

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "A", MUMBAI**

**BEFORE SHRI G.S. PANNU (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 4234/MUM/2016  
Assessment Year: 2008-09**

The DCIT, Cent. Cir. – 6(4), Room No. 1925, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai – 400021	<b>Vs.</b>	M/s J M Baxi & Co., 16, Bank Street, Fort, Mumbai - 400001  PAN: AA AFJ5198E
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Sh. R.P. Meena (CIT DR)

Assessee by : Shri N.S. Goradiya &  
Sh. Harsh Shah (DR)

Date of Hearing: 26/10/2017  
Date of Pronouncement: 19/01/2018

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the revenue against order dated 21/03/2016 passed by the Ld. Commissioner of Income Tax (Appeals)-54, Mumbai, for the assessment year 2008-09, whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against assessment order passed u/s 143 (3) read with section 153A of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee firm engaged in the business of shipping, container transport management, boat development and terminal management, tanker operations, chartering brokers, warehousing and freight station, international freight forwarding etc., filed its return of income for the assessment year under consideration declaring the total income of Rs. 36,06,10,969/-. The assessment was completed u/s 143 (3) of the Act determining the total income at Rs. 38,42,19,370/-. Subsequently, a search

action was carried out in the case of J.M. Baxi Group. The assessee had made investments of Rs. 46,18,83,990/- as per closing balance at the end of the year. The said investments did not earn any income or income which does not found part in the total income. The assessee did not disallow any expenditure u/s 14A. The AO relying on the decision of Special Bench of ITAT, Delhi in the case of Cheminvest Ltd. vs. ITO 317 ITR 86, made disallowance of Rs. 46,18,211/- u/s 14A read with rule 8D and determined the total income of the assessee at Rs. 37,14,16,560/-. The assessee challenged the assessment order before the Ld. CIT (A) *inter alia* on the ground that the AO has erred in framing the assessment u/s 143 (3) read with section 153A of the Act without appreciating the fact that no incriminating document was found in the search proceedings. Without prejudice, the assessee challenged the action of the AO on the ground that the Ld. AO failed to appreciate that the investments were made out of the internal accruals, interest free loans and rolling funds and the investments were made in the group companies.

3. The Ld. CIT(A) after hearing the assessee decided the main issue in favour of the assessee relying on the judgment of the Hon'ble Mumbai High Court passed in CIT vs. Continental Warehousing Corporation 58 taxmann.com78 and directed the AO to delete the addition holding that the same is beyond the scope and ambit of assessment envisaged under section 153A of the Act.

4. Aggrieved by the order of Ld. CIT (Appeals), the revenue has preferred this appeal before the Tribunal on the following effective grounds:-

1. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition u/s 14A of the Income Tax Act, 1961 relying on the decision of the Hon'ble Bombay High Court in the case of CIT Vs Continental Warehousing Corporation (Nhava Sheva) Ltd., by ignoring the fact that the*

*Department has not accepted the decision of the Hon'ble High Court and SLP is already filed before the Hon'ble Supreme Court.*

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition u/s 14A of the Income Tax Act, 1961 ignoring the fact that the provisions of Section 14A apply even if no exempt income is actually earned or received during the year in any form whatsoever."*

5. Before us, the Ld. Departmental Representative (DR) relying on the assessment order passed by the AO submitted that the LD. CIT (A) has wrongly deleted the addition made by A.O. u/s 14A of the Act relying on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation ignoring the facts that the department has filed SLP against the said decision in the Hon'ble Supreme Court.

6. On the other hand, the Ld. Counsel for the assessee relying on the findings of the Ld. CIT (A) submitted that since the decision of the Ld. CIT (A) is based on the law laid down by the Hon'ble jurisdictional High Court, there is no merit in the appeal of the revenue. Therefore, the same is liable to be dismissed.

7. We have heard the rival submissions and also gone through the material placed on record including the cases relied upon by the authorities below. The Ld. CIT (A) has decided the issue involved in the case holding as under:

*"7.4.2 From the facts available on record, it is observed that the Ld. AO has not brought out the fact that the impugned disallowance u/s 14A of the Act has been made on the basis of "books of account or other documents not produced in the course of original assessment but found in the course of search/incriminating material found during the course of search." Further the assessment of the relevant assessment year was already completed on 14.05.2010, i.e. before the*

*date of initiation of search on 20. 03.2012 and hence no abated. In view of facts & law discussed above and respectfully following the decision of Hon'ble Bombay High Court in the case of CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. (supra) and Hon'ble ITAT, Mumbai in the case of Parag M Sanghvi vs. ACIT (supra), it is held that the Ld. AO was not justified in disallowing the impugned sum of Rs. 46,18,211/- u/s 14A of the Act and the same is liable to be deleted without going into the merits of disallowance. Hence, the Ld. AO is directed to delete the said disallowance of Rs. 46,18,211/-. Accordingly, the Ground No. 1 with sub grounds is allowed."*

8. The revenue has challenged the findings of the Ld. CIT(A) on the ground that the department has filed SLP against the decision of Hon'ble Mumbai High Court, relied upon by the Ld. CIT(A). During the course of arguments, neither the Ld. DR contended that the Hon'ble Supreme Court has stayed the operation of the decision relied upon by the Ld. CIT(A) nor any document suggesting the said fact was produced before us. Under these circumstances, the Ld. CIT(A) has rightly followed the decision of the Hon'ble jurisdictional High Court. Hence, we do not find any reason to interfere with the findings of the Ld. CIT (A). We therefore, uphold the findings of the Ld. CIT (A) and dismiss both the grounds of appeal of the revenue.

In the result, appeal filed by the revenue for assessment year 2008-2009 is dismissed.

Order pronounced in the open court on 19<sup>th</sup> January, 2018.

Sd/-

(G.S. PANNU)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 19/01/2018

Alindra, PS

Sd/-

(RAM LAL NEGI)  
JUDICIAL MEMBER

**आदेश 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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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