

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.727-728/Kol/2017
Assessment Years:2012-13 &
2013-14

Income Tax Officer, Ward-32(2), 10B, Middleton Row, 3 rd Floor, Kolkata-71	बनाम / V/s.	M/s Raghunath Exports 5F, North Block, Park Plaza, 71, Park Street, Kolkata-700 016 [PAN No. AADFR 8371 E]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

C.O. No.41-42/Kol/2017
(a/o ITA No.727 & 728/Kol/2017)
Assessment Year: 2012-13 & 2013-14

M/s Raghunath Exports 5F, North Block, Park Plaza, 71, Park Street, Kolkata-700 016	बनाम / V/s.	Income Tax Officer, Ward-32(2), 10B, Middleton Row, 3 rd Floor, Kolkata-71
Co-objector	..	प्रत्यर्थी /Respondent

आवेदक की ओर से/By Assessee	Shri Khettra Mohan Roy, FCA
राजस्व की ओर से/By Respondent	Shri Arindram Bhattacharjee, Addl-CIT-DR
सुनवाई की तारीख/Date of Hearing	25-10-2017
घोषणा की तारीख/Date of Pronouncement	31-10-2017

आदेश /ORDER

PER BENCH:-

These two appeals by Revenue and Cross Objections (CO) by the assessee are directed against the different orders of Commissioner of Income Tax (Appeals)-9 Kolkata dated 19.01.2017. Assessments were framed by ITO Ward-32(2), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide their orders dated 10.03.2015 & 31.03.2016 for assessments year 2012-13 & 2013-14 respectively.

Shri Arindram Bhattacharjee, Ld. Departmental Representative appeared on behalf of Revenue and Shri Khettra Mohan Roy, Ld. Authorized Representative appeared on behalf of assessee.

2. Both appeals and COs are heard together and are being disposed of by way of consolidate order for the sake of convenience.

First we take up Revenue's appeal in ITA No.728/Kol/2017 for A.Y 12-13.

3. The ground as raised by the Revenue reads as under:-

- “1. That on the facts and circumstances of the case the Ld. CIT(A)-9, Kolkata erred in deleting the addition of Rs.35,098/- in relation of disallowance made u/s 2(24)(x) r.w.s. 36(1)(va) for delayed deposit of Employees PF since the addition was made for violations of the specific provisions of Income Tax Act.*
- 2. That on the facts and circumstances of the case the Ld. CIT(A)-9, Kolkata erred in deleting the addition of Rs.49,30,943/- in relation of payment of interest since the Loan found to have invested in non-income generating purpose an assessee failed to substantiate the commercial expediency.*
- 3. That on the facts and circumstances of the case the Ld. CIT(A)-9, Kolkata erred in deleting the addition of Rs.1,21,442/- in respect of disallowance made u/s. 14A read with Rule 8D as the assessee firm made substantial investment in shares which were capable of yielding exempt income.*
- 4. That the Appellant craves leave to put forward additional ground at the time of hearing.”*

4. First issue raised by Revenue in ground No.1 is that Ld. CIT(A) erred in deleting the addition made by the Assessing Officer for ₹35,098/- u/s 2(24)(x) r.w.s. Section 36(1)(va) of the Act on account of delayed deposit of employees PF.

5. Briefly, the facts are that the assessee in the present case is a partnership firm and engaged in business of processing, trading and export of tea. During the course of assessment proceedings, AO observed that assessee has failed to deposit the employees' PF within the due date as specified under the Provident Fund Act.

Therefore, an amount of ₹35,098/- was disallowed and added to the total income of assessee on account of delayed deposit of Employees PF.

6. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that all the payments of employees' PF were made before the due date of income tax return filing. Therefore, the same cannot be disallowed in view of judgment of Hon'ble jurisdictional High Court by the decision of Hon'ble jurisdictional High Court in the case of *CIT v. M/s Vijay Shree Limited* vide ITAT No.245 of 2011 in **GA No.2607 of 2011** dated 7th September, 2011, wherein it has been held as under:-

“After hearing Mr. Sinha, learned advocate, appearing on behalf of the appellant and after going through the decision of the Supreme Court in the case of Commissioner of Income Tax vs. Alom Extrusion Ltd., we find that the Supreme Court in the aforesaid case has held that the amendment to the second proviso to the Sec. 43(B) of the income Tax Act, as introduced by Finance Act, 2003, was curative in nature and is required to be applied retrospectively with effect from 1st April, 1988.

Such being the position, the deletion of the amount paid by the Employees' contribution beyond due date was deductible by invoking the aforesaid amended provisions of Section 43(B) of the Act.

We, therefore, find that no substantial question of law is involved in this appeal and consequently, we dismiss this appeal.”

Accordingly the Ld. CIT(A) after hearing the submission of assessee deleted the addition made by the AO.

The Revenue, being aggrieved, is in appeal before us.

7. Before us both the parties relied on the order of Authorities Below as favourable to them.

8. We have heard the rival contentions of both the parties and perused the material available on record. At the outset we find that the issue is squarely covered in favour of assessee and against the Revenue by the jurisdictional High Court in the case of *M/s Vijay Shree Limited* (supra). As the issue is already covered, hence, we dismissed Revenue's ground of appeal.

9. Next issue raised by Revenue in ground No.2 is that Ld. CIT(A) erred in deleting the addition made by the AO for ₹49,30,943/- on account of diversion of interest bearing loan to non-income generating activity.

10. The AO during the course of assessment proceedings observed that the assessee has made investment in unquoted shares as well as in share application money for ₹2,42,88,338/- and ₹1.45 crores respectively. At the same time, it was also observed by AO that assessee is having borrowed fund of ₹358.97 lakh on which an amount of interest for ₹49,30,943/- was paid. Thus, in view of the above, AO was of the view that the borrowed fund has been utilized by making investment in unquoted shares as well as in share application money. Accordingly, AO opined that the interest expenses claimed by assessee cannot be allowed as deduction. Therefore, AO called upon assessee to explain why interest expense should not be disallowed. In compliance thereto, assessee submitted that no borrowed fund was utilized in the impugned investment. The amount borrowed by assessee is representing the cash credit limit and it is mortgaged against the amount of closing stock as well as sundry debtors.

The assessee also submitted that during the year the total purchases were made for ₹13.41 crores but the sundry creditors were shown to the tune of ₹54,47,688/- in the balance-sheet at the end of the financial year. Therefore, it is evident that the cash credit borrowed was used only for making the payment of creditors.

11.1 However, AO observed that the borrowed fund has been utilized in the impugned investment by observing as under:-

*“Secured Loan – Rs.358.97 lakh
Total investment including share application money – Rs.387.88 lakh
Total sales - Rs.1448.28 lakh Total purchase - Rs.1341.42 lakh
Less: S/debtors Rs.148.17 lakh Less: S/creditors Rs. 53.48 lakh
Sales net of sundry debtors – Rs.1300.11 lakh Purchase net of
Sundry creditors –Rs.1287.94 lakh*

Hence, receipt of Rs.1300.11 lakh out of net sales is on the higher side as against net purchase of Rs.1287.94 lakh. Further, secured loan of Rs.358.94 lakh is below total investment of Rs.387.88 lakh which indicates total investment out of secured loans. No nexus of the subject investments with the assessee's business during the relevant previous year could also be proved by

the assessee. It is thus evident that total investments have been made out of secured loans and the explanation given by the assessee is not found to be based on the facts on record.”

In view of the above, AO after having reliance on the judgment of Hon'ble Punjab & Haryana High Court in the case of *CIT vs. Abhishek Industries Ltd.* Reported in 286 ITR 1 (P&H) has disallowed the interest expense for ₹49,30,943/- and added to the total income of assessee.

12. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that in the similar facts and circumstances the Coordinate Bench of this Tribunal in assessee's own case in **ITA No.2166/Kol/2014** for A.Y. 2010-11 dated 10.08.2016 has decided the issue in favour of assessee. The assessee further submitted that the judgment of Hon'ble Punjab & Haryana High Court in the case of *Abhishek Industries Ltd.* (supra) is contrary to the judgment of Hon'ble jurisdictional High Court in the case of *CIT vs. Britannia Industries Ltd.* reported in 280 its 525 (Cal) therefore same cannot be followed in the instant case.

12.1 Assessee further submitted that the Hon'ble Punjab & Haryana High Court in its subsequent judgment has relied on the judgment of Hon'ble jurisdictional High Court in the case of *Britannia Industries Ltd.* (supra) in the case of *CIT vs. Hero Cycles* reported in 323 ITR 518 (Cal) where the impugned issue was allowed in favour of assessee.

12.2 The assessee further submitted that its own fund is exceeding impugned investment therefore an assumption can be drawn that no borrowed fund has been used in the impugned investment. The Ld. CIT(A) after considering the submission of the assessee and after having reliance in assessee's own case for A.Y 2010-11 in **ITA No.2166/Kol/2014** (supra) has decided the issue in favour of assessee.

The Revenue, being aggrieved, is in appeal before us.

13. Before us both parties relied on the order of Authorities Below as favourable to them.

14. We have heard the rival contentions of both the parties and perused the material available on record. At the outset, we find that Ld. DR has not brought on record any change in the facts of the present case with that of the earlier year

pertaining to AY 2010-11 where the issue was decided in favour of assessee by the Hon'ble Tribunal in its own case. Indeed, the own capital of assessee is exceeding the amount of impugned investment. The relevant extract of the order is reproduced below:-

“12. I have heard the arguments of both the sides and also perused the relevant material available on record. Besides reiterating the arguments raised on behalf of the assessee before the authorities below showing the commercial expediency of the advances in question given to the sister concerns, the ld. Counsel for the assessee has invited my attention to the balance-sheet of the assessee placed at page no. 21 of his paper book which clearly shows that the assessee at the relevant time was having own funds of Rs.6.61 crores, which were sufficient to give the impugned advances to its sister concern. On the other hand, the loans taken by the assessee at the relevant time stood only at Rs.1.65 crores, which were entirely used for the purpose of its business. In my opinion, these facts and figures clearly evident from the relevant balance-sheet of the assessee; which have remained undisputed or uncontroverted by the ld. DR are sufficient to show that there was no diversion of borrowed funds by the assessee for non-business purpose and the disallowance made by the Assessing Officer on account of interest was unsustainable. In that view of the matter, I uphold the impugned order of the ld. CIT(Appeals) deleting the disallowance made by the Assessing Officer on account of interest and dismiss Ground No.3 of the Revenue's appeal.”

Respectfully following the same, we uphold the order of Ld. CIT(A). Hence, this ground of Revenue's appeal is dismissed.

15. Last issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition made by the AO for ₹1,21,442/- under the provision of Section 14A r.w.s Rule 8D of the IT Rules, 1962.

16. During the course of assessment proceedings, AO has invoked the provision u/s 14A r.w.s Rule 8D of the IT Rules, and made the disallowance for ₹1,21,442/- only.

17. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who deleted the addition made by the AO having reliance in assessee's own case in ITA No.2166/Kol/2014 (supra).

The Revenue, being aggrieved, is in appeal before us.

18. Before us both the parties relied on the order of Authorities Below as favourable to them.

19. We have heard the rival contentions of both the parties and perused the material available on record. At the outset, we find that there was no dividend income earned by assessee in the year under consideration. Therefore, the question of making disallowance u/s. 14A of the Act does not arise. In holding do we find support and guidance from the order of this Tribunal in assessee own case in ITA No.2166/Kol/2014 (supra). The relevant extract of this order is reproduced below:-

“19. I have heard the arguments of both the sides and also perused the relevant material available on record. As rightly held by the ld. CIT(Appeals), the disallowance under section 14A cannot be made where there is no exempt income earned by the assessee during the relevant year and this position is duly supported by the various judicial pronouncements discussed by the ld. CIT(Appeals) in his impugned order. I, therefore, find no infirmity in the impugned order of the ld. CIT(Appeals) giving relief to the assessee on this issue and upholding the same, I dismiss Ground No. 5 of the revs appeal.”

Respectfully following the same, we uphold the order of Ld. CIT(A). Hence, this ground of Revenue is dismissed.

20. In the result, Revenue's appeal is dismissed.

Coming to ITA No.727/Kol/2017 for A.Y.12-13.

21. The ground as raised by Revenue is reproduced below:-

- 1. That on the facts and circumstances of the case the Ld. CIT(A)-9, Kolkata erred in deleting the addition of Rs.46,90,649/- in respect of payment of interest since the Loan found to have invested in non-income generating purpose and assessee failed to substantiate the commercial expediency.*
- 2. That on the fact and circumstances of the case the Ld. CIT(A)-9, Kolkata erred in deleting the addition of Rs.1,21,442/- in respect of disallowance made u/s. 14A read with Rule 8D as the assessee firm made substantial investment in shares which were capable of yielding exempt income.*
- 3. That the Appellant craves leave to put forward additional ground at the time of hearing.”*

22. The facts of both the issue in the year under appeal are identical to the facts for A.Y. 2012-13 except the amount involved and the sections under which the order has been passed. As the rest of the facts and circumstances are similar following our order in Para 9 to 15 of this order, we decide the effective grounds of appeal for under appeal against the AO. We hold accordingly.

