IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI

BEFORE D.T. GARASIA, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.4153/M/2014
Assessment Year: 2010-11

ITA No.1949/M/2014
Assessment Year: 2009-10

M/s. Blue Dart Express Ltd., Blue Dart Centre, Sahar Airport Road, Andheri (East), Mumbai – 400 099 **PAN: AAACB0446L**	Vs.	Jt. Commissioner of Income Tax (OSD), Range – 8(1), Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

ITA No.4433/M/2014
Assessment Year: 2010-11

ITA No.2004/M/2014
Assessment Year: 2009-10

Dy. Commissioner of Income Tax - 8(1), Room No.260A, 2nd Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Blue Dart Express Ltd., Blue Dart Centre, Sahar Airport Road, Andheri (East), Mumbai – 400 099 **PAN: AAACB0446L**
(Appellant)		(Respondent)

Present for:

Assessee by	: Shri Dhanesh Bafna, A.R. Ms. Chandni Shah, A.R.
Revenue by	: Shri Suman Kumar, D.R.
Date of Hearing	: 19.06.2017
Date of Pronouncement	: 29.06.2017

O R D E R

Per D.T. GARASIA, Judicial Member:

The above titled appeals two by the assessee and two by the Revenue have been preferred against the orders of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] dated 09.12.2013 and

24.03.2014 relevant to assessment years 2009-10 and 2010-11 respectively. In all these appeals the common grounds are there. Since the facts and issues involved in all the cases are identical in nature, the same are taken together for disposal by this common order. For the sake of convenience, the facts have been taken from ITA No.1949/M/2014 for A.Y. 2009-10.

ITA No.1949/M/2014 for A.Y. 2009-10 (Assessee's appeal)

2. The short facts of the case in all the four cases are as under:

Ground No.1

Ground No.1 is in relation to depreciation on scanners.

The assessee company has filed the return on 22.09.09. During the assessment proceedings the Assessing Officer (hereinafter referred to as the AO) observed that the assessee company has claimed depreciation on two cargo scanners @ 60%. The purchase price of each cargo scanner was Rs.14,80,500/-. The assessee has claimed the depreciation @ 60% as the scanner is integral part of the computer. The AO was not convinced and allowed the depreciation @ 15%.

3. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) has dismissed the claim in both the years.

4. During the course of hearing, the Ld. A.R. submitted that issue in controversy is covered by the decision of Tribunal in the own case of the assessee for assessment year 2008-09 in ITA No.330/M/2012 wherein the Tribunal has allowed the depreciation @ 60%, therefore, it may be allowed @ 60%.

5. The Ld. D.R. relied upon the order of AO.

6. We have heard the rival contentions of both the parties. Looking into the facts and circumstances of the case, we find that the issue in controversy is

covered by the decision of the Tribunal in the own case of the assessee for assessment year 2008-09 in ITA No.330/M/2012 wherein the Tribunal has allowed the depreciation @ 60% by observing as under:

> "4. Under this issue the assessee has challenged the order of the Ld. CIT(A) in which he confirmed the depreciation @ 15% assessed by the Assessing Officer amounting to Rs.6,66,225/- on cargo scanners. The contention of the assessee is that the cargo scanners are integrated input output computer device and are not the part of the plant and machinery, therefore, the depreciation is liable to be granted @ 60% per annum as applicable to the computers. However, on the other hand, the Revenue is of the view that the cargo scanners are not the part and parcel of the computers and cannot be classified as computers, therefore, the assessee was entitled the depreciation @ 15% only. The Ld. Representative of the Assessee has argued that the cargo scanners is the part and parcel of the computer and in this regard reliance placed upon the law settled by the Hon'ble ITAT Delhi Bench in case of CIT vs. *BSES Yamuna Powers Ltd. in ITA No. 1267/2010 (Del)* and *ITO vs. Samiran Majumdhar 98 ITD 119 (Cal.)* and *ACIT vs. GE Capital Business Process Management Services Pvt. Ltd. in ITA No. 2887/Del/2011. We* have gone through the case file carefully and perused the record. The matter of controversy is that whether the cargo scanners are integrated input output computer device or not. In this regard the matter of controversy has been already adjudicated by the Hon'ble Delhi High Court in case of *CIT vs. BSES Yamuna Powers Ltd.* It is specifically held that the computer accessories and peripherals such as, printers, scanners and server, etc. form an integral part of computer system. In fact in the computer accessories and peripherals cannot he used without computer. Consequently, these are the part of the computer systems. Therefore, these articles are treated to depreciation as higher rate of 60%. The Hon'ble ITAT Kolkata Bench in the case of *ITO vs. Samiran Majumdhar 98 ITD 119 (Cal.) is* also of the view that the printers, scanners are the integral part of the computer system, therefore, they are to be treated as computer for the purpose of allowing higher rate of depreciation, i.e., 60%. The Hon'ble ITAT Delhi Bench in the case titled *ACIT vs. GE Capital Business Process Management Services Pvt. Lid,* has also held that the printers, scanners and server etc. are the integral part of the computer. Therefore, entitled for the depreciation @ of 60%. In the case of **DCIT vs. Datacraft India Ltd.** (ITA no. 7462 & *754/M/2007)* dated July 9, 2010 Hon'ble Mumbai Bench has held that the routers and switches can he classified as a computer hardware when they are used along with computer and when their function are integrated with computer and therefore, they are to be included in the block of computer entitled to depreciation @ 60%. Now coming to the present case, the present case is in connection with the cargo scanners which cannot be utilized without computer as their function are integrated with computer and therefore, they are to be included in the block of computer entitled to depreciation @60%. In view of the above discussion and law mentioned above, the finding of the CIT(A) affirming the decision of the A.0. is wrong against law and

> facts therefore, the same is not liable to be sustainable in the eyes of law. Hence, we set aside the finding of the CIT(A) on, this issue and allowed the claim of depreciation 60% on the cargo scanners. Accordingly, this issue has been decided in favour of the assessee against the revenue."

7. Respectfully following the above decision of the Tribunal, we decide the ground No.1 in favour of the assessee and against the Revenue.

Ground No.2

8. Ground No.2 is in relation to disallowance under section 14A of the Act. The short facts of the case are that during the assessment proceeding, the AO observed that the assessee has claimed exemption of dividend income of Rs.2,56,58,059/- earned from investments made by the assessee in mutual funds. The assessee has not attributed any expenditure incurred in relation to the concerned income. As per section 14A, assessee was asked to furnish the complete details in investment and as to why the disallowance of expenditure should not be made under section 14A of the Act in accordance with the formula prescribed under rule 8D of the I.T. Rules, 1962. The assessee contended that no direct expenditure has been incurred in relation to the activity of investment, nor any indirect expenditure is attributable to its exempt income, however, the assessee has requested to restrict the disallowance to Rs.1,23,654/- being 5% of the salary cost of the treasury term. However, AO made the addition.

9. Matter travelled to Tribunal and the Tribunal has allowed the claim by observing as under:

> "5. Under this issue the assessee has challenged the expenditure assessed to earned the exempt income to the tune of Rs.27,14,925/- u/s 14A of the Act r.w.r.81D. The Ld. Representative, the assessee has argued that the assessee company earned the dividend income to the tune of Rs.2,49,68,920/- from mutual funds and the assessee company used its own fund to earn the exempt income therefore the disallowance u/sl4A of the Act r.w.r 8D is not accordance with law. It is also argued that the assessee company did not incurr any direct and indirect expenses to earn the exempt

income therefore no disallowance of expenditure is justifiable. No expenditure against the said exempt income was claimed therefore, in the aforesaid circumstances, the provisions of Section 14A read with Rule 8D is not applicable in the present ease, therefore, the finding of the CIT(A) is wrong against, law and facts and is liable to be set aside. However, on the other hand the Ld. Representative of Department has strongly relied upon the order by the CIT(A) in question.

6. After hearing the rival contention of the parties and perusing the record. We observed that the assessee company nowhere claim any expenditure to earn the exempt income. On appraisal of the order passed by the Assessing Officer, we found that the Assessing Officer nowhere quantified expenditure to earn the exempt income. When the expenditure was not claimed then, in the aforesaid circumstances, there is no question of disallowance. It is not in dispute that the assessee earned the dividend income to the tune of Rs.2,49,68,920/-. The assessee himself offered the expenditure to the extent of 5% of the total salary relating to the treasury operation of the finance team. In the given circumstance we found it justifiable to restrict the expenditure to earn the exempt income @ 5% of the total salary relating to the treasury operation of the finance team as some expenditure may be occurred to earn the exempt income to the tune of Rs. 2,49,68,920/-. Therefore, in view of the said circumstances we set aside the finding of the CIT(A) on this issue and direct the Assessing Officer to assess the expenditure to earn the exempt income. Accordingly, this issue is decided in favour of the assessee against the revenue."

10. We have heard the rival contentions of both the parties. Looking into the facts and circumstances of the case, we find that the issue in controversy is covered by the decision of the Tribunal in the own case of the assessee for assessment year 2008-09 in ITA No.330/M/2012. Hence, respectfully following the same, we decide the Ground No.2 in favour of the assessee and against the Revenue.

Ground No.3

11. Ground No.3 is in relation to ad-hoc disallowance of Rs.19,11,838/- incurred on handling & clearing charges on ad-hoc basis. The AO noted that the assessee has furnished the location-wise breakup of fleet hire expenses amounting to Rs.81,60,09,115/- and handling & clearing charges amounting to Rs.16,57,22,523/- and its further breakup based on the mode of payment i.e.

cash and cheque. The AO disallowed 2.5% of cash and cheque which comes to Rs.19,11,838/-.

12. During the course of hearing, the Ld. A.R. submitted that the issue in controversy is covered by the decision of the Tribunal in the own case of the assessee for assessment year 2008-09 in ITA No.330/M/2012 wherein the Tribunal has allowed the claim by observing as under:

> "7. Issue No.3 is in connection with the ad-hoc disallowance of Rs.8,26,165/- being 2.5% of the total expenditure of Rs.3,30,46,586/- on account of fleet hire charges and handling and cleaning in charges. The A.O. disallowed to the extent of *2.5%* of the said expenditure on the basis of the finding of the earlier assessment year of the CIT(A). The said finding was confirmed by the Ld. CIT(A) by virtue of order dated 19.10.2011 in question. In support of this contention the Ld. Representative, the assessee has placed reliance from the order passed by the Hon'ble ITAT Mumbai Bench in case of ***M/s* Crescent Chemicals vs. ITO** dated 21.01.2011 in which it is specifically held that After giving our conscious consideration to the reasoning of the Ld. CIT(A), we find that both the authorities below have made the ad-hoc disallowance. We find force in the argument of the Ld. Counsel that on many occasions, isolated transporters and labourers are required to be engaged when it is not possible to get their bills. He further finds that nowhere it is a case of the A.O. that any of the expenditure was found to be bogus. We, therefore, do not find any reason to confirm the disallowance made by the Ld. CIT(A). Accordingly, the same is deleted and ground no. 1 is allowed.
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> 8. It is not dispute that the Assessing Officer made the ad-hoc disallowance on account of expenses of fleet and hire charges and handling and cleaning charges on the basis of the finding of the Ld. CIT(A) in the past year. The Ld. CIT(A) has also confirmed the same. The business of the assessee company is to provide the courier services in which the assessee has to make the payment on account of fleet and hire charges and handling and cleaning charges in cash. The payment of labour was payable also in cash on spot. It is not possible for the assessee to procure the each and every bills/details. It is not a case of the revenue that the claim of the assessee is bogus. Moreover, without any reason ad-hoc disallowance is not justifiable in accordance with law. Therefore, we allowed the claim of the expenses in all on account of fleet and hire charges handling and cleaning charges in the interest of justice. Accordingly, we set aside the finding of the Ld. CIT(A) on this issue and allowed the claim of the assessee against the revenue."

13. Respectfully following the above decision of the Tribunal, we decide the ground No.3 in favour of the assessee and against the Revenue.

14. In the result, the appeal of the assessee is allowed.

ITA No.2004/M/2014 for A.Y. 2009-10 (Revenue's appeal)

15. The issues involved in this appeal are identical to the assessee's appeal i.e. ITA No.1949/M/2014 for A.Y. 2009-10. Since we have already decided these identical issues in assessee's appeal i.e. ITA No.1949/M/2014 for A.Y. 2009-10 in favour of the assessee, we dismiss the appeal of the Revenue.

16. In the result appeal of the Revenue is dismissed.

ITA No.4153/M/2014 for A.Y. 2010-11 (Assessee's appeal)

17. Grounds and issues involved in this appeal are identical to the assessee's appeal in ITA No.1949/M/2014 for A.Y. 2009-10 and have been decided in favour of the assessee. Hence, following the same ratio, this appeal of the assessee is also allowed.

ITA No.4433/M/2014 for A.Y. 2010-11 (Revenue's appeal)

18. Tax effect involved in this appeal is less than Rs.10 lakhs and the Ld. D.R. has submitted that the CBDT Circular No.21/2015 is applicable to this appeal, hence, this appeal be dismissed as not pressed in terms of CBDT circular no 21/2015 dated 10/12/2015.

19. Hence, without going into the merit of the issues raised in the present appeal, this appeal is treated as dismissed as withdrawn/not pressed as its filing being in contravention of the CBDT Circular dated 10/12/2015 read with section 268A of the Income Tax Act.

20. Accordingly, the appeal of the Revenue is dismissed.

21. In the result, appeals of the assessee i.e. ITA No.4153/M/2014 for assessment year 2010-11 and ITA No.1949/M/2014 for assessment year 2009-10 are allowed and the appeals of the Revenue i.e. ITA No.4433/M/2014 for assessment year 2010-11 and ITA No.2004/M/2014 for assessment year 2009-10 are dismissed.

Order pronounced in the open court on 29.06.2017.

Sd/-	**Sd/-**
(G. Manjunatha)	**(D.T. Garasia)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 29.06.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.