

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCHES : “ F ” NEW DELHI]**

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I. T. Appeal Nos. 3844 & 6138 (Del) of 2014
Assessment Years : 2010-11 & 2011-12.**

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| Deputy Commissioner of Income Tax, Circle : 16 (1), New Delhi. | Vs. | M/s. T.G. Leisure & Resorts Pvt. Ltd., Khasra No. 646-653, Main Chattarpur Mandir Road, Chhatarpur, New Delhi - 30. |
| | | PAN : AABCT 2479 E |

A N D

**I. T. Appeal Nos. 3863 & 5777 (Del) of 2014
Assessment Years : 2010-11 & 2011-12.**

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| M/s. T.G. Leisure & Resorts Pvt. Ltd., Khasra No. 646-653, Main Chattarpur Mandir Road, Chhatarpur, New Delhi - 30. | Vs. | Addl. Commissioner of Income Tax, Range : 16, New Delhi. |
| PAN : AABCT 2479 E | | |
| (Appellants) | | (Respondents) |

Assessee by : Shri Deependra Mohan, Adv.;

Department by : Shri Atiq Ahmad, Sr. D. R.;

Date of Hearing : 04.04.2018;

Date of Pronouncement : 25.06.2018.

ORDER.

PER BENCH :

I.T.A. Nos. 3844 & 3863 (Del) of 2014 – [Assessment year 2010-11] :

These appeals filed by the assessee and the Revenue are arising out of the order of the learned Commissioner of Income Tax (Appeals)-19, New Delhi, dated 18.03.2014. The assessee has raised effectively 4 grounds of appeal in ITA. No. 3863 (Del) of 2014 as under :-

“ 1) That the authorities below have erred in law and on facts in disallowing a sum of Rs. 23,28,196/- out of interest paid which was incurred wholly and exclusively for the purpose of business as was necessary for the commercial expediency.

2) That the learned Commissioner of Income Tax Appeals has erred in law and on facts in sustaining the order of the learned A.O. in invoking sec. 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 against the appellant without disposing of the objections raised by the appellant.

3) That the learned Commissioner of Income Tax Appeals has erred in law and on facts in sustaining the disallowance of expenditure amounting to Rs. 17,67,210/- under section 14A Income-tax Act, 1961 alleged to have been incurred for earning tax free dividend income.

4) That the authorities below have erred in law and on facts in arbitrary disallowing ad- hoc sum of Rs. 1,09,727/- and Rs. 4,14,430/- out of entertainment and travelling expenses merely on premises, surmises and conjectures without appreciating that the said expenses were incurred wholly and exclusively for the purpose of business. ”

2. The Revenue has raised the only ground of appeal in I.T.A. No. 3844 (Del) of 2014 wherein the learned CIT (Appeals) has allowed the relief of Rs.95,12,830/- out of the total disallowances of Rs.1,12,80,040/- disallowed under section 14A of the Income Tax Act by the learned Assessing Officer.

3. The brief facts of the case is that assessee is a company engaged in the business of resort and hospitality services. It filed its return of income on 13.10.2010 at Rs.1,19,09,100/-. The assessment under section 143(3) was made on 22.03.2013 wherein certain disallowances were made by the learned Assessing Officer. The assessee preferred appeal before the learned CIT (Appeals) who vide order dated 18.03.2014 partly allowed the appeal of the assessee and confirming most of the disallowances. The only relief granted by him is with respect to disallowance under section 14A of the Income Tax Act. Against such relief, Revenue is in appeal.

4. We first take up the appeal of the Revenue. During the year the learned Assessing Officer noted that assessee has investment of Rs.40 crores in various shares, mutual funds, bonds etc. and, therefore, the

disallowance under section 14A is required to be made. The assessee was asked about the disallowance wherein it was stated that no dividend income has been received during the year hence, this section 14A does not apply. The learned Assessing Officer rejected the contention of the assessee and applied Rule 8D of the Income Tax Act and worked out the disallowance of Rs.1,12,80,040/-.

5. On appeal before the learned CIT (Appeals) assessee submitted that it has not received any dividend income. However, the learned CIT (Appeals) held that no direct expenditure on account of interest is disallowable. He further held that no indirect expenditure of interest is also disallowable as assessee has interest free fund of Rs.35.30 crores in the year of investment. However, he retained the disallowance of 0.5% of the value of the investment yielding tax free income. He, therefore, retained the disallowance to the extent of Rs.17,67,210/-.

6. The learned Departmental Representative vehemently submitted that Rule 8-D applies in this assessment year and, therefore, disallowance has been correctly made by the learned Assessing Officer.

7. The learned authorized representative submitted that when assessee has not earned any exempt income during the year, the provisions of section 14A does not apply.

8. We have carefully considered the rival contentions as well as perused the orders of the lower authorities. In the present case it is the claim of the assessee that it has not received any exempt income during the year and, therefore, provisions of section 14A does not apply. Despite the above facts, the learned Assessing Officer applied Rule 8-D of the Income Tax Act and made the disallowance accordingly. The learned CIT (Appeals) also disallowed part of the sum. However, the Hon'ble Delhi High Court in Cheminvest Ltd. Vs. CIT 378 ITR 33 (Del.) has held that in absence of any exempt income no disallowance under section 14A can be made.

9. The learned Departmental Representative could not controvert the submission of the assessee that it has not received any exempt income. In view of this, respectfully following the decision of Hon'ble Delhi High Court, we direct the learned Assessing Officer to delete the disallowance of Rs.1,12,80,040/- made under section 14A of the Income Tax Act. Accordingly ground No. 1 of the appeal of the

Revenue is dismissed and ground Nos. 2 and 3 of the appeal of the assessee are allowed.

10. Now we come to ground No. 1 of the appeal of the assessee where disallowance of Rs.23,28,196/- out of interest expenditure has been upheld by the learned CIT (Appeals).

11. The brief facts of the issue shows that assessee has borrowed Rs.5.20 crores from Kotak Mahindra Bank Ltd. and the above amount has been utilized for purchase of shares of two companies of M/s. Pashupati Nath Resorts P. Ltd. and M/s. Bashisht Farms Pvt. Ltd. The purpose of the prima term loan shown to be for re-payment of the loans whereas assessee purchased shares from the borrowings. Further the auditors in tax audit report reported that loan of Rs.5.20 crores raised from a bank during the year for the purpose of re-payment of loans have not been used for the purpose for which it was obtained. Therefore, the learned Assessing Officer held that assessee has paid interest of Rs.23,28,196/- on the above loan and such interest is not allowable as deduction from its income.

12. Assessee preferred appeal before the learned CIT (Appeals) un-successfully.

13. The learned authorized representative submitted the facts and claimed that the amount is utilized for purchase of the shares of the subsidiary companies which are also in the same line of business of running resort and banquet facilities. It is for the assessee's business and commercial expediency in taking up the shares of the two wholly subsidiaries hence, interest cannot be disallowed. Her further relied upon the decision of Co-ordinate Bench as well as Hon'ble Bombay High Court.

14. The learned Departmental Representative relied upon the order of the learned lower authorities.

15. We have carefully considered the rival contentions and perused the orders of the lower authorities. According to the provisions of section 36(1)(iii) any amount of interest paid in respect of capital borrowed for the purposes of the business or profession is allowable as deduction. Therefore, for allowability of such interest, the assessee must show that this interest is paid for the purpose of the business

