

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

ITA NO. 1600/MUM/2013 : (A.Y : 2006-07)

JM Financial Institutional Securities Vs. DCIT-3(2), Mumbai
Ltd. (Formerly known as JM (Respondent)
Financial Consultants Pvt. Ltd.,)
7th floor, Cnergy, Appasaheb
Marathe Marg, Prabhadevi,
Mumbai 400 025 (Appellant)
PAN : AAACM7079C

**Assessee by : Shri Vispi T. Patel
Revenue by : Shri M.C. Omi Ningshen**

Date of Hearing : 27/01/2017

Date of Pronouncement : 31/01/2017

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the assessee is directed against the order of CIT(A)-4, Mumbai dated 11.01.2013, pertaining to the Assessment Year 2006-07, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 08.12.2008 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. The appellant before us is a company incorporated under the provisions of Companies Act, 1956 and is, *inter-alia*, engaged in the

business of financial services and investment consultancy. Insofar as the first issue in this appeal is concerned, the same relates to the disallowance made by the Assessing Officer u/s 14A of the Act of Rs.18,62,864/- as against an amount of Rs.72,371/- offered by the assessee. In this context, the relevant facts are that the assessee had earned exempt income of Rs.2,37,46,587/- comprising of dividend of Rs.29,00,000/- on preference shares of subsidiary company and the balance of Rs.2,08,46,587/- from mutual fund units. The Assessing Officer show-caused the assessee as to why the expenditure related to the earning of such exempt income not be disallowed u/s 14A of the Act as per the formula contained in Rule 8D of Income Tax Rules, 1962 (in short 'the Rules'). The plea of assessee was that no particular expenditure is incurred for earning such exempt income and that at best an expenditure of Rs.72,371/- can be considered as disallowable u/s 14A of the Act. The said estimate was canvassed on the ground that the person looking after the banking matters may be required to spend only 25 days in a year for this activity and, therefore, a portion of his cost to the company be disallowed. The Assessing Officer, however, proceeded to compute the disallowance in terms of Rule 8D(2)(iii) of the Rules and accordingly, computed the disallowance at Rs.18,62,864/-. The said disallowance has further been affirmed by CIT(A), against which the assessee is in appeal before us.

3. Before us, the learned representative for the assessee pointed out that before the CIT(A) assessee had made detailed submissions, which has also been reproduced in the impugned order. It is pointed out that the action of the lower authorities in making the disallowance

based on Rule 8D of the Rules is quite misplaced as the said rule is operative only w.e.f. Assessment Year 2008-09 as held by the Hon'ble Bombay High Court in the case of *Godrej Boyce Mfg Co., 328 ITR 81 (Bom)*.

4. On the other hand, the Id. DR appearing for the Revenue has pointed out that even if Rule 8D of the Rules is not applicable for the instant assessment year, yet the disallowance computed in terms of the said rule can be said to be a reasonable disallowance.

5. In our considered opinion, the Assessing Officer is clearly in error in computing the disallowance u/s 14A of the Act on the basis of Rule 8D of the Rules given the fact that the said rule is not applicable for the assessment year under consideration, as held by the Hon'ble Bombay High Court in the case of *Godrej Boyce Mfg Co. (supra)*. Nevertheless, considering that the assessee has itself asserted that certain expenditure was incurred in relation to such exempt income, it would be in the fairness of things that a reasonable estimate be made of such expenditure. In order to arrive at such estimation we have perused the explanation furnished by the assessee to the Assessing Officer, which has been reproduced in the assessment order. In terms of the said explanation it is stated by the assessee that no significant activity is required in monitoring the investments inasmuch as the investments have been made in preference shares of subsidiary company and that the earnings from mutual fund is also on account of deployment of funds in the in-house mutual fund schemes. On this basis, the assessee estimated a portion of the cost of person looking after the banking

matters as an expenditure disallowable u/s 14A of the Act. In our considered opinion, it would be in the fitness of things that on an estimated basis a sum of Rs. 5,00,000/- is considered as overhead expenditure incurred in relation to earning of the exempt income. Therefore, on this aspect assessee partly succeeds.

6. The second dispute in this appeal arises from the action of Assessing Officer in holding that the expenditure of Rs.3,23,75,167/- debited in the Profit & Loss Account as Research expenses was partly capital in nature. The Assessing Officer has treated 10% of such expenses as revenue expenditure and the balance of Rs.2,91,37,651/- has been added back to the total income as being capital in nature. This action of Assessing Officer has further been affirmed by the CIT(A), against which assessee is in appeal before us.

