

आयकर अपीलीय अधिकरण “G” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM

आयकर अपील सं./ ITA No. 6969/Mum/2016

(निर्धारण वर्ष / Assessment Year 2006-07)

Zee Entertainment Enterprises Limited 18 th Floor, A Wing Marathon Futurex N M Joshi Marg Lower Parel Mumbai-400 013	Vs.	The Asst. Commissioner of Income Tax-Range 16(1), 4 th floor, Room No. 467, Aayakar Bhavan, Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No. AAACZ0243R		

Assessee by : Shri Jay Bhansali, AR

Revenue by : Shri V Vidhyadhar, DR

Date of hearing: 17-05-2018 Date of pronouncement : 31-05-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-4, Mumbai [in short CIT(A)], in appeal No. CIT(A)-4/IT-56/The Asst. Commissioner of Income Tax.11(1)/2014-15 dated 17.08.2016. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle-16(1), Mumbai (in short 'ACIT') for the A.Y. 2006-07 vide order dated 11.02.2015 under section 143(3) read with section 254 of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing the expenses relating to exempt income under section 14A of the Act at the rate of 1% of personal cost and administrative expenses and other expenses. For this assessee has raised the following ground: -

"1. (i) The Id. CIT(A) erred in law and facts in confirming disallowance of Rs. 1,02,19,490/- out of expenses under section 14A of the act @ 1% of personnel cost and administrative and other expenses on assumption. The reasons given by him for doing so are wrong, contrary to the facts of the case and against the provisions of law.

(ii) The Id. CIT(A) erred in law and facts in confirming mechanical disallowance of ₹ 1,02,19,490/- without proving nexus or expenditure with the investments made or incurred for purpose other than business hence the disallowance under section 14A is unwarranted. "

3. We have heard the rival contentions and gone through the facts and circumstances of the case. The facts of the case are that the assessee company has earned dividend income of ₹ 1,26,59,039/- and claimed the same as exempt under section 10(38) of the Act. In lieu of the restore order of ITAT vide dated 20.05.2013, the AO made disallowance of expenses relating to exempt income under section 14A of the Act by observing that such huge investments cannot be made without the help of financial advisories and directors and for that purpose expenditure in the nature of administrative cost is to be incurred. The AO noted the following administrative and financial expenses: -

"i) Financial Expenses (interest) ₹ 13,99,45,000



ii)	Administrative & Other expenses	₹ 57,86,45,000
iii)	Personal Cost	₹ 44,33,04,000
		₹ 1,16,18,94,000"

4. Accordingly, the AO disallowed 1% of the above expenses and thereby ₹ 1,16,18,940/- was disallowed. The CIT(A) after going through the fact of the case restored the disallowance at ₹ 1,02,19,490/- being 1% of such expenditure by observing in Para 3.5 of his appellate order as under:-

"3.5 As regards disallowance of expenses @1%, it is pertinent to mention that I Expenses cannot be subjected to such disallowance as no finance cost as clarified by Ld. A.R., is involved in such investment. However, as mentioned earlier, Administrative & Other expenses and Personnel Cost totaling to Rs. 1,02,19,49,000/- can be subjected to disallowance of expenditure. Thus, 1% of such expenditure comes to Rs.1,02,19,490/- hence, disallowance to this extent is restricted against the disallowance of Rs.1,16,18,940/-. The Assessing Officer is therefore, directed to disallow the above expenditure without further making any addition of earlier sustenance of disallowance of expenditure of Rs.67,55,896/- because finally that is merged with this disallowance of expenditure. Thus, total disallowance of expense u/s.14A of the I.T. Act, 1961 is sustained to the extent of Rs. 1,02,19,490/-."

Aggrieved, now assessee is in second appeal before Tribunal.

5. At the outset, the learned Counsel for the assessee stated that the assessee's issue is covered by Tribunal's decision in assessee's own



case in ITA No. 2474/Mum/2013 for AY 2007-08 vide order dated 06.08.2014 whereby the tribunal has restricted the disallowance at the rate of 5% of the exempt income after considering the decision of ITAT Mumbai in the case of Shri Deepak Aggarwal and others. Vs. The Asst. Commissioner of Income Tax in ITA No. 8912/Mum/2010 vide order dated 10.04.2013 by observing in Para 12.1, 13 and 14 as under: -

"12.1 It is the case of Ld. AR that according to the decision of Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. v. Dy. CIT, [2010] 328 ITR 81/194 Taxman 203 cannot be applied in respect of assessment years prior to A.Y 2008-09. It was submitted that since the impugned assessment year is 2007-08, disallowance cannot be made with reference to Rule 8D. It was submitted that Tribunal in series of cases has adopted a view that prior to application of Rule 8D disallowance of some percentage of dividend earned will be sufficient to comply with the provisions of section 14A and it was the argument of Ld. AR that the disallowance on account of section 14A should be restricted to 2% of the exempted income. Ld. AR referred to the decision of ITAT Mumbai dated 10/04/2013 in the case of Shri Deepak Agarwal v. ACIT i.e. ITA No.8912/M/2010 (copy placed on record), wherein this issue was decided as under:

"33. The only issue emanating from the above ground no. III and IV is the disallowance of Rs. 64,330/- for the AY 2006-07 and Rs. 4,609/- for the AY 2007-08 u/s 14A made by the AO. During the first appellate proceedings, CIT (A) directed the



AO to re-compute the disallowance made by the AO. At the outset, Shri Devendar Mehta, Ld Counsel for the assessee brought our attention to the judgment of the Hon'ble Bombay High Court in the case of CIT vs. M/s. Godrej Agrovvet Ltd vide Income Tax Appeal No. 934 of 2011, dated 8.1.2013 and mentioned that in view of the above mentioned judgment, the ITAT has taken the view that the disallowance u/s 14A should be restricted to 2% of the dividend income. Ld Counsel also relied on various decisions of the ITAT, Kolkata Benches in support of his contention.

34. On the other hand, Ld DR relied on the orders of the Revenue Authorities.

35. We heard both the parties and perused the orders of the Revenue. It is a fact that the relevant assessment years i.e., 2006-07 and 2007-08 under consideration are outside the scope of provisions of Rule 8D. The said provisions cannot be treated as applicable to the A.Y.2006-07 & 2007-08 under consideration when the same is precluded by the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. v. DCIT, reported in [2010] 328 ITR 81(Bom). The Hon'ble Bombay High Court also in the case of CIT v. M/s. Godrej Agrovvet Ltd vide Income Tax Appeal No. 934 of 2011, dated 8.1.2013, has held that percentage of the exempt income can constitute a reasonable



estimate for making disallowance in the years earlier to the assessment year 2008-09. The relevant portion of the said judgment of the Bombay High Court (supra) reads as under:

4. So far as question (b) is concerned, the Tribunal in its impugned order dated 179.2010 while applying the decision of this court in the matter of Godrej (supra) has disallowed the expenditure only to the extent of 2% of the total exempt income earned by the respondent-assessee on the basis its order dated 272.2009 for the assessment year 2002-2003 and order dated 10.9.2009 for the Assessment Years 2003-2004 and 2004-2005 wherein disallowance was restricted to 2% of the exempt income. Further; the Tribunal has remanded the matter to the AC t verify the disallowance claimed and restrict the disallowance only to the extent to 2% of the total exempt income. We find no fault with the order of the Tribunal.

36. Considering the binding nature of the judgment and the overall factual matrix of the present case, we restrict the disallowance to 5% of the total exempt income. Accordingly, ground nos.III and IV raised by the Revenue are partly allowed."



13. *On the other hand, Ld. DR relied upon the order passed by Ld. CIT(A). He pleaded that disallowance sustained by Ld. CIT(A) should be upheld.*

14. *We have heard both the parties and their contentions have carefully been considered. After careful consideration, adopting the view taken by the Tribunal in the case of Deepak Agarwal (supra), in which one of us (Accountant Member) is a party we restrict the disallowance to 5% of the exempted income. The disallowance will accordingly be worked out by the AO. Ground relating to section 14A raised by the assessee is partly allowed in the manner aforesaid."*

6. The learned Counsel only requested for a reasonable estimate for disallowance of exempt income. On the other hand, the learned Sr. Departmental Representative, requested for sustaining the addition.

7. From the above facts and following the decision of this Tribunal in assessee's own case, we direct the AO to restrict the disallowance at the rate of 5% of the exempt income. This issue of assessee's appeal is partly allowed.

8. The next issue in this appeal of Assessee is against the order of CIT(A) confirming the action of the AO in disallowing the expenses relatable to exempt income under section 14A of the Act while computing the book profit under section 115JB of the Act. For this assessee has raised the following ground: -

"(iii) The Id. CIT(A)/AO erred in law and facts in adding estimated amount of disallowance u/s 14A to book profit u/s 115JB of the Act. The reasons given



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by him for doing so are wrong, contrary to the facts of the case and against the provisions of law."

9. At the outset, the learned Counsel for the assessee stated that this issue is covered in favour of assessee and against Revenue by the decision of Special Bench of this Tribunal in the case of ACIT vs. Vireet Investments (P.) Ltd. [2017] 58 ITR (AT) 313 (Delhi - Trib.) (SB) wherein the Tribunal has clearly held that no disallowance under section 14A of the Act r.w.r 8D of the Rules can be made while computing book profit under section 115JB of the Act. The learned Sr. DR could not controvert the above proposition. Accordingly, we are of the view that this issue is covered by the special bench decision of this Tribunal in the case of Vireet Investments (P.) Ltd. (*supra*), respectfully following the same, we delete the disallowance and allow this issue of assessee's appeal.

10. In the result, the appeal assessee is partly allowed.

Order pronounced in the open court on 31-05-2018.

आदेश की घोषणा खुले में दिनांक 31.05.2018 को की गई ।

Sd/-
(G MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 31-05-2018

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI