

आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

माननीय श्री विकास अवस्थी, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI VIKAS AWASTHY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
 (Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No. 679/Mum/2020
 (निर्धारण वर्ष / Assessment Year: 2013-14)

M/s Lotus Ornaments Pvt. Ltd. Unit No. 78, SDF-III, SEEPZ SEZ, Andheri(E), Mumbai-400 096	बनाम/ Vs.	ACIT – 10(2)(1) Aaykar Bhavan M. K. Road Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAACL-9830-C		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Gaurav Bansal – Ld. AR
Revenue by	:	Shri Brajendra Kumar – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	28/09/2021
घोषणा की तारीख / Date of Pronouncement	:	01/10/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income-Tax (Appeals)-10, Mumbai [CIT(A)], dated 11/12/2019 in the matter of assessment framed by learned Assessing Officer (AO) u/s 143(3) on 25/03/2016. The impugned order has confirmed disallowance u/s 14A as well as adhoc disallowance of labour / assortment charges as made by Ld. AO in the assessment order. Ground No.1 has not been pressed

before us and therefore, the same stand dismissed as being *not pressed*. In ground no.2, the assessee has contested the confirmation of 10% adhoc disallowance of labour / assortment charges.

2. The assessee, vide letter dated 15/09/2021, has filed an additional ground challenging the disallowance made u/s 14A. Since the same arises out of the assessment order, it is admitted in term of the decision of Hon'ble Apex Court in **National Thermal Power Corporation Ltd. V/s CIT (1998; 229 ITR 383)**. The assessee seeks deletion of disallowance u/s 14A in terms of the decision of Hon'ble Apex Court in **Pr. CIT V/s Oil Industry Development Board (2019; 103 Taxmann.com 326)** as well as **CIT V/s Chettinad Logistics (P) Ltd. (2018; 95 Taxmann.com 250)** on the ground that no exempt income was earned by the assessee during the year.

3. Having heard rival submissions and after careful consideration of material on record, our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

Disallowances u/s 14A

4.1 The assessee offered suo-moto disallowance u/s 14A for Rs.0.63 Lacs in the computation of income against investments made by the assessee. However, Ld. AO computed additional disallowance of interest u/r 8D(2)(ii) for Rs.4.60 Lacs and added the same to the income of the assessee. It is undisputed fact that the assessee has not earned any exempt income during the year. The assessee did not contest this issue during appellate proceedings. However, the assessee has assailed the disallowance before us.

4.2 Upon perusal of assessee's financial statements, it could be gathered that assessee's own funds in the shape of share capital and

free reserves far exceeds the investment made by the assessee and therefore, a presumption would run in assessee's favor that the investments were funded out of own funds. Secondly, the assessee has not earned any exempt income during the year. Therefore, the additional interest disallowance is not sustainable in law as per the cited judicial pronouncements. Therefore, by deleting the disallowance of Rs.4.60 Lacs, we allow this ground of appeal.

Adhoc disallowance of Labor / Assortment Charges

5.1 The assessee claimed assortment / labour charges for Rs.777.80 Lacs. Upon perusal of sample supporting bills, vouchers etc., it was noted by Ld. AO that the nature and particulars could not be verified, few documents were not affixed with revenue stamps and in some cases, the payees could not be verified. Accordingly, Ld. AO estimated an adhoc disallowance of 10% against the same. The Ld. CIT(A) confirmed the same since the assessee did not appear during appellate proceedings.

5.2 The Ld. AR assailed the disallowance by submitting that the Books of Accounts have not been rejected and the adhoc disallowance thus made would not be sustainable in law as per the decision of Hon'ble Delhi High Court in **PCIT V/s R.G. Buildwell Engineers Ltd. (99 Taxmann.com 283; SLP dismissed which is reported at 259 Taxman 370)**. The Ld. AR submitted that the nature of expenditure was duly explained before Ld. AO and ledgers were produced along with vouchers. No specific defect has been pointed out in the documents furnished by the assessee. The Ld. AR also submitted that similar expenditure was incurred in AYs 2012-13 & 2014-15 wherein no disallowance has been made by Ld. AO in scrutiny assessment proceedings u/s 143(3). The copies of the orders have been placed on

record. Lastly, it is the submission of Ld. AR that assessee's books of accounts were duly audited under the Companies Act, 2013 as well as under Income Tax Act and no adverse findings have been reported by the Auditors. The Ld. DR, on the other hand, submitted that the facts of the case justify the disallowance.

5.3 After going through material facts, it could be gathered that the books of accounts have not been rejected by Ld. AO. The books were duly audited under The Companies Act as well as under Income Tax Act and no adverse findings have been rendered by Auditors, in this regard. Except for general observations, no specific defects have been pointed out by Ld. AO in sample documents produced by the assessee. Similar expenditure incurred by the assessee in AYs 2012-13 & 2014-15 has been accepted. The complete details of the expenditure along with relevant ledgers were furnished by the assessee during assessment proceedings (page nos. 18 to 133 of Paper Book). There is no dispute about genuineness and admissibility of claim of expenses. Regarding the observation of Ld. AO that there was drastic increase in such expenses during the year, the same stood explained by assessee's reply dated 19/01/2016 wherein it was submitted that the expenditure increased due to change in manufacturing pattern of the assessee which was necessitated due to customers requirements since the assessee diversified into small pieces for which higher labour charges were paid by the assessee. The net profit reflected by the assessee is 2.43% which is quite similar to net profit of 2.48% reflected in the earlier year. Thus, in terms of the cited decision of Hon'ble Delhi High Court and considering the facts of the case, we are inclined to delete the adhoc disallowance as made by Ld. AO. This ground stand allowed.

6. The appeal stand partly allowed in terms of our above order.

Order pronounced on 1st October, 2021.

Sd/-

(Vikas Awasthy)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 01/10/2021

Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.