**IN THE INCOME TAX APPELLATE TRIBUNAL**
**AMRITSAR BENCH; AMRITSAR.**

BEFORE SH. T. S. KAPOOR, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

**I.T.A. No. 298/(Asr)/2014**
Assessment Year: 2009-10
PAN: AAACT6167G

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| Dy. C. I. T.,<br>Circle-1, 2nd Floor Aayakar<br>Bhawan, Railhead Complex,<br>Jammu.<br>**(Appellant)** | Vs. | M/s. The Jammu & Kashmir<br>Bank Ltd., Corporate Head<br>Quarters, M. A. Road,<br>Srinagar.<br>**(Respondent)** |

Appellant by : Sh. S. S. Kanwal (D. R.)
Respondent by: Written Submissions

Date of Hearing: 05.10.2017
Date of Pronouncement: 03.01.2018

**ORDER**

**PER T. S. KAPOOR (AM):**

This is an appeal filed by revenue against the order of Ld. CIT(A), Jammu, dated 26.02.2014 for Asst. Year: 2009-10.

2. The grounds of appeal taken by revenue are reproduced below:

*"1. On the facts and circumstances whether the Ld. CIT(A) was right in deleting the disallowance u/s 40(a)(ia) of the I.T. Act, 1961 on account of clearing house charges.*

*2. On the facts and circumstances whether the Ld. CIT(A) was right in deleting the disallowance u/s 40(a)(ia) of the I.T. Act, 1961 as the decision of Apex Court relied upon is distinguishable from the said case.*

*3. On the facts and circumstances whether the Ld. CIT(A) was right in deleting the disallowance u/s 40(a)(ia) of the I.T. Act, 1961 on account of clearing house charges when the department is in, appeal before Hon'ble High Court on the issue for the A.Y. 2008-09.*

*4. On-the facts and circumstances whether the Ld. CIT(A) was right in deleting the disallowance of depreciation on wooden partitions as the case of Madras Auto Services P. Ltd. is distinguishable from the said case.*

*5. On the facts and circumstances whether the Ld. CIT(A) was right in deleting the disallowance u/s 40(a)(ia) on interest paid to JDA in view of the fact that TDS provisions are ment for ensuring tax compliance and deducting tax from entities whose income is taxable under the relevant provisions of I.T. Act, 1961.*

*6. On the facts and circumstances whether the Ld. CIT(A) was right in deleting, the disallowance u/s 40(a)(ia) on interest paid to JDA when JDA had been filing its return of income in the status of a "Local Authority".*

*7. On the facts and circumstances whether the Ld. CIT(A) was right in deleting the disallowance u/s 40(a)(ia) on interest paid to JDA when the department is in appeal before Hon'ble High Court of J&K on the issue for the A.Y. 2008-09.*

*8. On the facts and circumstances whether the Ld. CIT(A) was right in deleting the addition u/s 40(a)(ia) on account of short deduction of TDS.*

*9. On the facts and circumstances whether the Ld. CIT(A) was right in deleting the addition on account of disallowance made u/s 14A of the I.T. Act, 1961 as there is no provision in section 14A of the I.T. Act, 1961 to restrict the amount of disallowance worked out as per Rule 8D of the Income Tax Rules."*

3. At the outset, the Ld. AR submitted that each and every grievance of the revenue is duly covered in favour of assessee by the order of the Amritsar Bench in ITA No. 206/Asr/2013 and in ITA No. 74,76 & 137/Asr/2015. The Ld. AR in this respect filed a chart dealing therein every grounds of appeal and referring the relevant parts of the order of the Hon'ble Tribunal in this regard.

4. The Ld. DR fairly agreed with the issues raised by revenue are duly covered in favour of assessee.

5. We have heard the rival parties and have gone though the material placed on record. Ground no. 1, 2 & 3 relates to single grievance relating

to deletion of disallowance u/s 40a(ia) of the Act on account of MICR charges to clearing houses. The Ld. CIT(A) has deleted this addition by holding that in earlier years also that he had deleted such addition. We further find that Hon'ble Tribunal in its order dated 28.05.2013 has decided similar issue in favour of assessee by holding as under:

