

Income Tax Appellate Tribunal - Kolkata

Brahamanand Himghar Ltd., ... vs Department Of Income Tax on 6 November, 2013

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

(¢)Before , Ú /and .

. [,)

[Before Shri Mahavir Singh, JM & Shri Abraham P. George, AM]

É / I.T.A No. 826/Kol/2012

/Assessment Year: 2005-06

Assistant Commissioner of Income-tax,

Circle-3, Kolkata

(PAN:AABC4299A)

(/Appellant)

Vs.

M/s. Brahamanand Himghar Ltd.

(×/Respondent)

Date of hearing : 06.11.2013 Date of pronouncement: 21.11.2013 For the appellant: Shri Muzaffar Hussain, Addl. CIT, Sr. DR For the respondent: Shri M. Satnaliwala /ORDER Per Bench:

This appeal by revenue is arising out of order of CIT(A)-XXIV, Kolkata in appeal No. 985/CIT(A)-XXIV/Cir-3/11-12 dated 14.02.2012. Assessment was framed by ACIT, Circle-3, Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year 2005-06 vide his order dated 24.12.2007.

2. The first issue in this appeal of revenue is against the order of CIT(A) denying the deduction u/s. 80IB of the Act on the basis that the assessee failed to furnish audit report in form No. 10CCB along with the return of income as required u/s. 80IA and 80IB of the Act. For this, revenue has raised following ground no.1:

"1. That the Ld. CIT(A) erred in allowing the deduction of Rs.7,11,281/- u/s. 80IB without controvert the finding of the Assessing Officer that the assessee failed to furnish the Audit Report (Form No.100CB) along with Return of income as per requirement of sec. 80IA and 80IB."

3. We have heard rival submissions and gone through facts and circumstances of the case. It is an admitted fact that in the instant case Form No. 10CCB was filed by the assessee before the AO during the course of assessment proceedings. Once the Audit Report is filed during the Brahamanand Himghar Ltd., AY:2005-06 course of assessment proceedings the requirement of section is fulfilled. The requirement of Audit Report that it should be filed along with return is not mandatory condition and, therefore, filing of an Audit Report after the submission of the return but before the completion of assessment is sufficient compliance with the said condition. This view of ours is supported by the decisions of Hon'ble Gujarat High Court in the case of CIT Vs. Gujarat Oil & Allied Industries (1993) 201 ITR 325, 338 (Guj) and Hon'ble Madras High Court in the case of CIT Vs. A. N. Arunachalam (1994) 208 ITR 481,485 (Mad). Once this is the position, the CIT(A) has rightly allowed the deduction and we confirm the order of CIT(A) on this issue. This issue of revenue's appeal is dismissed.

4. The next issue in this appeal of revenue is against the order of CIT(A) in allowing deduction u/s. 80IB qua the other income i.e. interest income which is not derived from industrial activity. For this, revenue has raised following ground no.2:

"2. That the Ld. CIT(A) erred in allowing the deduction of Rs.7,11,281/- u/s. 80IB without taking into account the Categorical finding of the Assessing Officer that the Deduction is available only in respect of profits directly Derived from industrial activity and not for 'other income'.

5. We have heard rival submissions and gone through facts and circumstances of the case. At the outset, the Ld. Sr. DR as well as the Ld. counsel for the assessee fairly agreed that the CIT(A) has not adjudicated this issue. We have also gone through the order of CIT(A) and find that there is no finding in respect to the allowing of interest income as profit derived from industrial activity. Hence, as conceded by both the sides, we set aside this issue to the file of CIT(A) for fresh adjudication. This issue of revenue's appeal is allowed for statistical purposes.

6. Coming to last issue. The issue is as regards to order of CIT(A) deleting the addition made by AO by invoking the provisions of section 14A for the reason that interest bearing funds were not utilised for making investments. For this, revenue has raised following ground nos.3 and 4:

"3. That the Ld. CIT(A) erred in deleting the addition of Rs.19,27,869/- u/s. 14A without considering the fact the Assessee failed to prove by production of material on record that interest bearing fund were not utilized for making investments.

Brahamanand Himghar Ltd., AY:2005-06

4. That the Ld. CIT(A) failed to take into account the judgment of jurisdictional High Court of Calcutta in the case of Dhanuka & Sons Vs. CIT (Central-1), Kolkata (2011 12 Taxman. Com 227(Cal) dated 19.04.2011 while passing the order."

7. Briefly stated facts are that the AO made disallowance of Rs.19,27,869/- out of interest account by invoking the provisions of section 14A of the Act on the ground that borrowed funds were utilised for investment in shares from where assessee has earned exempt income. The CIT(A) has deleted the addition by observing as under:

"In the instant case, the appellant company did not earn any dividend or any other exempt income during the year from the investments made in shares. The Ld. A/R has explained that there was no nexus between the borrowed fund and the investments in shares. It has been explained that secured loan was taken from bank and financial institutions for the purpose of the business. The appellant had business receipts of more than Rs.4.9 crores. The Ld. A/R has also explained that interest was mainly paid to Bank for taking loans for making advances to the cultivators who stored their products in the cold storage. In the case of Siva Industries & Holding Ltd. (supra), the Hon'ble ITAT Chennai has held that in case the assessee does not have

any exempt income, no disallowance can be made u/s. 14A for the relevant assessment year. In view of the above discussion, the assessing officer is directed to delete the disallowance of Rs.19,27,869/- u/s. 14A in the instant case. This ground of appeal is allowed."

8. We have heard rival submissions and gone through facts and circumstances of the case. As the Ld. Counsel for the assessee clearly stated that assessee company did not earn any dividend or any other exempted income during the year under consideration from the investments made in share. He also explained that no borrowed funds were utilised for the purposes of investment in shares. It was explained that secured loan was taken from banks and financial institutions for the purposes of business. According to Ld. Counsel, the primary condition for invoking the provisions of section 14A of the Act is that there should be exempted income and the very provisions of section 14A(1) reads as under:

"Expenditure incurred in relation to income not includible in total income: 14A (1)
For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act."

The particular fact that the assessee has not earned any exempted income or claimed any exemption in the computation of income, when it was put to Ld. Sr. DR he could not show us any exempted income earned by assessee and which was claimed as exempt in the computation Brahamanand Himghar Ltd., AY:2005-06 of income. In such circumstances, we have no alternative except to confirm the order of CIT(A) on this issue and the ground of appeal of revenue is dismissed.

9. In the result, appeal of revenue is partly allowed for statistical purposes.

10. Order is pronounced in the open court on 21st November, 2013.

Sd/-
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(Abraham P. George)
Accountant Member

Sd/-
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(Mahavir Singh)
Judicial Member

Dated : 21st November, 2013

Jd. (Sr.P.S.)

- Copy of the order forwarded to:

1. /APPELLANT - ACIT, Circle-3, Kolkata 2 ×/ Respondent -M/s. Brahamanand Himghar Ltd., 36A, Bentinck Street, 2nd floor, Kolkata-700 069.

3. ()/ The CIT(A), Kolkata

4. / CIT Kolkata

5. / DR, Kolkata Benches, Kolkata
× /True Copy,

/ By order,

/Asstt. Registrar.