23. In the result, Revenue's appeal is dismissed.

Coming to assessee's CO No.42/Kol/2017 for A.Y. 13-14.

24. In the CO, the assessee has merely supported the impugned order of Ld. CIT(A), whereby he deleted the disallowance made by the AO. Since we have already uphold the order of Ld. CIT(A) giving relief to the assessee on this issue while dismissing the appeal of the Revenue, the CO filed by the assessee has become infructuous and the same is accordingly dismissed.

25. In the result, assessee's CO is dismissed as infructuous.

Now we take up assessee's CO No.41/Kol/2017 for A.Y. 12-13.

26. First issue raised by assessee in its CO is that Ld. CIT(A) erred in sustaining the disallowance of ₹2.50 lakh on account of commission expense.

27. During the year assessee has claimed brokerage expense for ₹ 2.50 lakh which was paid to its sister concern namely M/s Rex Agro (P) Ltd. the assessee also submitted that the amount of commission is just 0.3% of the total turnover and it was paid for the purpose of commercial expediency. However, assessee failed to justify the impugned expense on the basis of documentary evidence. Thus, the commission expense was disallowed by AO and added to the total income of assessee.

28. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that the payment of commission was made in pursuance to agreement with M/s Rex Agro (P) Ltd. for the purpose of business. The AO has disallowed the same without conducting necessary enquiry. However, Ld. CIT(A) disregarded the contention of assessee and confirmed the order of AO by observing that no documentary evidence has been placed on record.

Aggrieved by this, the assessee has come up in CO before us.

29. Before us, the Ld. AR reiterated the arguments that were made before the Ld. CIT(A). Ld. DR supported the order of Authorities Below.

30. We have heard the rival contentions of both the parties and perused the material available on record. At the outset, it was observed that Ld. AR for the assessee failed to bring any evidence to justifying the payment of commission expense. Therefore we are not inclined to interfere in the order of Ld. CIT(A). We uphold the same. Hence, this ground of assessee's CO is dismissed.

31. Next issue raised by assessee in its CO is that Ld. CIT(A) erred in confirming the order of AO by sustaining the disallowance of ₹1.50 lakh on account of service charge.

32. The assessee has claimed expenses of ₹1.50 lakh on account of service charge paid to its sister concern, however, AO disallowed the same on the ground that no documentary evidence furnished by assessee during assessment proceedings. Thus, the sum of ₹1.50 lakh was added to the total income of assessee.

33. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who confirmed the order of AO in the absence of any documentary evidence filed by the assessee.

Aggrieved by this, the assessee has come up in CO before us.

34. Before us Ld. AR submitted that the expense incurred the service charges were directly connected with the business and therefore it is eligible deduction. On the other hand, Ld. DR heavily relied on the order of Authorities Below.

35. We have heard the rival contentions of both the parties and perused the material available on record. At the outset, it was observed that Ld. AR for the assessee failed to bring any documentary evidence to justify the business connection for the payment of commission expense. In the light of above reasoning we hold that the order of the Ld. CIT(A) is correct and in accordance with law and no interference is called for. Hence, the ground raised by assessee in its CO is dismissed.

36. In the result, assessee's CO is dismissed.

37. In combine result, Revenue's appeals stand dismissed and that of assessee's COs No. 41/Kol/2017 stand dismissed and CO No.42/Kol/2017 dismissed as infructuous.

Order pronounced in open court on 31/10/2017

Sd/-
(न्यायिक सदस्य)
(S.S.Viswanethra Ravi)
Judicial Member

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
Accountant Member

*Dkp, Sr.P.S

दिनांक:- 31/10/2017

कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee- M/s Raghunath Exporters 5F, North Block, Park Plaza, 71,
Park Street, Kolkata-16
2. राजस्व/Revenue-ITO, Ward-32(2), 10B, Middleton Row, 3rd, Floor, Kolkata-71
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary
Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता