

आयकर अपीलीय अधीकरण, न्यायपीठ – “ऐ” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
(समक्ष)Before श्री महावीर सिंह, न्यायीक सदस्य एवं/and श्री, सी.डी.राव लेखा सदस्य)
[Before Shri Mahavir Singh, JM & Shri C. D. Rao, AM]

आयकर अपील संख्या / I.T.A No. 345/Kol/2012

निर्धारण वर्ष/Assessment Year: 2006-07

M/s. MBSK Finvest Pvt. Ltd.
(PAN: AADCM1373J)
(अपीलार्थी/Appellant)

Vs. Income-tax Officer, Wd-3(3), Kolkata
(प्रत्यर्थी/Respondent)

Date of hearing: 02.04.2012

Date of pronouncement: 04.04.2012

For the Appellant: Shri S. L. Kochar

For the Respondent: Shri P. S. Dutta

आदेश/ORDER

Per Mahavir Singh, JM (महावीर सिंह, न्यायीक सदस्य)

This appeal by assessee is arising out of the order of CIT(A)-I, Kolkata in Appeal No. 152/CIT(A)-I/Wd-3(3)/08-09 dated 28.11.2011. Assessment was framed by ITO, Ward-3(3), Kolkata u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) for Assessment Year 2006-07 vide his order dated 24.10.2008.

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the disallowance of travelling expenses by treating the same as not being business expenses even though the Fringe Benefit Tax (FBT) liability was worked out u/s. 115WE(3) of the Act by Assessing Officer. For this, assessee has raised following ground no.1:

“1. For that the Ld. CIT(A) erred in holding that Travelling expenses incurred by the appellant were not business expenses and in that view of the matter in confirming the disallowance of the same even though tax liability was worked out u/s. 115WE(3) by the A.O.”

3. We have heard rival submissions and gone through facts and circumstances of the case. We find that the Assessing Officer disallowed a sum of Rs.1,04,020/- on account of travelling expenses by observing that the travelling and conveyance expenses on air fare by directors for visit to Mumbai and Ahmedabad etc. is personal in nature and not related to business. CIT(A) also confirmed the action of Assessing Officer. Aggrieved, now assessee is in appeal before us.

4. We find that the assessee’s contention before Assessing Officer as well as CIT(A) is that these tours were undertaken only for the purpose of business and for that the assessee

narrated that the Assessing Officer even made assessment in FBT u/s. 115WE(3) of the Act dated 24.10.2008. Before us also the assessee enclosed copy of assessment order of FBT. Even we find that the Assessing Officer has not disputed the purpose relating to the travelling made by Directors and there is no purpose for directors to travel Mumbai, Ahmedabad etc. but strictly for the business purposes. Once, revenue is assessing these expenses under FBT it cannot say that these are not for the purpose of business. Hence we delete the disallowance. This issue of assessee's appeal is allowed.

5. The next issue in this appeal of assessee is against the order of CIT(A) confirming the disallowance of Rs.10,278/- out of the total exempted income earned at Rs.32,448/- by invoking section 14A of the Act.

6. We have heard rival submissions and gone through facts and circumstances of the case. We find that the assessee has earned exempted income at Rs.32,448/- on account of dividend and it was the contention of assessee that there is no expenditure related to the earning of income of dividend. Assessee also took the plea before the lower authorities that the concept of disallowance refers to Rule 8D which has been made applicable for and from the Assessment Year 2008-09 but the impugned assessment year is 2006-07, hence it is not applicable in assessee's case. CIT(A) confirmed the action of Assessing Officer. We find that Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. vs. DCIT [2010] 328 ITR 81 (Bom.) has already held applicability of Rule 8D of the Rules as prospective and not retrospective w.e.f. assessment year 2008-09, wherein Hon'ble High Court has also directed to recompute the disallowance in case there is a nexus for expenses with exempt income by laying down the principle as under:

“(v) The provisions of rule 8D of the Income-tax Rules which have been notified with effect from March 24, 2008, shall apply with effect from the assessment year 2008-09;

(vi) Even prior to the assessment year 2008-09, when rule 8D was not applicable, the Assessing Officer has to enforce the provisions of sub-section (1) of Section 14A. For that purpose, the Assessing Officer is duty bound to determine the expenditure which has been incurred in relation to income which does not form part of the total income under the Act. The Assessing Officer must adopt a reasonable basis or method consistent with all the relevant facts and circumstances after furnishing a reasonable opportunity to the assessee to place all germane material on the record;

(vii) The proceedings for the assessment year 2002-03 shall stand remanded back to the Assessing Officer. The Assessing Officer shall determine as to whether the assessee has incurred any expenditure (direct or indirect) in relation to dividend income/income from mutual funds which does not form part of the total income as contemplated under Section 14A. The Assessing Officer can

adopt reasonable basis for effecting the apportionment. While making that determination, the Assessing Officer shall provide a reasonable opportunity to the assessee of producing its accounts and relevant and germane material having a bearing on the facts and circumstances of the case”

We further find that the Tribunal, Kolkata Bench on the self same facts in the case of Sagrika Goods & Services Pvt. Ltd. Vs. Income-tax Officer, I.T.A No. 1278/Kol/2010, Assessment Year 2005-06 dated 24th September, 2010 has held as under:

“5. Heard the rival submissions, perused the material available on record and the decisions relied on by the Ld. Authorised Representative of the assessee cited supra. We find that on the issue of disallowance u/s. 14A, this Bench of the Tribunal has been taking a consistent view that this disallowance should be restricted to 1% of dividend income. Following the same, in this appeal also we hold that the disallowance u/s 14A for earning exempt dividend income should be restricted to 1% of dividend income. The Assessing Officer is accordingly directed to do so and work out the quantum of disallowance. This ground of appeal of the assessee is allowed as directed above.”

In view of the above, we restrict the disallowance u/s. 14A of the Act to 1% of total exempt income and direct the Assessing Officer to work out the quantum of disallowance accordingly. This ground of appeal of assessee is partly allowed.

7. In the result, the appeal of the assessee is partly allowed.

8. Order pronounced in the open court on 4.4.12.

Sd/-

सी.डी.राव लेखा सदस्य
(C. D. Rao)
Accountant Member

Sd/-

महावीर सिंह, न्यायीक सदस्य
(Mahavir Singh)
Judicial Member

(तारीख) Dated : 4th April, 2012

वरिष्ठ निजि सचिव Jd.(Sr.P.S.)

आदेश की प्रतिलिपि अग्रेषित:- Copy of the order forwarded to:

1. अपीलार्थी/APPELLANT – M/s. MBSK Finvest Pvt. Ltd., C/o S. L. Kochar, advocate, 86, Canning Street, Kolkata-700 001.
2. प्रत्यर्थी/ Respondent – ITO, Ward-3(3), Kolkata.
3. आयकर कमिशनर (अपील)/ The CIT(A), Kolkata
4. आयकर कमिशनर/ CIT Kolkata
5. विभागिय प्रतिनीधी / DR, Kolkata Benches, Kolkata

सत्यापित प्रति/True Copy,

आदेशानुसार/ By order,

सहायक पंजीकार/Asstt. Registrar.