

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA no.7506/Mum./2013
(Assessment Year : 2009-10)

Greaves Leasing Finance Ltd.
Industry Manor, Appasaheb
Maratha Marg, Prabhadevi
Mumbai 400 025
PAN – AAACG5021G

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-6(3), Aayakar Bhawan
101, M.K. Road, Mumbai 400 020

..... Respondent

Assessee by : Ms. Aarati Vissanji
Revenue by : Shri Shrikant Mamdeo

Date of Hearing – 07.01.2016

Date of Order – 07.01.2016

ORDER

PER SAKTIJIT DEY, J.M.

The aforesaid appeal preferred by the assessee is directed against the order dated 7th October 2013, passed by the learned Commissioner (Appeals)-12, Mumbai, for the assessment year 2009-10.

2. Grounds no.1 and 2, relate to disallowance made under section 14A r/w rule 8D.

3. In course of scrutiny assessment proceedings in case of assessee, the Assessing Officer, on verifying the return of income filed by the assessee, found that it has claimed dividend income earned of ₹ 150,42,705 as exempt under section 10 of the Act. He also noticed that while computing income, assessee on its own has made disallowance under section 14A of the Act an amount of ₹ 3,32,442. The Assessing Officer being of the opinion that the disallowance made by the assessee under section 14A is not as per rule 8D, called upon the assessee to furnish the details of expenditure incurred for earning exempt income. After considering the submissions of the assessee and verifying the details, the Assessing Officer held that disallowance of expenditure under section 14A for earning exempt income has to be made strictly in accordance with rule 8D and proceeded to quantify the disallowance by applying the said rule at ₹ 17,47,664. The assessee having already disallowed an amount of ₹ 3,32,442, the amount considered for addition by the Assessing Officer was ₹ 14,15,222. Being aggrieved of such disallowance, assessee preferred appeal before the learned Commissioner (Appeals).

4. In course of hearing of appeal before the first appellate authority, the contention of the assessee was the amount of ₹ 98,13,566, debited to the Profit & Loss account consists of administrative expenses of ₹ 3,00,818, interest expenditure of ₹ 31,624, loss on sale of fixed asset

at ₹ 8,83,081 and depreciation of ₹ 85,98,043. It was submitted, the assessee itself has disallowed administrative expenses and interest expenses aggregating to ₹ 3,32,442 and loss on sale of fixed asset amounting to ₹ 8,83,081, had already been added back by the assessee while computing its total income. Therefore, the amounts in the nature of expenditure debited to the Profit & Loss account have already been added back by the assessee. The only amount remains on account of depreciation not being an expenditure and having no nexus with earning of exempt income or investment disallowance under section 14A r/w rule 8D cannot be made other than what is already disallowed by the assessee. The learned Commissioner (Appeals), however, did not find merit in the submissions of the assessee. Referring to various judicial precedents, learned Commissioner (Appeals) held that since disallowance under section 14A of the Act for the impugned assessment has to be made in accordance with the manner provided under rule 8D, there is no irregularity / illegality by the Assessing Officer in computing the disallowance in accordance to the said rule. Accordingly, he upheld the disallowance made by the Assessing Officer.

5. Reiterating the stand taken before the Departmental Authorities, learned counsel submitted, as the assessee itself has disallowed / added back all expenditures debited to the Profit & Loss account and

the only other amounts which was debited to the Profit & Loss account is the claim of depreciation which cannot be considered to be an expenditure the disallowance made by the Assessing Officer under section 14A r/w rule 8D is not valid. Learned counsel, drawing our attention to the Profit & Loss account for the year ended 31st March 2009, and more specifically to Schedule–H to the Profit & Loss account submitted that apart from claim of depreciation of ₹ 85,98,043, other expenses debited to Profit & Loss account have been disallowed / added back by the assessee itself. Therefore, no further disallowance can be made over and above what is disallowed by the assessee. She submitted that as depreciation claimed is in the nature of allowance and not expenditure, the same cannot be considered for disallowance.

6. The learned Departmental Representative, on the other hand, relied upon the decision of the learned Commissioner (Appeals).

7. We have considered the submissions of the parties and perused the material available on record. On a careful examination of assessee's Profit & Loss account for the year ended 31st March 2009 and more particularly Schedule–H to the Profit & Loss account, we find that apart from deprecation claimed of ₹ 85,98,043, assessee has claimed expenditure of ₹ 11,83,899, under the head administrative expenditure and amount of ₹ 31,624, towards interest and finance charges. Undisputedly, assessee, while computing its income has

voluntarily made disallowance of interest expenditure of ₹ 31,624 and administrative expenditure of ₹ 3,00,818. There is also no dispute that loss on sale of fixed assets amounting to ₹ 8,83,081, debited to the Profit & Loss account under the head "*Administrative Expenses*" has already been added back by the assessee while computing its income. Thus, as can be seen, all expenditures debited to the Profit & Loss account has either been disallowed or added back by the assessee suo-motu while computing the income for the year under consideration. The only amount debited to the Profit & Loss account which remains is depreciation of ₹ 85,98,043. We find merit in the submissions of the assessee that depreciation cannot be considered to be in the nature of expenditure as there is no cash outgoing while claiming depreciation. In our view, depreciation is only in the nature of an allowance. Thus, if depreciation debited to the Profit & Loss account is left aside all other expenditure claimed by the assessee have been disallowed either under section 14A, or otherwise. No other expenditure remains to be disallowed. Therefore, keeping in view the principle that disallowance under section 14A cannot exceed, expenditure incurred by the assessee, we hold that the disallowance made by the Assessing Officer of an amount of ₹ 14,15,222, is not sustainable, hence, deleted. Ground raised by the assessee is allowed.

8. In view of our aforesaid decision, the other grounds raised by the assessee are of mere academic interest, hence, not required to be adjudicated upon.

9. In the result, assessee's appeal is partly allowed.

Order pronounced in the open Court on 7th January 2016

Sd/-
N.K. BILLAIYA
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 7th January 2016

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai