

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.2223/MUM/2024

(Assessment Year : 2018-19)

Godrej Agrovat Limited,

c/o Kalyaniwalla & Mistry LLP,

Esplanade House,

29, Hazarimal Somani Marg,

Fort Mumbai,

Mumbai – 400079

Maharashtra

PAN – AAACG0617Q

..... Appellant

v/s

Principal Commissioner of Income Tax,

Mumbai -6,

Room No.51, 5th Floor,

Aaykar Bhavan, Maharishi Karve Road,

Mumbai - 400020

Maharashtra

..... Respondent

Assessee by : Shri Percy J. Pardiwalla, Sr. Adv.

Shri Jeet Kamdar, Adv.

Revenue by : Shri Himanshu Joshi, Sr. DR

Shri Dr. Kishor Dhule, CIT - DR

Date of Hearing – 24/01/2025

Date of Order – 20/03/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 29/02/2024, passed under section 263 of the Income Tax Act, 1961 (*"the Act"*) by the learned Principal Commissioner of Income Tax, Mumbai - 6 [*"learned PCIT"*], for the assessment year 2018-19.

2. In this appeal, the assessee has raised the following grounds: –

"1. The Pr. Commissioner of Income Tax erred in assuming jurisdiction u/s. 263, when the jurisdictional conditions were not satisfied.

2. The Pr. Commissioner of Income Tax erred in assuming jurisdiction u/s. 263 on issues which were duly inquired into/ looked at by the Assessing Officer during the course of assessment proceedings.

3. The Pr. Commissioner of Income Tax erred in passing an order u/s. 263 on issues where two views were possible and the Assessing Officer had taken a plausible view.

4. The Pr. Commissioner of Income Tax erred in passing the order u/s. 263 of the Act when the assessment order passed under section 143(3) r.w.s. 144B was neither erroneous nor prejudicial to the interest of Revenue.

5. The Pr. Commissioner of Income Tax erred in directing the Assessing Officer to compute the disallowance under section 14A by invoking with Rule 8D.

6. The Pr. Commissioner of Income Tax erred in directing the Assessing Officer to disallow the depreciation u/s.32 in respect of the office premises acquired by the Appellant in the preceding Assessment Year 2016-17.

7. The Pr. Commissioner of Income Tax erred in assuming jurisdiction u/s.263 to deny the weighted deduction u/s.35CCC."

3. In the present appeal, the assessee is aggrieved against the invocation of revisionary proceedings under section 263 of the Act by the learned PCIT.

4. The brief facts of the case pertaining to this issue, as emanated from the record, are: The assessee is engaged in the business of manufacturing of agricultural products, animal feeds, integrated portal business, crude palm oil, and trading of agricultural products. For the year under consideration, the assessee filed its return of income on 30/11/2018, declaring a total income of INR 254,21,18,570. The return filed by the assessee was selected for scrutiny, and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. After considering the submissions of the assessee in response to the statutory notices issued during the assessment

proceedings, the Assessing Officer ("AO"), vide order dated 23/04/2021 passed under section 143(3) read with section 144B of the Act, assessed the total income of the assessee at INR 254,81,95,810.

5. Subsequently, vide notice dated 02/11/2023 issued under section 263 of the Act, revisionary proceedings were initiated in the case of the assessee on the basis that (i) excess deduction @50% being INR 10,68,11,066 (INR 32,04,33,197 minus INR 24,56,00,462) has been allowed under section 35CCC of the Act leading to under-assessment of income to that extent; (ii) 1% of the investments capable of fetching exempt dividend income was not disallowed under section 14A read with Rule 8D of the Income Tax Rules, 1962 (*"the Rules"*); and (iii) the AO has allowed depreciation claimed on the value of land leading to excess allowance of depreciation amounting to INR 2,85,62,919. Therefore, it was alleged that since the assessment order has resulted in an under-assessment of income, the same is erroneous and prejudicial to the interest of the Revenue and is required to be set aside on the aforementioned issues by invoking the provisions of section 263 of the Act.

6. The learned PCIT, vide impugned order, disagreed with the submissions of the assessee, filed in response to the show cause notice issued under section 263 of the Act, and inter-alia held that the AO accepting the suo moto disallowance made by the assessee under section 14A of the Act is not in conformity with the past precedents, and therefore, clearly lacks enquiry and application of mind. Further, with respect to the issue of depreciation on land, the learned PCIT held that the AO allowed the claim of the assessee without

proper enquiry and application of mind. As regards the deduction claimed under section 35CCC of the Act, the learned PCIT held that the AO overlooked the aspect that the assessee gave up its claim for weighted deduction and requested the AO to restrict the deduction in respect of the expenditure incurred on agriculture extension activity to the actual expenditure incurred. Accordingly, the learned PCIT held that the assessment order passed by the AO under section 143(3) read with section 144B of the Act is erroneous insofar as it is prejudicial to the interest of the Revenue on the aforementioned issues and directed the AO to re-assess the income after providing an opportunity of being heard to the assessee. Being aggrieved, the assessee is in appeal before us.

7. We have considered the rival submissions and perused the material available on record. The impugned revisionary proceedings under section 263 of the Act were initiated with respect to three issues. Vide impugned order, inter-alia, it was held that in its computation of income for the year under consideration, the assessee claimed a weighted deduction under section 35CCC of the Act @150% of the expenses incurred on agriculture extension activity. However, the assessee vide letter dated 12/04/2021, filed during the assessment proceedings, gave up its claim for weighted deduction and requested the AO to restrict the deduction at the actual expenditure incurred amounting to INR 24,56,00,462 instead of the weighted deduction claimed amounting to INR 32,04,23,197, which was completely overlooked by the AO and the assessee was allowed excess deduction of INR 10,68,11,066 under section 35CCC of the Act. From the perusal of the impugned order, we further

find that the assessee filed an application under section 154 of the Act requesting the AO to rectify the mistake apparent from the record and restrict the deduction under section 35CCC of the Act to the actual expenditure of INR 24,00,56,462 instead of INR 32,04,33,197 claimed in its return of income. Since the revision proceedings were initiated, the learned PCIT treated the rectification application filed by the assessee as redundant. During the hearing, the learned Senior Counsel, appearing for the assessee, submitted that the excess amount allowed as a deduction by the AO is only INR 8,03,76,735 (i.e., INR 32,04,33,197, claimed in the return of income, minus INR 24,00,56,462, actual expenditure incurred by the assessee). Thus, it was submitted that the disallowance should be restricted to only INR 8,03,76,735 instead of INR 10,68,11,066 directed by the learned PCIT. Having considered the submissions and perused the material available on record, we are of the considered view that revision proceedings under section 263 of the Act have been correctly initiated in respect of this issue. However, the AO is directed to disallow an amount of INR 8,03,76,735 being the excess amount allowed to the assessee as a deduction under section 35CCC of the Act. Accordingly, to this extent, the impugned order passed under section 263 of the Act is upheld.

8. The next issue with respect to which the proceedings under section 263 of the Act were initiated pertains to disallowance under section 14A of the Act. Vide impugned order, the learned PCIT held that in the assessee's own case, in earlier years, the disallowance under section 14A of the Act was made as per Rule 8D, and therefore, the action of the AO in accepting the suo moto disallowance made by the assessee is not in conformity with the past

precedents and therefore clearly lacks enquiry and application of mind. The learned PCIT further held that the assessment order has not been made in accordance with the CBDT's Circular No. 5 of 2014, which mandates the AO to compute the disallowance under section 14A of the Act in accordance with the method prescribed in Rule 8D of the Rules. Accordingly, the learned PCIT held that the case falls under the purview of clause (c) of Explanation-2 to section 263 of the Act.

9. From the perusal of the factual paper book placed on record by the assessee, we find that the return filed by the assessee was selected for scrutiny through CASS, and notice under section 143(2) of the Act was issued on 23/09/2019, inter-alia, for examining the expenses incurred by the assessee for earning exempt income. In this regard, the AO issued a notice under section 142(1) of the Act on 06/03/2020, forming part of the paper book from pages 5-11, inter-alia seeking the details of investments and claim of exempt income and applicability of section 14A read with Rule 8D of the Rules. We further find that vide this notice the AO also sought a chart from the assessee showing the monthly average of opening and closing balance of value of investments for the year under consideration, detail of exempt income earned during the year under consideration, detail of expenditure incurred to earn the exempt income, detail of interest expenditure incurred, and detail of disallowance made by the assessee under section 14A along with the calculation of the same. We find that vide its reply dated 29/01/2021, forming part of the paper book from pages 12-24, the assessee, inter-alia, submitted that it has suo moto disallowed expenditure of INR 7,53,153

incurred towards earning of dividend income while computing the total income as per the regular provisions of the Act. The assessee further submitted that the suo moto disallowance has been computed taking into consideration the salaries of the Managing Director, Executive Vice President-Finance, Company Secretary, General Manager-Finance and Secretary to the Managing Director, and also the office expenditure incurred by the office of the above top management personnel. The assessee also submitted that the expenditure incurred on telephone, travel, conveyance, and rent pertaining to the area occupied by the said top management personnel have also been considered for computing the suo moto disallowance under section 14A of the Act. The assessee, along with its submission, also provided the working of the said disallowance made under section 14A of the Act. During the assessment proceedings, the AO issued another notice under section 142(1) of the Act on 10/04/2021, forming part of the paper book from pages 25-26, seeking the annual average of the monthly average of opening and closing balance of the value of investment whose income is exempt, and the total investment as on 31/03/2018. Again on 10/04/2021, the AO issued a notice under section 142(1) of the Act, forming part of the paper book from pages 27-28, seeking detailed working on exempt income by mentioning total investments, exempt income and expenses. We find that vide its reply dated 13/04/2021, in response to the two notices issued under section 142(1) of the Act on 10/04/2021, forming part of the paper book from pages 49-167, the assessee, inter-alia, furnished all the details as sought for by the AO.

10. Therefore, from the perusal of the notices issued by the AO during the assessment proceedings and the reply filed by the assessee thereto, we find that this issue was specifically raised during the scrutiny assessment proceedings and the same was duly replied to by the assessee. Therefore, from the multiple notices issued by the AO on this issue from time to time during the assessment proceedings, it cannot be concluded that this aspect was not examined by the AO or there was no application of mind. We find that the Hon'ble Jurisdictional High Court in CIT v/s Reliance Communication Ltd, reported in [2016] 69 taxmann.com 103 (Bom.), held that the fact that the AO did not make any reference in the assessment order cannot make the order erroneous when the issues were indeed looked into.

11. Further, as regards the non-compliance with the CBDT's Circular No. 5 of 2014, we find that the said Circular was issued in the backdrop of controversy as to whether disallowance can be made by invoking the provisions of section 14A of the Act even in those cases where no income has been earned by the assessee which has been claimed as exempt during the financial year. Accordingly, the CBDT clarified that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where a taxpayer in a particular year has not earned any exempt income. However, in the present case, there is no dispute regarding the fact that the assessee received dividend income during the year under consideration, which was claimed as exempt. Thus, we are of the considered view that the aforesaid Circular, relied upon by the learned PCIT, has no relevance to the facts of the present case, and therefore, we find no merits in the findings of the learned

PCIT that the assessment order has not been made in accordance with the aforementioned CBDT's Circular. Thus, we are of the considered view that the provisions of clause (c) of Explanation-2 to section 263 of the Act are not applicable to the present case. Thus, in view of the facts and circumstances of the present case, we are of the considered view that this issue was duly examined by the AO during the scrutiny assessment proceedings. Therefore, the impugned revision order passed under section 263 of the Act on this issue is set aside.

12. The last issue with respect to which the proceedings under section 263 of the Act were initiated pertains to depreciation claimed on the value of land leading to excess allowance of depreciation amounting to INR 2,85,62,919. Vide impugned order, the learned PCIT noted that in the assessment years 2016-17 and 2017-18, the AO disallowed the depreciation relating to the acquisition of land, and the assessee's appeal for the earlier years is pending. Therefore, since the issue has not attained finality, the learned PCIT held that the AO ought to have disallowed the depreciation on the land claimed by the assessee in order to maintain consistency. Thus, the learned PCIT held that the AO allowed the claim of depreciation by the assessee without proper enquiry and application of mind, thereby rendering the assessment order erroneous and prejudicial to the interest of the Revenue.

13. We find that during the assessment proceedings, the AO vide notice dated 10/04/2021 issued under section 142(1) of the Act, forming part of the paper book on pages 25-26, asked the assessee to provide the details pertaining to depreciation on land/rights claimed this year. Responding to the

said notice, the assessee vide its reply dated 13/04/2021, forming part of the paper book from pages 49-167, more particularly from pages 58-69, inter-alia submitted its detailed response and also clearly mentioned the disallowance of depreciation in respect of the value of land in the preceding assessment years 2016-17 and 2017-18. The assessee by referring to the agreement dated 30/03/2012, a copy of which was also furnished by the assessee along with its reply, submitted that it purchased an under-construction office premises, possession of which was given in the financial year 2015-16. The assessee submitted that on receipt of the possession, it has capitalised the said office premises and the cost of acquisition and other incidental expenses aggregating to INR 82,96,65,374 are added to the block of asset "*Building*". Accordingly, the depreciation under section 32 of the Act was claimed at the rate of 10% on the cost of acquisition shown under the head "*Building*". It is evident from the reply of the assessee that specific reference was made to the queries raised by the AO, during the assessment proceedings for the assessment year 2016-17, wherein the AO denied the depreciation on the amount allegedly attributable to the land. The assessee referred to various clauses of the sale agreement to make good its submission that what was acquired is an office premises and the assessee did not acquire any land, which is owned by the seller/developer. The assessee also referred to various case laws as well as the findings of the learned DRP in the case of sister concern, wherein identical disallowance of depreciation made by the AO was deleted. Further, the assessee extensively dealt with the findings in the assessment order for the assessment year 2016-17 as well as the provisions

of the Maharashtra Ownership Flats Act, 1963 read with the Maharashtra Apartment Ownership Act, 1970.

14. Therefore, from the detailed submissions filed by the assessee during the assessment proceedings as noted above, it is evident that the assessee made specific reference to the findings in the assessment orders for the earlier years, and the AO was completely apprised of the litigation history as well as the relevant facts pertaining to this issue. Thus, once the AO after considering the submissions filed by the assessee has allowed the claim of depreciation, it cannot be said that the assessment order was passed without proper enquiry and application of mind rendering the same to be erroneous insofar as it is prejudicial to the interest of the Revenue. Therefore, we are of the considered view that this issue was duly examined by the AO during the scrutiny assessment proceedings. Thus, the impugned revision order passed under section 263 of the Act on this issue is set aside.

15. In view of the aforesaid findings, the impugned order passed by the learned PCIT under section 263 of the Act is sustained partially. As a result, grounds raised by the assessee are partly allowed.

16. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 20/03/2025

Sd/-

**AMARJIT SINGH
ACCOUNTANT MEMBER**

MUMBAI, DATED: 20/03/2025

Divya R. Nandgaonkar (stenographer)

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai