

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D", NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER

I.T.A. No. 2993/DEL/2014		
A.Y. : 2008-09		
INCOME TAX OFFICER, WARDS 5(1), NEW DELHI ROOM NO. 376A, CR BUILDING, I.P. ESTATE, NEW DELHI	VS.	M/S KAMA HOLDINGS LTD., C-8, COMMERCIAL COMPLEX, SAFDARJUNG DEVELOPMENT AREA, NEW DELHI – 110 016 (PAN: AAFCS9521A)
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Department by : Ms. Mona Singh, CIT(DR)  
Assessee by : Sh. Anandi Prasad, CA

**ORDER**

**PER H.S. SIDHU : JM**

The Revenue has filed this Appeal against the impugned Order dated 21.1.2014 passed by the Ld. CIT(A)-XI, New Delhi relevant to assessment year 2008-09.

2. The grounds raised in the Revenue's Appeal read as under:-
  1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in restricting the additional disallowance made u/s. 14A to Rs. 92,88,538/- and allowing relief of Rs. 4,42,76,962/-

to the assessee without appreciating the provision of Rule 8D?

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance computed under Rule 8D(2)(ii) amounting to Rs. 5,14,64,000/- made by the AO and accepting the working of the assessee of disallowance of Rs. 71,86,533/- under Rule 8D(2)(i), ignoring the fact that the provision of Rule 8D does not make any such distinction?
3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 12,32,814/- being prior period expenses ignoring the fact that the bill was raised on 28.3.2007 pertaining to FY 2006-07?
4. That the order of the Ld. CIT(A) is erroneous and is not tenable on facts and in law.
5. That the grounds of appeal are without prejudice to each other.

6. That the appellant craves leave to add, alter, amend or forego any ground(s) of the appeal raised above at the time of the hearing.

3. The brief facts of the case are that the assessee is engaged in the business of manufacturing of engineering plastic and fish net twines. The assessee filed its return of income showing loss of Rs. 29,59,46,143/- on 29.09.2008. The return was revised on 31.3.2010 by claiming prior period expenditure amounting to Rs. 51,81,578/- and loss was declared at Rs. 30,24,23,126/-. The revised return was processed u/s. 143(1) of the I.T. Act. The case was selected for scrutiny and the AO completed the assessment u/s. 143(3) of the I.T. Act, by making a disallowance of Rs. 5,35,65,500/- u/s. 14A of the I.T. Act, 1961 at a loss of Rs.24,36,76,000/- vide his order dated 28.12.2010.

4. Against the said order of the Ld. AO, assessee appealed before the Ld. CIT(A), who vide impugned order dated 21.1.2014 has partly allowed the appeal of the assessee.

5. Aggrieved with the aforesaid order of the Ld. CIT(A), Revenue is in appeal before the Tribunal

6. Ld. DR relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal and stated that the Ld. CIT(A) has wrongly deleted the additions.

7. On the contrary, Ld. Counsel of the assessee relied upon the order of the Ld. CIT(A).

8. We have heard both the parties and perused the relevant records available with us, especially the orders of the revenue authorities. We find that Ld. CIT(A) has elaborately discussed the Issue No. 1 & 2 vide para no. 7.1 to 7.2 (wrongly mentioned as para no. 8.2) and Issue No. 3 vide para no. 8(wrongly mentioned as para no. 9) of the impugned order which reads as under:-

*“7.1 The facts of the case and the written submissions of the appellant have been carefully considered. Ground No. I, II, III & IV of the appeal are against the addition on account of disallowance of ~ 5,35,65,5001- made by the AO U/S 14A of the Act after applying Rule 8D of the Act. The appellant had suo-moto made disallowance of ~ 18,32,5001-U/S 14A of the Act. The disallowance has been made by the AO after invoking Rule 8D(2)(ii) and 8D(2)(iii) of the IT Rules, 1962 and the AO observed that there are no direct expenses relating to the investments yielding exempt dividend income. The issue of disallowance has been subject matter of dispute in appellant's case since A Y 2006-07 onwards so much so that the matter reached upto the level of Hon'ble High Court. As the Rule 8D was not operative in A Y 2006-*

07 & 2007-08, the Hon'ble High Court directed the AO to compute the disallowance keeping in mind the decision of jurisdictional court in the case of M/s Maxop Investment Ltd. ITA No. 687/2009. Accordingly, following the directions of the Court, the AO has disallowed the proportionate interest pertaining to the investments in A Y 2006-07 and in AY - 2007-08, the AO in addition to proportionate interest further disallowed an estimated expenditure of Rs.3 lac in respect of administrative and managerial expenses relating to earning of exempt income. In this backdrop, the appellant has vehemently argued that since the quantum of investments remained unchanged at 7,86,9.10 lac since A Y 2005-06 to 2009-10, the proportionate interest expenses have again been offered as disallowance U/S 14A of the Act, treating the same as direct expenditure relating to earning of exempt income. Therefore, the appellant has disallowed Rs. 71,86,533/- (being average interest @ 8.39% on Rs.857.04 lacs) under Rule 8D(2)(i) of IT Rules. further, the AO's action in respect of allowance under Rule 8D(2)(iii) amounting to RS. 39,34,548/- has also not been disputed by the appellant in its computation being expenditure component relating to administration and managerial expenditure attributable to earning of exempt income.

*However, the appellant has objected the disallowance under Rule 8D(2)(ii) of the IT Rules, since it has already been accepted by the AO that before 31st March, 2005, an amount of Rs. 875.04 lac has been utilized for investment and remaining loan was for business purposes. Since then no new investment in shares has been made by the appellant and various loans obtained by the appellant have been utilized for specific purpose of business working capital requirement. The appellant's argument have force and it is undisputed that the AO had determined in AY.2006-07, the loan amount of 857.04 lac utilized for investment in shares out of total borrowings of Rs.4612.12 lac and same has been followed in A Y 2007 -OS as the quantum of investment in shares remained unchanged. The facts being the same during the year under consideration and the amount of disallowance has already been disallowed by the appellant under Rule 8D(2)(i) of IT Rules as directly attributable expenditure; there remains no justification for making further disallowance under Rule SD(2)((ii) of IT Rules. Thus, total disallowance uls 14A of the Act comes at Rs. 1,11,21,08l/-.*

8.2. Thus, out of total addition on account of disallowance of Rs. 5,35,65,500/- made by the AO u/s 14A of the Act, an amount of Rs. 92,88,538/- (Rs. 1,11,21,081 - 18,32,543) only is sustained and the appellant gets the consequential relief. Ground No. I, II, III & IV are partly allowed.

9. Ground No. V & VI of the appeal are against the disallowance of Rs. 51,81,578/- as prior period expenses. The appellant had not made this claim in its original return. However, a revised return was filed on 31.03.2010 by claiming prior period expenses amounting to Rs. 51,81,578/-. In support of these expenses, the appellant had filed the copy of invoice raised by M/s Fertilizers & Chemicals Travancore Ltd. amounting to Rs. 12,32,814/- in respect of raw material consumption. The AO disallowed the entire claim as the assessee could not file any documentary evidence in support of its claim of Godown Rent, Repairs and Maintenance and Freight on Sales. During the appellate proceedings, no documentary evidences in respect of items enumerated by the AO had been filed by the appellant. However, the copy of invoice raised by M/s Fertilizers & Chemicals Travancore Ltd. (FACT Ltd.) which was also produced before the AO was again furnished. The perusal of

*this invoice shows that the appellant company purchased the raw material through this invoice which is dated 11.03.2007. The same had been reportedly sent from Kochi (Kerala) to Chennai factory of appellant company. As per the invoice,' the said raw material was delivered to the appellant company on 30.04.2007, as certified by the representative of the authorized carrier. This fact has been recorded at part II, S1. No. 43/30/4/07, which has been reflected on the face of the invoice itself. The AO has not given any reason to disbelieve the invoice after acknowledging the same. From the documents, it is clear that the raw material was received during the current year, even if it was bought on 28.03.2007. As the liability got crystallized during the current year, such expenses are very much allowable as held by various courts, relied upon by the appellant in its submissions. Regarding the remaining expenses of prior period viz. Godown Rent, Repair and Maintenance and Freight on Sales, no documentary evidences in support of the claim that the liability got crystallized during the current year have been filed by the appellant and therefore, the AO was justified in disallowing the same.*

*In the result, the appellant gets a relief of Rs.12,32,814/- out of total addition of Rs.51,81,578/-. The grounds of appeal are partly allowed.*

*In the result, the appeal of the appellant is partly allowed.”*

8.1 On perusing the above finding of the ld. CIT(A), with regard to ground no. 1 & 2, we note that this issue relates to against the addition on account of disallowance of Rs. 5,35,65,500/- made by the AO u/s 14A of the Act after applying Rule 8D of the Act. The assessee had suo-moto made disallowance of RS.18,32,500/- u/s.14A of the Act. The disallowance has been made by the AO after invoking Rule 8D(2)(ii) and 8D(2)(iii) of the IT Rules, 1962 and the AO observed that there are no direct expenses relating to the investments yielding exempt dividend income. The issue of disallowance has been subject matter of dispute in appellant's case since A Y 2006-07 onwards so much so that the matter reached upto the level of Hon'ble High Court. As the Rule 8D was not operative in A Y 2006-07 & 2007-08, the Hon'ble High Court directed the AO to compute the disallowance keeping in mind the decision of jurisdictional court in the case of M/s Maxop Investment Ltd. ITA No. 687/2009. Accordingly, following the directions of the Court, the AO has disallowed the proportionate interest pertaining to the investments in A Y 2006-07 and in AY - 2007-08, the AO in addition to proportionate interest further

disallowed an estimated expenditure of Rs.3 lac in respect of administrative and managerial expenses relating to earning of exempt income. In this backdrop, the assessee has vehemently argued that since the quantum of investments remained unchanged at 7,86,9.10 lac since A Y 2005-06 to 2009-10, the proportionate interest expenses have again been offered as disallowance U/S 14A of the Act, treating the same as direct expenditure relating to earning of exempt income. Therefore, the assessee has disallowed Rs. 71,86,533/- (being average interest @ 8.39% on Rs.857.04 lacs) under Rule 8D(2)(i) of IT Rules. further, the AO's action in respect of allowance under Rule 8D(2)(iii) amounting to RS. 39,34,548/- has also not been disputed by the assessee in its computation being expenditure component relating to administration and managerial expenditure attributable to earning of exempt income. However, the assessee has objected the disallowance under Rule 8D(2)(ii) of the IT Rules, since it has already been accepted by the AO that before 31st March, 2005, an amount of Rs. 875.04 lac has been utilized for investment and remaining loan was for business purposes. Since then no new investment in shares has been made by the appellant and various loans obtained by the appellant have been utilized for specific purpose of business working capital requirement. We note that Ld. CIT(A) has rightly observed that the assessee's argument have force and it is undisputed that the AO had determined in AY.2006-07, the loan amount of 857.04 lac utilized for investment

in shares out of total borrowings of Rs.4612.12 lac and same has been followed in AY 2007-08 as the quantum of investment in shares remained unchanged. The facts being the same during the year under consideration and the amount of disallowance has already been disallowed by the appellant under Rule 8D(2)(i) of IT Rules as directly attributable expenditure; there remains no justification for making further disallowance under Rule 8D(2)(ii) of IT Rules. Thus, total disallowance u/s 14A of the Act comes at Rs. 1,11,21,081/-. Thus, out of total addition on account of disallowance of Rs. 5,35,65,500/- made by the AO u/s 14A of the Act, an amount of Rs. 92,88,538/- (Rs. 1,11,21,081 - 18,32,543) only was rightly sustained and the assessee gets the consequential relief, which does not need any interference on our part, hence, we uphold the order of the Ld. CIT(A) on the issue in dispute and accordingly, we dismiss the ground nos. 1 & 2 raised by the Revenue.

8.2 With regard to ground no. 3, we find that as against the disallowance of Rs. 51,81,578/- as prior period expenses. The assessee had not made this claim in its original return. However, a revised return was filed on 31.03.2010 by claiming prior period expenses amounting to Rs. 51,81,578/-. In support of these expenses, the assessee had filed the copy of invoice raised by M/s Fertilizers & Chemicals Travancore Ltd. amounting to Rs. 12,32,814/- in respect of

raw material consumption. The AO disallowed the entire claim as the assessee could not file any documentary evidence in support of its claim of Godown Rent, Repairs and Maintenance and Freight on Sales. During the appellate proceedings, no documentary evidences in respect of items enumerated by the AO had been filed by the assessee. We note that however, the copy of invoice raised by M/s Fertilizers & Chemicals Travancore Ltd. (FACT Ltd.) which was also produced before the AO was again furnished. The perusal of this invoice shows that the appellant company purchased the raw material through this invoice which is dated 11.03.2007. The same had been reportedly sent from Kochi (Kerala) to Chennai factory of appellant company. As per the invoice, the said raw material was delivered to the assessee company on 30.04.2007, as certified by the representative of the authorized carrier. This fact has been recorded at part II, S1. No. 43/30/4/07, which has been reflected on the face of the invoice itself. The AO has not given any reason to disbelieve the invoice after acknowledging the same. From the documents, it is clear that the raw material was received during the current year, even if it was bought on 28.03.2007. As the liability got crystallized during the current year, such expenses are very much allowable as held by various courts, relied upon by the assessee in its submissions. Regarding the remaining expenses of prior period viz. Godown Rent, Repair and Maintenance and Freight on Sales, no documentary evidences in

support of the claim that the liability got crystallized during the current year have been filed by the assessee and therefore, the AO was justified in disallowing the same. Therefore, the assessee gets a relief of Rs.12,32,814/- out of total addition of Rs.51,81,578/-, which does not need any interference on our part, therefore, we uphold the order of the Ld. CIT(A) on the issue in dispute and accordingly, we dismiss the ground no. 3 raised by the Revenue.

9. In the result, the Appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on 27/03/2017.

**Sd/-**

**[L.P. SAHU]  
ACCOUNTANT MEMBER**

**Sd/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

*Date 27/3/2017*

**“SRBHATNAGAR”**

**Copy forwarded to: -**

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

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By Order,

Assistant Registrar,  
ITAT, Delhi Benches