> *"8. We have heard the rival contentions and perused the facts of the case. We concur with the views of the Ld. CIT(A) and the arguments made by the Ld. counsel for the assessee, Mr. R. K. Gupta that the Ld. CIT(A) in the present case has given a pertinent finding that MICR cheques are cleared through with the help of ultraviolet rays which scans the genuineness of cheques No. human intervention is required in MICR clearing of cheques by way of examining technical data, analyzing them and making them useful for subsequent use. In fact, MICR clearance of cheques can be possible by a mechanized system only and not through human intervention keeping in view the processing of bulk cheques. Therefore, in facts and circumstances of the present case, the decision of Hon'ble Supreme Court in the case of CIT Vs. Bharti Cellular Ltd. (supra) is clearly applicable and the Ld. CIT(A) has rightly deleted the disallowance made by the Assessing Officer in ground No. 2 of the Revenue. Thus, ground no. 2 of the Revenue is dismissed."*

In view of the above ground no. 1, 2 & 3 are dismissed.

Ground no. 4 relates to disallowance of depreciation on wooden partitions. This issue is also covered in favour of assessee by the order of the Tribunal dated 28.05.2013. The findings of the Hon'ble Tribunal are reproduced below:

> *"11. As regards ground No.4 of the Revenue, the AO has allowed a depreciation @ 10% instead of 100% as claimed by the assessee on wooden partition amounting to Rs.78,77,736/-.*
>
> *11.1 Before the Id. CIT(A), the assessee made the submissions which were considered and the Id. CIT(A) held hat the structure in the form of wooden partition is purely a temporary wooden structure in the rented premises and no advantage of enduring benefit accrued to the assessee and accordingly allowed the claim of the assessee by holding that the assessee is entitled to 100% depreciation on wooden partitions.*

*11.2. Ld. DR argued that the wooden partitions in the bank are of permanent nature and are never dismantled, may be in the owned or rented premises or of enduring in nature and therefore, 10% depreciation should he allowed instead of 100% claimed. Accordingly, he prayed to reverse the order of the Id. CIT(A) and confirm the order of the Assessing Officer.*

*11.3. Mr. R.K.Gupta, CA, relied upOn the submissions made before the Id. CIT(A) and the order of the Id. CIT(A). He further argued that the identical issue has come up before this Bench in ITA No.43(Asr)/2012 dated 23.01.2013 where vide para 13.3 of the said order, on identical facts, the present assessee has been allowed the claim at 100% deduction of the expenditure incurred during the year 2003-04. In the said order of the ITAT since the issue is covered by Bench's own decision and therefore, no different view can be taken in the present appeal.*

*12. We have heard the rival contentions and perused the facts of the case. There is no dispute to the fact that the wooden partitions were erected on the, lease/rented accommodation. In our view, such wooden partitions on lease or rented accommodation are not enduring in nature and cannot be treated as capital expenditure and following our own order dated 23.01.2013 for the assessment year 2003-04, we find no infirmity in the order of the Ld. CIT(A), who has rightly allowed the claim of the assessee. Hence, ground No.4 of the revenue is dismissed."*

In view of the above ground no. 4 is also dismissed.

Ground no. 5 relates to disallowance u/s 40a(ia) on account of interest paid to JDA. This issue is also covered in favour of assessee by the order of the Tribunal dated 28.05.2013 which is reproduced below:

*"13.1. Before the Id. CIT(A), the assessee made the submissions which were considered and accordingly, he allowed the claim of the assessee.*

*13.2. The Ld. DR argued that the Ld. CIT(A) has followed the order of the Amritsar Bench, which in fact has followed the decision of ITAT, Delhi Bench in the case of Chief/Senior Manager, Oriental Bank of Commerce vs. ITO (TDS & Survey) Ghaziabad passed in ITA No. 2228(Del)/2011 for the A.Y.2005-06 dated 15.07.2011. He argued that his arguments made in those years placed on record and the order being per incuriam cannot be followed in the present facts and circumstances of the case and the ITAT Bench has the power to ignore such order and accordingly he prayed not to follow such order.*

*14. The Ld. counsel for the assessee, Mr. R. K. Gupta, CA argued and strongly relied upon the order of the CIT(A) and the submissions made*

*before him and the order of this Bench in ITA Nos. 623 & 624(Asr)/2011 for the assessment years 2007-08 & 2008-09 dated 09.(37.2012 and also our order in ITA Nos. 206 to 210(Asr)/2011 dated 24.04.2012 in assessee's own case.*
*15. We have heard the rival contentions and perused the facts of the case. We have perused the order of ITAT Delhi Bench in the case of Chief/Senior Manager, Oriental Bank of Commerce Vs. ITO (TDS & Survey) (supra) and our earlier orders mentioned hereinabove on the identical facts. In our order in ITA No. 206 to 210(Asr)/2010(Asr)/2011 dated 24.04 2012 (PB 60 72) in assessee's own case, especially at page 12 of the said order (at PAPER BOOK-71), the arguments made by the Ld. DR has been dealt with, which for the sake of clarity are reproduced hereunder:-*

*"6.1. Thus, respectfully following the aforesaid order of the ITAT, Delhi Bench 'I' we dismiss the appeal filed by the Revenue by holding that the Jammu Development Authority is in exempted category where the provisions of section 194(1) are not applicable. We also hold that Exception provided in section 194A(3)(iii)(f) of the Act and as per notification, the Jammu Development Authority is a creation of J & K Development Act and satisfies the condition at Entry No.39 of the said notification and we hold that no tax was deductible on accrued interest on FDRs of Jammu Development Authority with J & K Bank Ltd. Keeping in view the above discussions we hold that no interference is called for in the well reasoned Impugned order passed by the ld. first appellate authority and accordingly we uphold the same. Hence, the appeal of the Revenue in ITA No. 206(Asr)/2011 is dismissed."*

In view of the above ground no. 5, 6 & 7 are dismissed.

Ground no. 8 relates to disallowance u/s 40a(ia) on account of short deduction of TDS. This issue is also covered in favour of assessee in ITA No. 74,76 & 137/Asr/2015. The relevant findings of the Hon'ble Tribunal in its order dated 28.02.2017 are reproduced below:

*"11. Ground No. 4 pertains to addition u/s.40(a)(ia) on account of short TDS as reported in Annexure "J" of the Tax Audit Report of the assessee bank. The Id. CIT(A) deleted the disallowance, following his order for A.Y. 2009-10.*

*12. As contended on behalf of the assessee, the Hon'ble Calcutta High Court, vide order (APB 20 to 22) dated 03.12.2012 passed in the case of "CIT, Kolkata vs. S.K. Teriwal", in ITA No. 183/2012, GA No. 2069 of 2012, has upheld the Tribunal order in that case (as followed by the Tribunal in the case of the present assessee). The Tribunal order in the case of "S.K. Teriwal" has been placed at APB 15 to 19. The reasoning adopted therein*

*has been upheld by the Hon'ble High Court, holding that since no substantial question was involved, the appeal was being dismissed. The reasoning of the Tribunal is as follows:*

*"In the present case before us the assessee has deducted tax u/s. 194C(2) of the Act being payments made to sub-contractors and it is not a case of non-deduction of tax or no deduction of tax as is the import of section 40a(ia) of the Act But the revenue's contention is that the payments are in the nature of machinery hire charges falling under the head 'rent' and the previous provisions of section 1941 of the Act are applicable. According to revenue, the assessee has deducted tax @ 1% u/s. 194C(2) of the Act as against the actual deduction to be made at 10% u/s. 1941 of the Act, thereby lesser deduction of tax. The revenue has made out a case of lesser deduction of tax and that also under different head and accordingly disallowed the payments proportionately by invoking the provisions of section 40(a}(ia) of the Act. The Ld. C1T, DR also argued that there is no word like failure used in section 40(a)(ia) of the Act and it referred to only non-deduction of tax and disallowance of such payments. According to him, it does not refer to genuineness of the payment or otherwise but addition u/s. 40(a)(ia} can be made even though payments are genuine but tax is not deducted as required u/s 40(a)ia) of the Act. We are of the view that the conditions laid down u/s 40(a)(ia) of the Act for making addition is that tax is deductible at source and such tax has not been deducted. If both the conditions are satisfied then such payment can be disallowed u/s. 40(a)(ia) of the Act but where tax is deducted by the assessee, even under bonafide wrong impression, under wrong provisions of TDS, the provisions of section 40(a)(ia) of the Act cannot be invoked. Herein the present case before us the assessee has deducted tax u/s 194C(2) of the Act and not u/s. 1941 of the Act and there is no allegation that this TDS is not deposited with the Government account. We are of the view that the provisions of section 40(a) (la) of the Act has two limbs one is where, inter alia, assessee has to deduct tax and the second where after deducting tax, inter alia, the assessee has to pay into Government Account. There is nothing in the said section to treat, inter alia, the assessee as defaulter where there is a shortfall in deduction. With regard to the shortfall, it cannot be assumed that there is a default as the deduction is not as required by or under the Act, but the facts is that this expression, 'on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction has not been paid on or before the due date specified in subsection (1) of section 139. This section 40(a)(ia) of the Act refers only to the duty to deduct tax and pay to government account. If there is any shortfall due to any difference of opinion as to the taxability of any item or the nature of payments falling under various TDS provisions, the assessee can be declared to be an assessee in default u/s. 201 of the Act and no disallowance can be made by invoking the provisions of section 40(a)(ia) of the Act.*

*Accordingly, we confirm the order of CIT(A) allowing the claim of assessee and this issue of revenue's appeal is dismissed."*

*13. In view of above, this issue raised by the department also does not carry any merit. Accordingly, ground no. 4 is rejected."*

In view of the above ground no. 8 is also dismissed.

As regards disallowance u/s 14A of the Act same is also covered in favour of assessee by the order of the Tribunal in ITA No. 74,76 & 137/Asr/2015. The relevant findings of the Hon'ble Tribunal as contained in para 18 to 23 are reproduced below:

*"18. Ground No.7 challenges the action of the Id. CIT(A) in deleting the addition made on account of disallowance u/s. 14A of the Act.*

*19. The Id. CIT(A) deleted the addition by observing as follows:*

*"I have considered the argument of the appellant. It has been held in appellant's own case in earlier years that no disallowance u/s14A is required to be made in respect of interest or management cost. There is no doubt that the facts and figures for the year under consideration has not undergone any change from the earlier years. However if any disallowance is to be made the AO has to disapprove the method of accounting that he is not satisfied with the claim of the assessee. For this 14A(3) empowers the AO to work out the disallowance as per prescribed method even if the assessee states that there is no expenditure to earn the exempt income. But for all this the AO is duty bound to disapprove the contention of the assessee. Now, here the appellant has offered whole of its income to tax and it has been held in earlier years that there is no related cost which can be stated to be incurred for earning such income then it is the duty of the AO to record his satisfaction before invoking Rule 8D and making additional disallowance of Rs.2,81,04,160/- as to why he is not satisfied with the correctness of the claim of the assessee. Subsection (2) of sec. 14 states that "The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with the method as may be prescribed, if the Assessing Officer, having regard to the Accounts of the assessee, is not satisfied with the correctness of claim of the assessee in respect of such expenditure in relation to income which do not form part of the total income under this Act.*

*In the year under consideration, the appellant bank has shown that the investments from which this income of Rs.49,35,591/- has been earned are being treated as stock in trade and not as an investment. Thus in view of this fact although income from dividend of Rs.49,35,591/- being exempt u/s 10(34) yet the appellant bank treating these investments as stock in trade has offered whole of the amount to tax and not claimed exemption on this income under respective section. Now, sec.l4A is applicable to income which does not form part of total income whereas the facts in this case are entirely different. The appellant has offered this income to tax and has not considered this income as not form of total income. Thus in my considered opinion it was not required from AO to invoke the provisions of sec.!4A.Rather, this aspect of the appellant bank is in the interest of Revenue. Had the appellant claimed this income exempt even then the facts and figures do reveal that these are exactly the same as in the previous years wherein those years the appellate authorities including myself have given a finding that in view of own Funds there cannot be any disallowance for interest cost and in view*

*of the fact that management cost is fixed whether or not this exempt income is earned there cannot be any management cost related to earn this exempt income.*

*Under such facts and circumstances, I am not in agreement with the AO to make disallowance u/s 14A by applying Rule 8D.*

*Further, there is no need to discuss the contentions of the appellant on other grounds to set off loss from exempt income to taxable income when I have given finding that no disallowance u/s 14A is to be made under such facts & circumstances. Similar type of disallowance has been deleted by me in the order passed in appeal no, 346/11-12 pertaining to assessment year 2009-10. Hence, the disallowance made by the AO of Rs. 04,160/- is hereby deleted."*

*20. In this connection, it is seen that the Id. CIT(A) held that, as held in the earlier years, disallowance u/s. 14A can be made only if the AO disapproves the method of accounting of the assessee, being not satisfied with the assessee's claim; that section 14A(3) empowers the AO to work out the disallowance as per the prescribed method, even if it is stated that no expenditure was incurred to earn the exempt income; that in this case, the assessee has offered the whole of its income to tax and in the earlier years, it has been held that there is no related cost which can be said to have been incurred for earning such income; that in these facts, before invoking Rule 8D of the IT Rules and making additional disallowance, the AO was required to record his satisfaction as to the incorrectness of the claim of the assessee; that in the year under consideration,[1] the bank had shown that the investments, from which income had been earned, stood treated as stock in trade rather than investment; that the assessee had not claimed exemption on this income; that as such, the assessee had offered its income and had not considered the income to be part of its total income; that therefore, section 14A of the Act was not applicable and it could not have been invoked; that had the assessee claimed this income exempt, it was exactly the same as in the earlier years, in which years, it was held that in view of the assessee's own funds, no disallowance of interest cost could have been made and that in view of the fact that management cost is fixed, whether or not this Is exempt income as earned, there cannot be any management cost relating to this exempt income earned; and that a similar disallowance has been deleted by him [the Id. CIT(A)] in the assessee's case for A.Y 2009-10.*

*21. The facts are not disputed. For A.Y. 2002-03, the Tribunal, vide order (APB 23 to 42) dated 31.12.2012, in ITA No.l36/Asr./2010 and CO No. 09/Asr/2010 and for A. Ys. 2003-04 & 2004-05, vide order (APB 43 to 66), dated 23.01.2013, in ITA Nos. 43, 53, 85, 86 and 418/Asr./2012 and CO Nos. 4 to 6 & 33/Asr./2012, the CIT(A)'s orders, which are on similar lines as those in the year under consideration, were upheld. As contended, the assessee's own funds being used, no interest cost is incurred which can be said to be related to earn income. The management cost shall also remain fixed even if such income is earned. Further, for AYs 2005-06 and 2006-07, again, the CIT(A), vide order (APB 67 to 115) dated 12.02.2014, deleted the similar additions. It has been stated on behalf of the assessee, and not denied by the department, that the department has not filed any appeal against the said CIT(A)'s orders for A.Y. 2005-06 and 2006-*

*07. Then, obviously, as held by the Mumbai Bench of the Tribunal, vide order (APB 116-120) dated 01.01.2005, in ITA No. 5592/Mum/2012 in the case of "Daga Global Chemicals Ltd. vs. ACIT", disallowance u/s. 14A read with Rule 8D of the IT Rules cannot exceed the exempt income. Moreover, no interest expenditure disallowance made in relation to dividend received from trading in shares is sustainable in law, as held by the Mumbai Bench of the Tribunal in the case of "DCIT vs. India Advantage Securities Ltd.", in ITA No. 6711/Mum/2011, vide order (APB 121- 127) dated 14.09.2012.*

*22. In view of the above, here also, we do not find any error whatsoever in the order of the Id. CIT(A), which is confirmed. Ground No. 7 is rejected.*

*23. As stated at the beginning of this order, the facts in both the appeals of the department, i.e., that for A.Y. 2010-11 and that for A.Y. 2011-12, are similar and the issues are common in both the appeals inter se. Therefore, our observations shall, mutatis mutandis, apply equally to ITA No. 137/Asr./2015, the department's appeal for A.Y. 2011-12. Accordingly, both the appeals are dismissed."*

In view of the above ground no. 9 is also dismissed.

6. In nutshell, the appeal filed by revenue is dismissed.

Order pronounced in the open court on 03.01.2018

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| Sd/- | Sd/- |
| (N. K. CHOUDHRY) | (T. S. KAPOOR) |
| JUDICIAL MEMBER | ACCOUNTANT MEMBER |

Dated: 03.01.2018.
*/GP/Sr. Ps.*
Copy of the order forwarded to:

(1) The Assessee:
(2) The
(3) The CIT(A),
(4) The CIT,
(5) The SR DR, I.T.A.T.,

True copy

By Order