

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH : KOLKATA

[Before Hon'ble Shri J.Sudhakar Reddy, AM & Hon'ble Smt. Madhumita Roy, JM]

I.T.A No. 1960/Kol/2016

Assessment Year : 2011-12

DCIT, Circle-8(1), Kolkata

-vs-

M. Junction Services Ltd.

[PAN: AACCM 5881 C]

(Appellant)

(Respondent)

I.T.A No. 1879/Kol/2016

Assessment Year : 2011-12

M. Junction Services Ltd.

-vs-

DCIT, Circle-8(1), Kolkata

[PAN: AACCM 5881 C]

(Appellant)

(Respondent)

For the Department : Shri G. Hangshing, CIT

For the Appellant : Shri Aakash Mansinghka, AR

Date of Hearing : 28.05.2018

Date of Pronouncement : 01.06.2018

ORDER

Per J.Sudhakar Reddy, AM

These cross appeals directed against the order of the Commission of Income Tax(Appeals)-2, Kolkata passed u/s 250 of the Income Tax Act, 1961(the 'Act') for the assessment year 2011-12.

2.The assessee is a company and is engaged online market/exchange of Steel and other products, it conducts forward auctions online as well as reverse auction (e-Sourcing) for procurement of goods and services for its clients. It is also engaged in organizing events and conferences and providing financial services and selling of Car through 'auto junction'. The assessee company is a joint venture between Steel Authority of India Ltd. (SAIL) and Tata Steel Ltd. (TISCO).

3. We have heard the ld . counsel for the assessee Mr. Aakash Mansinghka and the ld. CIT DR Mr. G. Hangshing. The assessee filed two paper books as well as charts.

4. We have carefully considered the rival submissions, order of the authorities below, case law cited and held as follows.

5. First we take up in I.T.A. No. 1879/Kol/2016 for assessment year 2011-12

Ground no. 1 is on the issue of disallowance u/s 14A of the Act read with Rule 8D of the I.T. Rules. The facts relating to the disallowance are brought out at para 3 page 2 of the assessment order which is extracted below for the reference:

"It is noted that the assessee company earned tax exempt dividend income of Rs. 3,63,33,108/- from its investment in units of Mutual Fund and shares of other companies. As per annexure-D of the balance sheet, the value of investment on the first day and on the last day of the previous year 2010-11 stand at Rs. 64,03,99,000/- and Rs. 96,13,72,000/- respectively, the average of value of investment being Rs. 80,08,85,500/-. In this regard, it was seen from the TAR that as per the details of deduction inadmissible u/s 14A of the Income Tax Act, 1961, an amount of Rs. 11,97,030/- was determined as inadmissible. It was observed that such inadmissible amount was computed by disallowing 50% salary paid to Shri Dilip Kr. Singhal, 10% salary paid to Shri Rajarshi Chattopadhyay, 5% salary paid to Shri Vinaya Verma and 2% salary paid to Shri Viresh Oberoi which were Rs. 4,83,606/-, Rs. 1,78,122/-,

Rs. 1,81,482/- & Rs. 2,03,820/- respectively. Further, there was disallowance of Rs. 1,50,000/- as towards miscellaneous activities for SAP entry stationeries etc.

As per the provisions of Circular No. 05/2013 dated 11.02.2014 issued by the CBDT it is held that the legislative intent is to allow only that expenditure which is relatable to earning of income and it therefore follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance, irrespective of the fact whether any such income has been earned during the financial year or not. As the assessee did not maintain any separate books of accounts for accounting for expenses incurred in relation to income not includible in its total income, the amount of expense actually incurred cannot be ascertained from the assessee's books of accounts satisfactorily. Accordingly, the provisions of section 14A read with Rule 8D of the Act are attracted in the case of the assessee."

6. The Id. Counsel for the assessee contends that the satisfaction was not recorded by the AO giving cogent reasons for rejecting the suo-moto computation of disallowance u/s 14A of the Act by the assessee. He relied on the decision of Hon'ble Supreme Court in the case of Maxopp Investments Ltd. vs. CIT in civil Appeal No. 104 to 109 of 2015 judgment dated 12.02.2018 as well as on the judgment of the Jurisdictional High Court in the case of CIT vs. REI Agro Ltd. in G.A. No. 3022/2013 ITAT No. 161 of 2013 order dated 23.12.2013, wherein the decision of "A" Bench of Kolkata Tribunal in I.T.A. No. 1811/Kol/2016 in the case of DCIT vs. REI Agro Ltd. was upheld, for the proposition that cogent reasons have to be recorded by the AO as to why he is not in agreement with the suo-moto disallowance made by the assessee.

7. The Id. DR opposed this contentions. He relied on the order of the Ld. CIT(A) and argued that the AO has relied on the CBDT Circular and applied Rule 8D of the ITAT rule.

8. On an examination the issue, we find that the Hon'ble Supreme Court in the case of Maxopp Investments Ltd. supra at para 41 page 40 wherein it has held as follows:

“Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.”

This bench of the Tribunal in the case of REI Agro Ltd. supra at page 9 held as follows:

“We find from the facts of the above case that the AO has not examined the account so the assessee and there is no satisfaction recorded by the AO about the correctness of the claim of the assessee and without the same he invoked Rule 8D of the Rules. While rejecting the claim of the assessee with regard to expenditure or no expenditure, as the case may be, in relation to exempted income, the AO has to indicate cogent reasons for the same”.

This decision was upheld by the Hon'ble High Court vide its judgment dated 23.12.2013.

