

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

**BEFORE SHRI R.C. SHARMA (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 7588/MUM/2016  
Assessment Year: 2012-13**

M/s J.K. Helene Curtis Limited, Pokhran Road No. 1, Jekegram, Thane - 400606  PAN: AAACJ2511L <b>(Appellant)</b>	<b>Vs.</b>	The Assistant Commissioner of Income Tax, Circle - 2(2)(1), Mumbai  <b>(Respondent)</b>
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Assessee by : Shri Y.P. Trivedi & Ms. Usha Dalal (AR)  
Revenue by : Shri M.C. Omi Ningshen (DR)

Date of Hearing: 08/11/2017  
Date of Pronouncement: 05/02/2018

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against order dated 07/10/2016 passed by the Ld. Commissioner of Income Tax (Appeals)-5, Mumbai, for the assessment year 2012-13, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. The brief facts of the case are that the assessee company dealing in cosmetics and toiletries, filed its return of income declaring the total income of Rs. 27,12,70,810/-. The return was processed u/s 143 (1) of the Act. Since, the case was selected for scrutiny notice u/s 143 (2) and 142(1) were issued and in response thereof the authorized representative of the assessee appeared before the AO and filed the details called for from time to time. Since, the assessee had earned dividend income of Rs. 65,87,307/- from investments in shares and Mutual Funds, the assessee made *suo moto* disallowance of Rs. 87,977/-

u/s 14A in its computation of income. The AO issued show cause as to why the correct disallowance u/s 14A read with rule 8D should not be made. The assessee contended that it did not apply rule 8D since it had not paid any interest on loans as the entire amount invested was made from its own surplus funds. The AO rejected the contention of the assessee and worked out the disallowance u/s 14A read with rule 8D and determined the total disallowance at Rs. 13,04,994/- and after giving benefit of amount already disallowed the AO added an amount of Rs. 12,17,017/- to the income of the assessee and determined the total income of the assessee at Rs. 8,17,46,349/-.

3. Aggrieved by the assessment order passed by the AO, the assessee challenged the assessment order before the Ld. CIT (A). The assessee contended before the first appellate authority that it had made *suo moto* disallowance u/s 14A, therefore, the AO has wrongly made addition in question. After hearing the assessee the Ld. CIT (A) dismissed the appeal of the assessee and upheld the findings of the AO. The assessee is in appeal against the impugned order passed by the Ld. CIT (A).

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

1. *"The learned Commissioner of Income Tax (Appeals) erred in confirming Assessing Officer's action who disallowed a sum of Rs. 12,17,017/- u/s 14A of the Income tax Act, 1961.*
2. *The learned Commissioner of Income Tax (Appeals) erred in upholding the learned Assessing Officer's view that for making investment, the Appellant was required professional skills along with a lot of man hours and hence A.O. was justified in computing disallowance of 0.5% of average investment as envisaged in Rule 8D (2)(iii) of the Income Tax Rules, 1962.*
3. *The learned Commissioner of Income Tax (Appeals) ought to have appreciated that the appellant itself calculated disallowance of*

*Rs. 87,977/- u/s 14A of the Income Tax Act, 1961 in its return of income which was based on the working hours spent by two persons who were involved for such investment. Appellant further submits that looking to the nature of expenses claimed by the appellant which are incurred for our regular business purposes, the disallowance ought to have been restricted to Rs. 87,977/- as disallowed by the appellant.*

- 4. The learned Commissioner of Income Tax (Appeals) failed to appreciate that the quantum amount of investment cannot be considered as the main criteria for the purpose of disallowance u/s 14A of the Income Tax Act, 1961.*
- 5. The learned Commissioner of Income Tax (Appeals) also erred in upholding the learned A.O.'s action that for making investment in mutual funds would definitely require professional skills and lot of man hours.*
- 6. The Assessing Officer as well as Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had already involved two persons for such investment in mutual funds who had professional skills and hence it disallowed a sum of Rs. 87,977/- u/s 14A on its own which was quite reasonable and sufficient.*
- 7. Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) failed to appreciate that even in similar circumstances in the immediate proceeding year i.e. 2011-12, not a single rupee was disallowed u/s 14A of the Income Tax Act, 1961 (over and above suo moto disallowance of Rs. 87,977/- by the Assessee) by the Assessing Officer or Commissioner of Income Tax (Appeals) and as per the rules of precedents, the same was binding on them when the facts were identical.*
- 8. The learned Commissioner of Income Tax (Appeals) failed to appreciate that number of mutual funds was only four and did not require a large staff to handle it and in fact the appellant on its own had already suo moto disallowed a sum of Rs. 87,977/- which could have been accepted in toto.”*

5. Before us, the Ld. counsel for the assessee submitted that the identical issue raised by the assessee before the ITAT in appeal against the appellate

order passed by the Ld. CIT(A) in assessee's own case for the assessment year 2011-12. The ITAT after hearing the contention of the assessee restored the issue to the file of AO to verify whether own funds of the assessee were more than the investment made in group companies and to determine the disallowance accordingly.

6. On the other hand, the Ld. Departmental Representative (DR) submitted that since the AO has calculated the disallowance u/s 14A read with rule 8D of the Income Tax Rules, the Ld. CIT (A) has rightly upheld the findings of the AO.

7. We have heard the rival submissions and perused the material on record in the light of the submissions of the parties. The only ground raised by the assessee is that the Ld. CIT(A) has wrongly confirmed the addition made by the AO under section 14A read with Rule 8D of the Income tax Rules. We notice that the assessee had raised the identical issue before the coordinate Bench in its own appeal ITA no. 5534/Mum/2015 and the coordinate Bench restored the issue to the file of AO holding as under:-

*“4. At the time of hearing, the ld. AR submitted that before us that when the assessee's own funds is sufficient to cover the investments made in the group companies and therefore the disallowance was wrongly calculated by the AO and also wrongly restricted and sustained by the ld. CIT (A). The ld. AR further submitted that assessee's own funds were far more than the investments made in the group companies and also the investments is of strategic nature and therefore the disallowance made by the AO and the partly allowed by the ld. CIT (A) deserved to be deleted.*

*5. After hearing both the parties and on perusal of record, we find that the assessee has made investments in group companies out of its own funds and no borrowed funds were used for the said investments and the investments were of strategic nature and not made with motive of earning dividend and therefore provisions of section 14A r.w.r. 8D cannot be invoked. But this requires verification and therefore it would be just and*

*proper if the matter is restored to the file of AO. We therefore, direct the AO to verify whether own funds of the assessee are more than investments in group companies and delete the addition accordingly.”*

8. In the assessee's own case for the assessment year 2011-12, the coordinate Bench has restored the identical issue to the file of AO for further verification and determining the disallowance to be made u/s 14A read with rule 8D of the Income Tax Rules in accordance with the law. The contention of the assessee in this year is also identical. Hence, respectfully following the decision of the coordinate Bench rendered in assessee's own case for the assessment year 2011-12, we restore the issue to the file of AO to verify as to whether the assessee had sufficient own funds to make investments in question and pass the order in accordance with the observations made by the coordinate Bench in assessee's own case referred above. We therefore, partly allow the appeal of the assessee.

In the result, appeal filed by the assessee for assessment year 2012-2013 is allowed for the statistical purposes.

Order pronounced in the open court on 5<sup>th</sup> Feb., 2018.

*Sd/-*

(R.C. SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 05/02/2018

*Sd/-*

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

**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**