

आयकर अपीलीय अधिकरण, मुंबई “बी” खंडपीठ में
Income-tax Appellate Tribunal -“B”Bench Mumbai
 सर्वश्री राजेन्द्र,लेखा सदस्य एवं अमरजीत सिंह, न्यायिक सदस्य
Before S/Sh.Rajendra,Accountant Member and Amarjit Singh,Judicial Member
 आयकर अपील सं./I.T.A./64/Mum/2011, **निर्धारण वर्ष /Assessment Year: 2007-08**
 आयकर अपील सं./I.T.A./7045/Mum/2011,**निर्धारण वर्ष /Assessment Year: 2008-09**
 आयकर अपील सं./I.T.A./5609/Mum/2013,**निर्धारण वर्ष /Assessment Year: 2010-11**

M/s.Motilal Oswal Financial Services Ltd. 2 nd Floor, Palm Spring Centre New Link Road, Malad (W) Mumbai-400 064. PAN:AAECM 2876 P	Vs.	Addl. CIT-Range-3(2) Aayakar Bhavan, M.K. Road Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

राजस्व की ओर से / **Revenue by:** Shri Suman Kumar -DR

अपीलार्थी की ओर से /**Assessee by:** Shri Vijay Mehta

सुनवाई की तारीख / **Date of Hearing:** 28/03/2018

घोषणा की तारीख / **Date of Pronouncement:** 27/06/2018

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश
Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य, राजेन्द्र के अनुसार -PER RAJENDRA, AM-

Challenging the orders of the CIT (A)-7,Mumbai, the assessee has filed appeals for the above-mentioned assessment years(AY.s).Assessee-company is engaged in the business of investment and financial activities.The details of dates of filing of returns,returned incomes, assessment dates,assessed incomes etc. can be summarised as under:

A.Y.	ROI filed on	Returned Income	Assessment dt.	Assessed Income	CIT(A) order dt.
2007-08	29/10/2007	Rs.8,22,02,780/-	30/11/2009	Rs.8,89,50,250/-	02/11/2010
2008-09	29/09/2008	Rs.21,43,00,338/-	15/12/2010	Rs.21,85,33,142/-	08/07/2011
2010-11	28/09/2010	Rs.40,37,58,494/-	Nil	Rs.42,28,16,254/-	19/07/2013

ITA/64/Mum/2011,AY.2007-08:

2.First ground of appeal is about confirming disallowance of legal fees of Rs. 55.10 lakhs paid to M/s. Avendus Advisers Private Ltd. (AAPL).During the assessment proceedings, the AO found that the assessee had paid Rs. 55,10,000/-for raising private equity.He directed it to file explanation in that regard.After considering the submission of the assessee,dated 26/11/2009,the

AO held that the payment was made for raising equity of the company which was a capital asset. Holding the expenditure as capital expenditure,he added the disputed amount to the total income of the assessee.

2.1.Aggrieved by the order of the AO,the assessee preferred an appeal before the First Appellate Authority(FAA)and made submissions. It was argued that the case of Broke Bond India Ltd. was not applicable, that the assessee was a finance company, that the expansion of capital was undertaken by the assessee in order to meet the need for more working funds, that the disputed amount was a business expenditure. After considering the available material,he held that the issue stands decided by the judgement of the honorable Supreme Court delivered in the case of Broke Bond India Ltd.(225ITR798), that minor variation of facts would not affect the binding nature of the decision. He finally confirmed the order of the AO.

2.2.Before us,the Authorised Representative(AR)stated that the FAA had not considered the submission made by the assessee on 26.09.2016,that facts of Brook Bond India were not applicable to the case under consideratin.The Departmental Representative (DR) supported the order of the FAA.

2.3.We have heard the rival submissions and perused the material before us.We find that the FAA has not considered the facts submitted by the assessee vide its letter dated, 26. 10. 2010 (Pg.18-23 of the PB.).The assessee had made specific submission about its workprofile and justification for incurring of the expenditure for business purposes.But,the FAA had not at all dealt with its arguments.He has simply stated that matters decided by the Hon'ble Apex Court were applicable to the case under appeal-though there was minor variation in the facts.He did discuss the alleged minor variation.It was his duty to pass a speaking and reasoned order dealing with all the arguments raised by the assessee.But,he failed to do so. Therefore, in our opinion,the matter needs futher verification.In the interest of justice first ground of appeal is restored back to the file of the AO for fresh adjudication.who will decide the issue after affording a reasonable opportunity of hearing to the assessee.First ground of appeal is decided in favour of the assessee, in part.

3.Second ground of appeal deals with disallowance of Rs.12.37 lakhs made u/s.14A of the Act. During the assessment proceedings,the AO found that the assessee had claimed exempt income

of Rs.22.59 lakhs,that it did not make any disallowance while computing the taxable income.It was claimed that no expenditure was claimed by the assessee against the income.However,the AO,invoking the provisions of section 14A r.w. Rule 8D of the Rules,made a disallowance of Rs.12.37 lakhs.

3.1.Aggrieved by the order of the AO,the assessee filed an appeal before the FAA and made submission.After considering the available material,he held that Rule 8 D was no applicable for the year under appeal, that disallowance had to made on a reasonable basis, that the AO had not made any disallowance out of interest expenditure, that method adopted by the AO, i.e. average capital used was reasonable .

3.2.Before us,the AR argued that ,that in the case of Motilal Oswal Investment advisors (ITA/3010/Mum/2012,dtd.12/8/14)in the similar circumstances matter was restored back to the file of the AO, that in the case of Motilal Oswal Securities Ltd. and Ors.(ITA/7328/Mum/2011 dtd.19/2/2016), the matter was restored back to the file of the AO.The DR left the issue to the discretion of the Bench.

3.3.We have heard the rival submissions.We find that the assessee had made suo motu disallowance of Rs.1.39 lakhs u/s.14A of the Act,that proportionate salary was disallowed by it,that administrative expenses were also disallowed in the same proportion.We agree with the argument of the AR that provisions of Rule 8D r.w.s 14 A were not applicable for the year under consideration.As the AO and the FAA has not considered this aspect and in one of the group cases (supra)the Tribunal has sent back the matter to the file of the AO,so,we are of the opinion that matter should be restored back to the file of the AO for fresh adjudication.He is directed to decide the issue after affording an effective opportunity to the assessee.Second ground stands partly allowed.

ITA/7045/Mum/2011(A Y2008-09).

4.The solitary Ground of appeal is about disallowance of Rs.45.73 lakhs made u/s.14A r.w. rule 8D (2)(iii). Following our order for the earlier year we restore back the issue to the file of AO for fresh adjudication to provide an effective opportunity of hearing to the assessee. Effective ground is decided in favour of the assessee in part.

ITA/5609/Mum/2013(AY2010-11).

4.1.Ground No.1.01 is about disallowance of Rs.1.90 crores, u/s.14A of the Act r.w. Rule 8D (1)(b). Ground No.1.02 is about conferring disallowance of interest expenditure of Rs.1.34 crores as per Rule 8D (2)(ii). Ground No.1.03 is about disallowance of Rs.56.08 lakhs as per provisions of section 14A r.w.r. 8D(2)(iii).In short, the effective Ground of appeal is about disallowance confirmed by the FAA.

4.2.During the assessment proceedings the AO observed that the assessee had invested huge sum in shares and securities, that it had incurred interest expense of Rs.6.37 crores for the year under consideration, that it had admitted expenditure of Rs.6.73 lakhs only as per the provisions of section 14A r.w.r. 8D.He computed disallowance at Rs.1.97 crores and after considering the disallowance made by the assessee (6.73 lakhs) he made a disallowance of Rs.1.90 crores.

4.3.In the appellate proceedings the assessee made detailed submissions and following the order of the Tribunal in the case of Daga Capital Management (26SOT603) upheld the order of the AO.

4.4.The AR argued that while deciding the appeal of one of the group concern for the AY.2007-08,the Tribunal had approved the method of 14A disallowance,that paragraph 24 of the judgment of the Hon'ble Supreme Court delivered in the case of Maxopp Investment Ltd.was in favour of the assessee,that the AO had not recorded dissatisfaction about the disallowance. He referred to the case of Maxopp Investment Ltd.(347 ITR 272) of the Hon'ble Delhi High Court.The DR argued that investment was made from the common fund,that there was no co-relation between the interest expenditure and investment made,that the assessee had not maintained separate books of accounts.He relied upon the case of Maxopp India delivered by the Hon'ble Apex Court.

4.5.We have heard the rival submissions and perused the material before us.In our opinion the matter needs further verification and investigation by the AO.The order of the FAA is non

speaking. In the interest of justice we are restoring back the matter to the file of AO for fresh adjudication.

As a result, all the appeals filed by the assessee stand partly allowed.
फलतः निर्धारिती द्वारा दाखिल की गई अपीलें अंशतःमंजूर की जाती है.

Order pronounced in the open court on 27th June, 2018.
आदेश की घोषणा खुले न्यायालय में दिनांक 27 जून , 2018 को की गई ।

Sd/-

(अमरजीत सिंह / **Amarjit Singh**)

न्यायिक सदस्य / **JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक/Dated : 27.06.2018.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR “ B” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

Sd/-

(राजेन्द्र / **Rajendra**)

लेखा सदस्य / **ACCOUNTANT MEMBER**

आदेशानुसार/ **BY ORDER,**
उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**