8. Applying the proposition of law laid down in these judgment to the facts of the case we find that the assessing Officer has not given any cogent reason as to why he is not satisfied with the suo moto disallowance made by the assessee. The Assessing Officer's comment that the assessee did not to maintain separate books of accounts, for the expenses incurred in relation to earning of income not includible in the 'total income' would tantamount to AO being of the opinion that the assessee should maintain separate books for this purpose. This is not required as per law. The AO has committed an error in assuming so. Hence this

ground on which the AO has not accepted the suo motu disallowance made by the assessee u/s 14A of the Act is wrong. Thus, as the Assessing Officer has not recorded his satisfaction before rejecting the suo-moto disallowance made by the assessee u/s 14A of the Act, we delete this disallowance made by the AO under Rule 8D of the Rules and allow ground no.1 of the assessee.

9. Ground no. 2 is on the issue of provision for leave encashment. The assessee relies on the Jurisdictional High Court judgment in the case of Exide Industries Ltd. vs. Union of India reported in 292 ITR 470. Alternatively he submits that the claim may be allowed on actual payment basis and that the assessee prefers to withdraw its ground if the amount is allowed on actual payment, for the reason that it would take considerable time before the issue attends finality. The ld. DR submitted that this issue is being remanded back to the file of the AO by the Tribunal for awaiting the judgment of the Hon'ble Supreme Court and passing order in accordance thereof.

10. We set aside this issue to the file of the AO to fresh adjudication in accordance with law. The assessing officer may either wait for the judgment of Hon'ble Supreme Court in the case of Exide Industries Ltd. supra or may consider the alternative plea of the assessee that the claim be allowed on actual payment basis and if it is so done, the assessee would withdraw all the pending litigation, for all the years, wherein he sought deduction of the provision made for the leave encashment. Hence, this ground is allowed for statistical purposes.

11. Ground no. 3 is on the issue of disallowance of bad debts written off.

12. The ld. counsel for the assessee submitted that the provision was made in the profit and loss account for the previous year under 31st March, 2010 of Rs. 9,10,94,000/-, towards doubtful debts from receivables and that this amount added back to the computation to the income while filing the return of income for the assessment year 2008-09. Similarly for financial year 31st March, 2009 and the provision for doubtful receivables was made of an amount of Rs. 18,31,000/- and this amount was added back to the income while computing income for the assessment year 2009-10. For the financial year 31st March, 2010, the assessee had received part of the doubtful receivables out of claims provided to the earlier year's and accordingly Rs. 1,48,00,000/- was written back and shown as other income in the annual accounts. While computing income for the assessment year 2010-11, this amount was deducted from the income, as the earlier year the provisions made by the assessee were added back to the income. Based on a letter given by the receiver the assessee company came to a conclusion that the amount in question is not recoverable and consequently it wrote off these debts. The AO did not allow this claim of the assessee on the grounds that the loss has not crystallized during the year and that the issue is sub judice and the assessee may receive damages in future, which are yet to be quantified. Further the AO states that, it is evident from the notes to account as well as the note of the statutory auditor that the amount in question may be recovered, though it may take considerable amount of time. The ld. Counsel for the assessee on facts refers to the letter from receiver and submits that on facts the recovery is doubtful and hence the same has been written off. He relied on the judgment of the Hon'ble Supreme Court in the case of TRF Ltd. vs. CIT reported in 323 ITR 397 (S C). Further relied on the certain judgments for the proposition that, the liability in question crystallized during this year and is

alternatively allowable as business loss. The Id. DR submitted that the condition as to whether the amount in question has been taken into account is not addressed by the assessing officer and hence the same may be set aside to the file of the AO. He did not controvert the other submissions of the assessee.

13. We have considered the letter written by the official receiver Mr. A. Paul to the assessee dated 14.02.2011 which is at page 116 of the paper book. As per the order passed on 15.05.2009 the Hon'ble Justice Shri Sanjib Banerjee of the Hon'ble High Court of Calcutta, the assessee receiver had handed over cheques to the tune of Rs. 1,54,94,333/- to the assessee, by way of full and final settlement. The term 'Full and Final Settlement' shown that the balance amount is not recoverable. From the above letter dated 14.02.2011 it is clear that the assessee had written off bad debts in its accounts based on cogent material. Once the bad debt is written off, it should be allowed as a deduction as held by the Hon'ble Supreme Court in the case of TRF Ltd. supra. On the objection of the Ld. CIT DR, we find that the assessee has made a provision for doubtful debts in the profit and loss account of the assessee in the earlier assessment years and hence it is clear that these amounts were taken into account by the assessee in the earlier assessment years hence the conditions specified u/s 36(1)(vii) of the Act are satisfied. Hence this ground of the assessee is allowed.

14. Ground no. 4 is against the levy of interest u/s 234B and 234C of the Act as levy of interest is consequential.

15. Now we take up in I.T.A. No. 1960/Kol/2016

The sole grounds of the revenue appeal is on the issue of disallowance of expenditure u/s 14A of the Act. In view of our decision on ground no.1 in the assessee's appeal, this ground of the revenue has to be dismissed.

16. In the result, the appeal of the revenue is dismissed and the appeal of the assessee is allowed in part.

Order pronounced in the Court on 01.06.2018

Sd/-
[Madhumita Roy]
Judicial Member

Sd/-
[J.Sudhakar Reddy]
Accountant Member

Dated : 01 .06.2018

SB, Sr. PS

Copy of the order forwarded to:

1. DCIT, Circle-8(1), Kolkata, Aayakar Bhawan, 5th Floor, P-7, Chowringhee Square, Kolkata-700069.
2. M/s M Junction Services Ltd, 43, J.L. Nehru Road, Tata Centre, Kolkata-700071.
- 3..C.I.T.(A)- , 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