

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “डी” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.6214/Mum/2011

(निर्धारण वर्ष / Assessment Year : 2008-09)

DSP Investment Pvt.Ltd., 1003, 11 th floor, Stock Exchange Tower, Dalal Street , Mumbai-400001	Vs.	Addl. Commissioner of Income tax- Range 2(1), Aayakar Bhavan, M K Road, Mumbai-400020
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आयकर अपील सं./I.T.A. No.6476/Mum/2012

(निर्धारण वर्ष / Assessment Year : 2009-10)

Asst. Commissioner of Income tax- Range 2(1), Room No.561, 5 th floor, Aayakar Bhavan, M K Road, Mumbai-400020	Vs.	DSP Investment Pvt.Ltd., 1003, 11 th floor, Stock Exchange Tower, Dalal Street , Mumbai-400001
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आयकर अपील सं./I.T.A. No.6776/Mum/2012

(निर्धारण वर्ष / Assessment Year : 2009-10)

DSP Investment Pvt.Ltd., Mumbai	Vs.	Asst. Commissioner of Income tax- Range 2(1), Room No.561, 5 th floor, Aayakar Bhavan, M K Road, Mumbai-400020
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आयकर अपील सं./I.T.A. No.7137/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2010-11)

DSP Investment Pvt.Ltd., Mumbai	Vs.	Asst. Commissioner of Income tax- Range 2(1), Room No.561, 5 th floor, Aayakar Bhavan, M K Road,
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		Mumbai-400020
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आयकर अपील सं./I.T.A. No.63/Mum/2014
(निर्धारण वर्ष / Assessment Year : 2010-11)

Dy. Commissioner of Income tax- Range 2(1), Room No.561, 5 th floor, Aayakar Bhavan, M K Road, Mumbai-400020	Vs.	M/s D S P Investment Pvt. Ltd, Mumbai.
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आयकर अपील सं./I.T.A. No.5414/Mum/2014
(निर्धारण वर्ष / Assessment Year : 2011-12)

Asst. Commissioner of Income tax- Range 2(1), Room No.561, 5 th floor, Aayakar Bhavan, M K Road, Mumbai-400020	Vs.	M/s D S P Investment Pvt. Ltd, Mumbai.
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आयकर अपील सं./I.T.A. No.5468/Mum/2014
(निर्धारण वर्ष / Assessment Year : 2011-12)

DSP Investment Pvt.Ltd., Mumbai	Vs.	Asst. Commissioner of Income tax- Range 2(1), Room No.561, 5 th floor, Aayakar Bhavan, M K Road, Mumbai-400020
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

स्थायी लेखा सं./ PAN :AAACB1574H

अपीलार्थी की ओर से / Assessee by	:	Shri Madhur Aggrawal
प्रत्यर्थी की ओर से/Revenue by	:	Shri B S Bist

सुनवाई की तारीख /Date of Hearing	:	15.11.2016
घोषणा की तारीख /Date of Pronouncement	:	19. 12.2016

आदेश/ORDER

Per RAJESH KUMAR, Accountant Member:

These are the seven appeals filed by the respective parties against the respective orders passed by the First Appellate Authority. In ITA No 6214/Mum/2011 the assessee is in appeal against the order of CIT(A) dated 15.6.2011 for the assessment year 2008-09. ITA. No 6476/Mum/2012 and ITA No 6776/Mum/2012 are cross appeal for assessment year 2009-10 directed against the order dated 28.8.2012, ITA No.7137/Mum/2013 and ITA No.63/Mum/2014 are cross-appeals directed against the order dated 25-10-2013, ITA No.5414/Mum/2014 and ITA No.5468/Mum/2014 are also cross-appeals are directed against the order dated 23.6.2014. Since these appeals are filed by the same assessee involving common issue , therefore, for the sake of convenience, these appeals were clubbed together, heard together and are being decided by this common order.

2. For assessment year 2008-09 , this is a second round of litigation before us. In the first round, the Tribunal decided the issue against the assessee vide ITA No.6214/Bom/2011 for the assessment year 2008-09, dated 10.7.2013. The assessee challenged the said order before the Jurisdictional High Court raising substantial question of law on the ground that there was a mistake apparent in the order of Tribunal as the decision

relied upon by the assessee in support of his contention of J K Investors (Bom) Ltd V/s ACIT in Income Tax Appeal No.7858/Mum/2011, dated 13.3.2013 has not been considered by the Tribunal while disposing of the appeal. Accordingly, the Hon'ble High court vide order dated 8.3.2016 passed in Income Tax Appeal No.2342 of 2013 has set aside the order of the Tribunal and directed the Tribunal to decide the issue afresh on the basis of facts and law. Hence this appeal before us. So we will take up ITA No.6214/Mum/2011:-

3. The issue raised in various grounds of appeals by the assessee is against the Id.CIT(A)'s not appreciating the fact that the provisions of section 14A can only be applied after pin pointing the expenditure on the basis of material on record and to prove that the appellant has incurred expenditure which related to exempt and only that expenditure which has nexus with the exempt income can be disallowed.

4. The facts in brief are that the assessee filed is return of income on 30.9.2008 declaring a total income of Rs.22,38,54,239/- in respect of assessment year 2008-09. The case of the assessee was selected for scrutiny under CASS and the notices under section 143(2) and 142(1) were issued and served upon the assessee. During the course of assessment proceedings, the AO found that the assessee has earned dividend income of Rs.13,89,40,620/- which was claimed as exempt under section 10(34) in the return of income and the assessee suo mottu disallowed expenses relating to

exempt income of Rs. 9,00,907/- under section 14A read with rule 8D of the Rules. The calculation of disallowance as made by the assessee was furnished in Annexure-A to clause 17(1) of the Tax Audit Report. The AO during the course of assessment proceedings noticed that the assessee has not applied rule 8D. The AO calculated disallowance of Rs.24,11,959/- under rule 8D and after allowing the deduction of suo motto disallowance of the assessee of Rs. 9,00,907/- made net addition of Rs.15 lakhs by framing assessment at Rs.22,53,65,239/- by making various additions and disallowances inter alia disallowance under section 14A. The disallowance was made by the AO after finding the disallowance as per section 14A rule 8D of Rs. 1,22,90,682/- to be excessive and more than the actual expenditure of Rs. 24,11,959/- charged to the profit and loss account.

5. Being aggrieved by the order of AO , the assessee preferred an appeal before the First Appellate Authority who partly allowed the appeal of the assessee by observing and holding as under :

6. I have considered the facts of the case and submissions of the assessee. Undisputedly certain expenses are allocable to the exempt income, these expenses are not directly relatable to either business income or the exempt income in total. Therefore, the disallowance has to be calculated as per Rule 8D only which is a statutory rule. Hence, the action of the A.O. is upheld in applying Rule 8D. But the depreciation is related to the business income because it is allowable irrespective of the exempt income or its quantum and the depreciation is not an expenditure but an allowance and same is the decision of Hon'ble ITAT in Hosang D. Nanavati's case as relied by the assessee. Therefore, A.O. is directed to recalculate the disallowance u/s. 14A after excluding the depreciation allowance from expenses as per Rule 8D. In the result, the ground of appeal is partly allowed."

Accordingly, the Id.CIT(A) directed the AO to recalculate the disallowance u/s 14A after excluding the depreciation allowance.

6. The Id. AR vehemently submitted before us that the order passed by the Id.CIT(A) was not correct as the assessee has already worked out the disallowance which was reasonable and no further disallowance was called for. The Id counsel of the assessee also submitted that the neither AO nor CIT(A) recorded any findings as to the expenses which were incurred and related to exempt income with reference to the books of accounts. Under these facts and circumstances, the AR submitted that the disallowance as made by the assessee suo motto should be accepted which was reasonable. The Id. AR submitted that the similar issue has been decided by the co-ordinate Bench of the Tribunal in sister concern's case of the assessee in the case of DSP Adiko Holdings Pvt. Ltd V/s DCIT in ITA no.7135/Mum./2013(Assessment Year : 2010-11) order dated 22.04.2016, wherein the co-ordinate Bench accepted voluntary disallowance u/s 14A read with rule 8D of the Rules. The Ld AR finally prayed that the order of Id. CIT(A) be set aside and the AO be directed to restrict the disallowance to Rs.9,00,907 as made by the assessee suo motto.

7. On the other hand, the Id. DR relied upon the orders of authorities below and requested for upholding the same.

8. We have carefully considered the rival contentions and perused the material placed before us including the orders of authorities' below and case

relied upon by the assessee. We find that from the facts before us that the assessee has exempt income of Rs. 13,89,40,620/- which was claimed exempt u.s 10(34) of the Act and taxable income of Rs. 23,53,65,240/-. The total expenses charged to the profit and loss account excluding the donations and bad debts were Rs. 24,11,959/- and the disallowance if is calculated as per section 14A rule 8D(2)(iii) comes to Rs. 1,22,90,682/- which is unreasonable and excessive and therefore the assessee suo motto disallowed a sum of Rs. 9,00,907/- out of expenses as relating to exempt income. We further find that the AO without recording any satisfaction with the reference to the books of accounts as regards the expenses attributable to exempt income made the additions of Rs. 15,11,000/- apart from the suo motto disallowance by the assessee of Rs. 9,00,907/-. In our opinion the disallowance as made by the assessee is reasonable and justified and no further disallowance without pointing out any defect in working of the assessee of the said disallowance with reference to the books of accounts. Moreover the case of the assessee is fully and squarely covered by the decision of the Tribunal in DSP Adiko Holdings Pvt. Ltd(supra) wherein an identical issue has been decided in favour of the assessee by the co-ordinate bench of the Tribunal by holding that the assessee himself has made disallowance which is reasonable and justified and no further disallowance is called for the operative part of the order is reproduced below:

"5. We have considered the submissions of the parties and perused the material available on record. Undisputed facts are, during the year

under consideration, assessee declared taxable income of Rs.23,48,56,710/- as against exempt income of Rs.13,40,30,621. Further, though, the assessee incurred expenditure of Rs.2,80,52,240, but the assessee itself disallowed expenditure of Rs.2.48 crore while computing its income as per the statement of total income. Further, in course of assessment proceedings, the assessee, out of the balance expenditure of Rs.32,52,240, disallowed Rs.22,69,274 under section 14A read with rule 8D. Thus, the actual expenditure claimed by the assessee for the year under consideration was ` Rs.9,82,966. Therefore, considering the quantum of taxable income and exempt income earned by the assessee during the relevant previous year, in our view, the expenditure apportioned / attributed by the assessee to exempt income at Rs.22,69,274, is more than reasonable. Moreover, as noticed by us, the Tribunal, while considering identical nature of dispute in assessee's own case under similar facts and circumstances for assessment year 2008-09, in ITA no.7598/Mum./2011, dated 22nd January 2014, held as under:-

"5. We are of the considered view that a reasonable allocation of expenditure has to be made which can be attributed to the income which is chargeable to tax particularly bank interest income of Rs.28.50 crores as against dividend income of Rs.12.46 crores (approximately). Considering the facts and circumstances of the case, we are of the considered view that expenditure of Rs.7,21,927/- as worked out by assessee, the details of which are mentioned by AO at page 2 of the assessment order, is reasonable to make disallowance u/s 14A with Rule 8D. Accordingly, we restrict the disallowance to Rs.7,21,927/- by reversing the orders of authorities below and allow the grounds of appeal taken by assessee. Hence, the grounds of appeal taken by assessee are allowed."

6. Facts in the impugned assessment year being materially same, respectfully following the order of the co-ordinate bench of the Tribunal, we modify the order of the learned Commissioner (Appeals) by restricting the disallowance under section 14A r/w rule 8D to Rs. 22,69,274, as voluntarily offered by the assessee in the course of assessment proceedings. Accordingly, while ground raised by the assessee is allowed, the ground raised by the Department is dismissed."

9. The facts of the assessee case being materially same to decision of the tribunal in the case of sister concern, we respectfully following the order of Co-ordinate Bench of the Tribunal set aside the order of the CIT(A) by restricting the disallowance u/s 14A read with rule 8D to Rs. 9,00,907/- as voluntarily made by the assessee and according the appeal of the assessee is allowed.

10. As regards the other appeals filed by the assessee vide ITA No 6776/Mum/2012 AY 2009-10, ITA No 7137/Mum/2013 AY 2010-11 and ITA No 5468/Mum/2014 AY 2011-12, the issue raised in the various grounds are identical to as decided by us supra in ITA No 6214/Mum/2011 AY 2008-09, therefore our findings in ITA No 6214/Mum/2011 AY 2008-09 would, mutatis mutandis, apply to these appeals as well and accordingly the appeals of the assessee stand allowed. Since we have allowed the appeals of the assessee for AY 2009-10, AY 2010-11 and 2011-12, the cross appeals by the revenue become infructuous and accordingly dismissed as infructuous.

11. In the result, the appeals of the assessee are allowed and that of revenue stand dismissed.

The above order was pronounced in the open court on 19th Dec,2016.

Sd

(MAHAVIR SINGH)

न्यायिक सदस्य / **Judicial Member**

sd

(RAJESH KUMAR)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :19.12.2016

SRL,Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

True copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai