

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F' NEW DELHI

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5719/Del/2014  
AY: 2010-11

M/s PVR Pictures Ltd.,  
61, Basant Lok,  
Vasant Vihar,  
New Delhi.  
(PAN: AACCP3746K)  
(Appellant)

vs DCIT,  
Circle-14(1),  
New Delhi.

(Respondent)

Appellant by: None  
Respondent by: Shri Atiq Ahmad, Sr. DR

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

This appeal has been preferred by the assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals) – XVII, New Delhi for assessment year 2010 – 11 wherein vide order dated 17/07/2014, the Ld. Commissioner of Income Tax (Appeals) has confirmed the disallowance of Rs. 17,74,373/- made under section 14A of the Income Tax Act, 1961 (hereinafter called “the Act”).

2. The brief facts of the case are that the return of income was filed declaring a loss of Rs. 14,07,27,600/- which was subsequently revised

by the assessee to a loss of Rs. 12,72,15,668/-. The case was selected for scrutiny and the only disallowance made by the AO was of Rs. 17,74,373/- under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962. The assessment was completed at a loss of Rs. 12,54,41,295/-.

2.1 The background leading to the disallowance under section 14A of the Act was that during the course of assessment proceedings, the AO observed that the assessee company had not disallowed the amount of Rs. 17,74,373/- u/s 14A in its computation of income. This was the amount of expenditure attributable to exempt income as mentioned in Para 17 (1) of the tax audit report. The assessee was asked to show cause as to why this amount should not be disallowed. It was the contention of the assessee before the AO that the amount invested in the mutual funds as on 01/04/2009 and also on 31/03/2010 was in growth funds which were not eligible for generating tax-free income. The assessee submitted before the AO that the statutory auditors of the company had incorrectly shown the details of mutual funds under daily dividend plan instead of growth funds. The assessee also furnished photos copies of the statements of the mutual

funds as an evidence to prove that the investment was in growth funds and not in daily dividend funds. The assessee also informed the AO that the assessee had taken up the matter with the statutory auditors and had brought to their notice the incorrect details given in the schedule of investment which was forming part of the balance sheet of the company. A copy of the said letter was also submitted before the AO. The AO was also informed that the statutory auditors have thereafter corrected the details given in the annual accounts of the company and had confirmed it through a letter dated 28/01/2013. A copy of this letter was also submitted before the AO. A certificate from the tax auditors dated 28<sup>th</sup> of January 2013 was also submitted wherein the tax auditors had certified that the disallowance of Rs. 17,74,373/- in Form 3CD of the tax audit report should be read as “nil”.

2.2 The AO also wrote to the statutory auditors to clarify the situation who vide their letter dated 19/02/2013 confirmed the averments made by the assessee before the AO.

2.3 However, the AO did not accept the contention of the assessee and proceeded to disallow an amount of Rs. 17,74,373/- under section 14A of the Act by holding that the assessee company had not reflected

true particulars of income and that the clarification given by the assessee vide its reply dated 18/02/2013 was not reliable and convincing. The AO further noted that the certificate of the statutory auditors was issued at the behest of the assessee and therefore the same was not reliable.

2.4 Aggrieved, the assessee preferred an appeal before the Ld. First Appellate Authority who also confirmed the disallowance. Now the assessee has approached the ITAT and has challenged the confirmation of the disallowance by the Ld. CIT (Appeals).

3. None was present for the assessee. The entry in the order sheet shows that the case was earlier fixed for hearing on 05/06/2017 and was adjourned at the request of the assessee on that date. Therefore, we deem it fit to proceed with the hearing of the case *ex parte* the assessee.

4. The Ld. Senior Departmental Representative read out extensively from the assessment order as well as the order of the Ld. CIT (Appeals) and submitted that during the year under consideration the assessee had earned dividend income amounting to

Rs. 2,15,20,908/- and, therefore, the assessee's claim that no expenditure was incurred in earning the dividend income was unbelievable. It was also submitted that the statutory auditors had not given a working as to how "nil" amount was arrived at for the purpose of disallowance under section 14A of the Act. It was also submitted that Rule 8D requires that disallowance has to be made compulsorily. It was submitted that the AO had correctly decided the issue and the same should be upheld.

5. We have heard the Ld. Senior Departmental Representative and have also perused the orders of the authorities below. The facts are not in dispute. The AO proceeded to disallow the amount of Rs. 17,74,373/- based on the figure, which as per the claim of the assessee, was incorrectly mentioned by the auditors in the tax audit report. The assessee, subsequently, filed certificate from the statutory auditors stating that the said amount had been incorrectly mentioned and the correct amount was "nil". However, the AO was of the view that the certificate of the auditor had been issued at the behest of the assessee. The AO also noted that no working/basis of calculation of disallowance at "nil" was submitted by the assessee. However, while

making the disallowance, the AO picked up the figure which was mentioned in the tax audit report and did not carry out an independent examination/verification regarding the assessee's claim that no expenditure had been incurred. Such a course of action does not conform to the mandate given to the AO while calculating the quantum of disallowance under section 14A of the Act. The Ld. CIT (Appeals), while dismissing the assessee's appeal, only mentioned that the assessee had earned dividend of Rs. 2,15,20,908/- during the year and the earning of dividend would require certain expenditure like expenditure on salary, administrative expenses etc. The Ld. CIT (Appeals) also did not examine the claim of the assessee regarding no expenditure having been incurred for the purpose of earning dividend. Therefore, in light of the circumstances, it is our considered opinion that interest of Justice would be served if the issue is restored to the file of the AO for re-examining the issue *de novo*. Accordingly, we set aside the order of the Ld. CIT (Appeals) and restore the issue to the file of the AO for calculating the disallowance under section 14A of the Act, if the circumstances so warrant, keeping in mind the

provisions of the Act and the settled judicial precedents after giving proper opportunity to the assessee to present its case.

6. In the final result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 25<sup>th</sup> October, 2017.

*Sd/-*

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

*Sd/-*

(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER

DT. 25<sup>th</sup> October, 2017  
'GS'

Copy forwarded to:-

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

By Order

Asstt. Registrar