7. From the relevant discussion in the orders of the authorities below, the facts in relation to the said dispute can be understood as follows. The assessee-company is engaged in the business of investment banking which, *inter-alia*, involves advising various corporate clients for raising funds from international and domestic capital markets, financial restructuring, mergers & acquisitions, etc. In order to maintain appropriate quality level of its services, assessee is required to render professional advice on the prevailing market conditions. For the said purpose, assessee was required to have an in-house mechanism by which its personnel are updated on the developments in finance and investment climate available for opportunities. For this purpose, assessee incurred expenditure on

research. To meet its research requirements, assessee depended on another group concern, namely JM Morgan Stanley Securities Pvt. Ltd., which maintains an elaborate Research division. It has been pointed out that JM Morgan Stanley Securities Pvt. Ltd. is engaged in institutional broking business and has a full-fledged research support division. For availing such services of JM Morgan Stanley Securities Pvt. Ltd., assessee made payment of Rs.3,23,77,167/- and the same was claimed as revenue expenditure.

8. The Assessing Officer as well as the CIT(A) have denied the claim of assessee on the ground that the expenditure in question is not directly relatable to any project or business receipt of assessee and it's benefits would be available to assessee over a period of more than one year, therefore, the same is to be considered as capital in nature. While holding so, the income-tax authorities have allowed 10% of expenses as revenue expenditure and only the balance of Rs.2,91,37,651/- has been added back to total income as capital expenditure.

9. Before us, the learned representative pointed out that the said expenditure was incurred to enable the assessee to carry on its activities in a profitable manner and, therefore, it related to revenue field and that it could not be considered as capital expenditure. It has been emphasised that neither in the past and nor in the subsequent years such an expenditure has been disallowed on the ground that it was capital in nature. In any case, it is also pointed out that it is not necessary that the benefits of various reports generated by the research department would have a useful life of more than one year.

Rather, it is pointed out that such research reports may have a very short life, e.g., daily morning reports are useful for only a day and similarly, quarterly and annual analysis of financial performance of an industry or corporate will become outdated as soon as the next financial year starts. The learned representative for the assessee pointed out that all these facts were brought out before the lower authorities, which are duly reproduced by them in their respective orders, but the same have not been properly appreciated.

10. On the other hand, the Id. DR has reiterated the stand of lower authorities, which we have already adverted to in the earlier paras of this order and is not being repeated for the sake of brevity. It is again reiterated that the benefits to assessee are available for a long period and, therefore, such expenditure has been rightly treated as capital expenditure.

11. We have carefully considered the rival submissions. At the outset, we may note that though the Assessing Officer contends that such expenditure is capital in nature, yet he proceeds to treat 10% of such expenditure as revenue in nature. The said action of Assessing Officer is contradictory and quite inexplicable. Be that as it may, the fact-situation in the present case clearly brings out that the research reports obtained by the assessee are for use in carrying on assessee's business of investment banking, involving advising its clients for raising of funds, financial restructuring, mergers & acquisitions and project advisory, etc. Therefore, the benefits to assessee are purely in the field of generation of business and profits thereof. The plea of Revenue that

the benefit of research may extend beyond the year under consideration is of no significance so long as it is clear that such benefit is in the revenue field and not in the capital field. The aforesaid legal premise has been duly approved even by the Hon'ble Supreme Court in the case of *Empire Jute Co. Ltd., 124 ITR 1 (SC)*. In fact, the action of Assessing Officer in accepting that part of expenditure is in revenue field itself demonstrates that the ratio of judgement of Hon'ble Supreme Court in the case of *Empire Jute Co. Ltd. (supra)* is fully attracted inasmuch as the expenditure which results in benefits over a period of time is allowed as revenue expenditure so long as such benefit is in the revenue field. Therefore, considering the aforesaid legal position, as also the uncontroverted assertion of learned representative for the assessee that in the past and in the subsequent years no such disallowance have been made, we deem it fit and proper to uphold the plea of assessee that the expenditure incurred by way of payments to JM Morgan Stanley Securities Pvt. Ltd. on account of research reports is fully allowable as revenue expenditure. Thus, on this aspect assessee succeeds.

12. In this view of the matter, appeal of assessee is treated as partly allowed.

Order pronounced in the open court on 31st January, 2017.

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Mumbai, Date : 31st January, 2017

SSL

Sd/-

(G.S. PANNU)
ACCOUNTANT MEMBER

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "J" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai