot be any disallowance of interest attributable to investments made by the assessee. The Id CITA finally upheld the disallowance on the plea that the assessee itself had offered the sum of Rs 15,75,737/- for disallowance during the course of

assessment proceedings and hence no interference is called for on the same. Aggrieved, the assessee is in appeal before us on the following grounds:-

I.T.A. No. 1146/Kol/2015

1. That Ld. CIT(A)-4/Kol failed to analyze the fact of the case and made the addition without providing the due weightage to the submission and the documentary evidences as a result uncalled addition of Rs. 15,75,737/- was made.

2. That the Appellant Company leave to submit further and additional ground or grounds before or at the time of hearing of the appeal.

3.3. We have heard the rival submissions. The ld AR pointed out that the workings for disallowance u/s 14A of the Act read with Rule 8D of the Rules were submitted before the ld AO only under protest as has been already noted by the ld AO in his order. It was never accepted by the assessee. This offer under protest has been conveniently ignored by the lower authorities without looking into the factual aspects of availability of sufficient own funds with the assessee company. We are in agreement with the argument advanced by the ld AR that the offer for disallowance was made only under protest by the assessee before the ld AO as is evident from the assessment order itself. With regard to availability of sufficient own funds with the assessee, we find that the lower authorities had not examined the issue from that perspective. Hence we deem it fit and appropriate to remand this issue to the file of the ld AO, to verify the balance sheet of the assessee for examination of availability of own funds with the assessee company and thereafter to decide whether disallowance u/s 14A read with Rule 8D(2)(ii) of the Rules to be inflicted or not. With regard to the third limb of disallowance under Rule 8D(2), since the part of the issue of disallowance under Rule 8D is remanded to the file of the ld AO, we deem it fit and appropriate to remand the other part of disallowance under Rule 8D also to the file of the ld AO to decide the same afresh in accordance with law. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

4. In the result, the appeal of the revenue is dismissed and appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 17.10.2017

Sd/-
[N.V. Vasudevan]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 17.10.2017
SB, Sr. PS

Copy of the order forwarded to:

1. Shree Bidyanath Ayurved Bhawan Pvt. Ltd., 1, Gupta Lane, Kolkata-700006
2. DCIT, Circle-12(2), Kolkata, Aayakar Bhawan, 6th Floor, P-7, Chowringhee Square, Kolkata-700069
- 3..C.I.T.(A)-4, Kolkata
4. C.I.T.- Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches