आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL , 'B' BENCH, CHENNAI

श्री वी दुर्गा राव,न्यायिक सदस्य **एवं श्री एस जयरामन, लेखा सदस्य के समक्ष**

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.No.2552/CHNY/2017**
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Weiss Rohig (India) Pvt Ltd, (formerly known as M/s.Tricon Shipping P Ltd) Olympia Platina, Plot No.33-B, South Phase, Guindy Industrial Estate, Chennai – 600 032. **PAN: AAACT4210G**	Vs	**The ACIT,** Corporate Circle – III(3), Chennai – 34.
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Ms. R. Anitha, JCIT
सुनवाई की तारीख/Date of hearing	:	15.10.2020
घोषणा की तारीख /Date of Pronouncement	:	09.11.2020

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-13, Chennai in ITA No.761/CIT(A)-13/2009-10 dated 21.08.2017 for the assessment year 2009-10.

2. M/s. Weiss Rohig (India) Pvt. Ltd., the assessee, is engaged in the business of freight forwarding and customs clearance. It filed its return of income on 27.09.2009 admitting an income of Rs.5300/-. Subsequently revised its return thrice viz., on 09.01.2010, 08.02.2010 & 03.01.2011 admitting a total income in all of them at Rs.3980/- only. The AO scrutinized it and completed the assessment making, inter-alia, disallowance u/s.14A r.w.r.8D and restricting assessee's TDS claim. Aggrieved the assessee filed an appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal. Aggrieved against that order, the assessee filed this appeal.

2.1 The case was heard through video conferencing. On the first issue, the Ld.AR submitted that assessee received Rs.41,984/- as dividend during the year which was claimed as an exempt income. In this regard, the assessee disallowed Rs.9,977/- as an expenditure incurred to earn such an exempt income. The AO without recording due satisfaction has invoked Section 14A r.w.rule 8D, mechanically quantified the disallowance at Rs.51,889/- and after deducting the sum already disallowed by the assessee at Rs.9,977/- made a disallowance at Rs.41,912/-. The Ld.CIT(A) without examining the facts and circumstances, particularly the AO's failure to record due satisfaction has dismissed the appeal and hence pleaded to allow the appeal.

2.2 Per contra, the Ld.DR submitted that the assessee has not given any basis for the sum quantified by it towards the disallowance. The AO examined the P&L account and found that the assessee claimed interest at Rs.30,24,710/-towards secured & insecured loans alone and the assessee has made huge investments in mutual funds from borrowed funds also during the year and hence the AO on due satisfaction, invoked Section 14A r.w.r 8D as a base and quantified the disallowance. Therefore, she supported the orders of the lower authorities.

2.3 We heard the rival submissions and gone through the relevant material. The assessee is in the business of freight forwarding and customs clearing agency. It has earned exempt income and quantified Rs.9,977/- as an expenditure towards earning the exempt income. In the absence of any basis for the quantum of disallowance arrived by the assessee, the AO examined the accounts and found that the assessee has claimed huge interest on the borrowed funds and made investments earning exempt income out of such borrowed funds also. Therefore, he adopted Rule 8D of the Income Tax Rules, 1961 (hereinafter the 'Act') as the base and quantified the disallowance and completed the assessment, thus there is clear satisfaction recorded by the Assessing

Officer. Though the assessee is aggrieved, yet it has neither furnished the basis for its quantum of disallowance nor furnished any workings as to how the quantum of disallowance made by the AO is wrong. Therefore, the disallowance made by the AO is confirmed to the extent of quantum of exempt income admitted by the assessee (Joint investments P Ltd vs. CIT, 372 ITR 694 –Delhi). Therefore, this issue is partly allowed.

3. On the next issue, the Ld.AR submitted that out of the total freight collected by the assessee at Rs.30.53 crores, the assessee paid freight to shipping companies at Rs.25.56 crores and hence it had correctly admitted the balance sum of Rs.4.96 crores as gross income in its P&L account, which is not disputed by the AO. The AO has gone wrong in not granting full TDS credit of Rs.76,16,380/- to the assessee and is wrong in holding that the assessee should have accounted the entire gross receipts of Rs.30.53 crores, in order to claim the full TDS credit of Rs.76,16,380/- and in restricting the TDS credit at Rs.12,37,993/- based on the gross income admitted by the assessee at Rs.4.93 crores. The Ld.CIT(A) erred in sustaining the restriction of TDS credit in the computation of taxable total income and misconstrued the provisions of Section 199 r.w.r. 37BA of the Act, without following the decision of the CIT(A) in the assessee's own case in ITA No.629/13-14/CIT(A) dated

27.04.2017 for the AY 2010-11 and ITA No.172/14-15/CIT(A) dated 27.04.2017 for the AY 2011-12 and pleaded to allow the appeal. Per contra, the LD.DR submitted that the assessee has not admitted the gross receipts of Rs.30.53 crores in its return of income, however, admitted Rs.4.93 crores only as gross income, but the counsel claims that the difference of amounts were paid by the assessee towards freight charges and others. If the TDS is deducted on the gross receipts, it represents contract payments to the assessee to do CHA work on the behalf of deductors on commission basis and in such facts and circumstances, in order to claim the corresponding TDS credit, the assessee should have admitted the entire gross receipts in its return, deducted TDS on the payments made by it in accordance with law. Therefore, she supported the orders of the lower authorities and relied on certain case laws viz., DCIT vs. Lloyd Insulations (India) Ltd., 2012 Delhi Tribunal, ITA No.2400/Del/11 dt. 09.08.2012., etc.

3.1 We heard the rival contentions and gone through relevant material. The assessee is carrying on the business of custom house agent providing agency services. From the TDS certificates submitted by the assessee, the AO found that the assessee company's gross receipt was Rs.30,53,29,612/- on which Rs.76,16,380/- TDS was deducted. However, in the P&L account the assessee has admitted only

Rs.4,96,38,883/- as receipts. Therefore, the AO required the assessee to explain the difference which apparently has not been done and hence, the AO restricted the TDS credit to the extent of admitted receipts in the P&L account. When the deductors have certified that the assessee has received Rs.30.53 crores on which they have deducted TDS also, the assessee is duty bound to explain as to how and what basis it has accounted Rs.4.96 crores alone in its accounts. The assessee pleads that the total gross receipts are not forming part of income. But it has not laid relevant material viz., agreements or contracts or other material/evidences before the lower authorities and explained the reason for the impugned discrepancies. Since the facts and circumstances associated with this issue are not clearly brought on record, we are of the view that this issue has to be remitted to the AO for due examination and determination. The onus is on the assessee to make proper reconciliation of the differences between the receipts as per TDS certificates and that of as per P&L account, lay relevant evidence / material in support of its contentions/explanation. Hence, in the interests of justice, we remit this issue to the file of the AO to give due opportunity to the assessee to submit proper reconciliation between the income as per TDS certificates and the P&L account and explain the veracity with the documentary evidences. On due appreciation, the AO shall decide this issue by a speaking order in accordance with law.

4. On the last issue, the Ld.AR submitted that the assessee has filed valid revised return within due time reporting certain loss, however, the AO without assigning proper reason and justification did not adopt it, which is also rejected by the Ld.CIT(A) without assigning reason. Therefore, he pleaded that this issue be remitted back to the AO for due decision.

4.1 We heard the rival submissions. The AO shall re-examine this issue and decide in accordance with law.

5. In the result, the assessee's appeal is treated as partly allowed for statistical purposes.

Order pronounced on 9th November, 2020 at Chennai.

Sd/-	Sd/-
(वी दुर्गा राव)	(एस जयरामन)
(V. Durga Rao)	(S. Jayaraman)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य /Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 9th November, 2020

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF