

## IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'C' KOLKATA

[Before Hon'ble Shri J.Sudhakar Reddy, AM &amp; Shri A.T.Varkey, JM ]

**ITA No.280/Kol/2017**  
Assessment Year : **2012-13**

T.K.M. Global Logistics Ltd.  
Kolkata  
(PAN: AABCT 2426 M)  
(Appellant)

-versus-

A.C.I.T., Circle-15(1)  
Kolkata  
(Respondent)

For the Appellant: Shri R.N.Dutt, Advocate  
For the Respondent: Shri G.Mallikarjuna, CIT. DR

Date of Hearing : 10.04.2018.

Date of Pronouncement : 18.04.2018.

**ORDER**

**PER J.SUDHAKAR REDDY, AM:**

This is an appeal by the Assessee directed against the order of the Final assessment order passed u/s 144C(5) r.w.s. 143(3) of the Income Tax Act, 1961 (The Act) relating to A.Y. 2012-13.

2. The assessee has raised the following grounds of appeal :-

*"1. That the learned Assessing Officer in course of modifying the assessment for giving effect to the direction of the Dispute Resolution Panel issued U/S 144C (5) of Income Tax Act, 1961 erred in disallowing a sum of Rs. 14,48,940 U/S 14A of Income Tax Act, 1961 read with Income Tax rules 8D (2)(ii) & (iii) of 1962.*

*2. That the learned Assessing Officer erred in considering the Investment in foreign subsidiary qualifying for disallowance under Rule 8D (2) (iii) of the Income Tax Rules, 1962.*

*3. That the learned Assessing Officer erred in applying circular No. 512014 dated 11.02.2014 of CBDT in the appellant's case since the concerned investments were made in foreign subsidiaries and any income there from generated to and/or received by the appellant, if any, is taxable in India."*

3. The assessee filed the following additional grounds :

*“1. On the facts of the case and in law, the order of the Transfer Pricing Officer (hereinafter referred to as "TPO") passed u/s 92 CA(3) of the Income-tax Act, 1961, (hereinafter referred to as the 'Act'), subsequently confirmed in part by the Dispute Resolution Panel (hereinafter referred to as "Panel") and consequently incorporated by the Income Tax Officer (hereinafter referred to as "AO") in the assessment order U/S 143(3) r/w S. 144C(13)/154 of the Act, is erroneous on facts and bad in law.*

*2. On the facts of the case and in law, the Panel erred in confirming the adjustment of Rs. 3,87,07,126/- to the international transactions of the Appellant with its Associated Enterprises" (hereinafter referred to as 'AEs').*

*3. On the facts and circumstances of the case, the Learned ("Ld.") TPOIAO and subsequently the Ld. Panel have erred in selection of companies which are functionally not comparable to the assessee.*

*4. That on the facts and circumstances of the case, the Ld. AO have erred in initiating penalty proceedings U/S 271(1)(c) of the Act.*

*5. The Appellant craves leave to add to and/or amend, alter, modify or rescind the grounds hereinabove before or at the time of hearing of the appeal.”*

4. The Id. Counsel for the assessee Shri R.N.Dutt, Advocate pleaded for admission of additional grounds. The Id. DR opposed the same on the ground that they arise out of an order passed u/s 154 of the Act.

5. After hearing the rival submissions, we find that the additional grounds arise out of a rectification order passed by the AO u/s 154 of the Income Tax Act, 1961 (Act). Though the assessee pleads that there is a merger, we are of the considered opinion that the proceedings made by the AO u/s 154/92CA(5) r.w.s. 92CA(3)/144C/143(3) of the Act dated 14.07.2017 is a separate proceedings and has to be separately challenged, as the assessee wishes to challenge as to whether the rectification in question carried out by the AO to the final assessment order are mistakes apparent on record or not. Such a challenge to the Sec.154 proceedings can be done only by filing separate appeal against the Sec.154 order.

6. Hence we do not admit these additional grounds of appeal. The assessee is free to file an appeal against the order passed by the AO u/s 154 of the Act. The delay in

filing shall be considered sympathetically as and when the appeal is filed before the Appellate Authority.

7. Now coming to the regular grounds of appeal, we find that the only issue is with respect to the disallowance made u/s 14A r.w.r. 8D of the Act. The dividend income derived by the assessee is Rs.5,64,333/- . The Hon'ble Delhi High Court in the case of Joint Investment Pvt. Ltd. Vs CIT in ITA No.117 of 2015 dated 25.02.2015 held that the disallowance u/s 14A cannot exceed the amount of exempt income earned by the assessee.

8. The Id. Counsel for the assessee submitted that the assessee has interest free fund in excess of the total investments in shares made, which had earned dividend income and that Rule 8D(2)(ii) of the IT Rules will not apply in view of the judgment of the Hon'ble Bombay High Court in the case of HDFC Bank Ltd., 366 ITR 505 (Bom). We restrict the disallowance to the exempt income earned by the assessee i.e. Rs.5,64,333/- by applying the judgment in the case of Joint Investment Pvt. Ltd. (supra). We do not propose to go into those arguments, as it would involve a factual exercise which was not taken by the lower authorities. . Suffice to say that this would not be taken as a precedent for the future years. The AO is directed to restrict the disallowance to Rs.5,64,333/- only. In the result the assessee gets part relief.

8. In the result the appeal of the assessee is allowed in part.

**Order pronounced in the Court on 18.04.2018.**

Sd/-  
[A.T.Varkey]  
Judicial Member

Sd/-  
[ J.Sudhakar Reddy ]  
Accountant Member

Dated : 18.04.2018.

[RG Sr.PS]

Copy of the order forwarded to:

1. TKM Global Logistics Limited, Diamond Heritage, Room NO.710 & 711, 7<sup>th</sup> Floor, 16, Strand Road, Kolkata-700001.
2. A.C.I.T., Circle-15 (1), Kolkata.
3. Pr.CIT-5, Kolkata      4. C.I.T.(TPO), Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary  
Head of Office/D.D.O, ITAT Kolkata Benches