of the assessee. The end use of the facilities as per the sanctioned letter of the Kotak Mahindra Bank mentions that borrower has to undertake that the facility is granted by the bank is not used for any other purposes than specified. The Schedule I provided that loan of Rs.5.20 crores was obtained for pre-payment of loan of Religare Enterprises. Therefore, it is apparent that assessee has though borrowed the money for re-payment of loan, but has utilized for the purpose of investment. Now It is to be seen that when subsidiaries are also in the same line of business whether assessee has used money for the purposes of its business or not. The assessee has relied upon the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Phil Creation 244 CTR page 226 (Bom). However, in the present case the assessee has shown that assessee has made investment in the companies which are 100% subsidiary of the assessee company and therein the same line of business. It was also not shown before us that investment is made only for the purpose of earning dividend. In view of the decision of the Hon'ble Bombay High Court in CIT Vs. Phil Creation (supra). According to us, the issue is squarely covered in favour of the assessee, hence ground No. 1 of the appeal of the assessee is allowed.

16. Ground No. 3 of the appeal of the assessee against disallowance of entertainment expenditure sustained @ 10% out of the total expenditure at 50% of Directors travelling expenses.

17. We have noted that this issue is squarely covered in favour of the assessee by the decision of the Co-ordinate Bench in assessee's own case for assessment year 2007-08 in I.T. Appeal No. 2833 (Del) of 2010 wherein it has been held that when there is no specific expenses as pointed out by the Assessing Officer for non-business purposes, no disallowance can be made. Therefore, respectfully following the decision of the Co-ordinate Bench, we allow ground No. 3 of the appeal of the assessee.

18. Ground No. 4 is against initiation of penalty proceedings under section 271(1)(c) of the Act which is pre-mature and hence dismissed.

19. Ground No. 5 of the appeal is against disallowance of interest expenditure on VAT and Service Tax.

20. We do not find any such addition made by the learned Assessing Officer hence, this ground of appeal is dismissed. Even otherwise, the learned CIT (Appeals) has directed the Assessing Officer to examine the claim of the appellant.

21. In the result, appeal of the Revenue is dismissed and the appeal of the assessee is partly allowed.

I.T.A. Nos. 6138 & 5777 (Del) of 2014 – [Assessment year 2011-12] :

22. We now come to the appeal of the assessee and the Revenue for assessment year 2011-12. Both the parties are in appeal before us, on the issue of disallowance under section 14A of the Act.

23. Though assessee has not earned any exempt income, the disallowance of Rs.19,79,546/- was upheld by the learned CIT (Appeals) and deleted the addition of Rs.1,35,92,107/- under section 14A of the Act. Therefore, both the parties are in appeal.

24. As the assessee has not earned any exempt income during the year, the appeal of the Revenue is dismissed and appeal of the

assessee is allowed, for the reasons given by us while deciding the appeal of the assessee and the Revenue for assessment year 2010-11 in assessee's own case.

25. In the result, all the four appeals are disposed off.

The order is pronounced in the Open Court on : **25th June, 2018.**

**Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER**

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated : the **25.06.2018.**

MEHTA

Copy of the Order forwarded to :-

1. Appellants;
2. Respondents;
3. CIT;
4. CIT (Appeals);
5. DR, ITAT, ND.

//True Copy//

BY ORDER

ASSISTANT REGISTRAR

| | Date |
|---|-------------------|
| Date of dictation | 13.06.2018 |
| Date on which the typed draft is placed before the dictating Member. | 25.06.2018 |
| Date on which the typed draft is placed before the Other Member. | 25.06.2018 |
| Date on which the approved draft comes to the Sr. P.S. /P.S. | 25.06.2018 |
| Date on which the fair order is placed before the Dictating Member for pronouncement. | 25.06.2018 |
| Date on which the fair order comes back to the Sr. P.S. / P.S. | 25.06.2018 |
| Date on which the final order is uploaded on the website of ITAT. | 25.06.2018 |
| Date on which the file goes to the Bench Clerk. | 25.06.2018 |
| Date on which the file goes to the Head Clerk. | |
| The date on which the file goes to the A.R. for signature on the order. | |
| Date of dispatch of the Order. | |

