

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

**BEFORE HON'BLE SH. G. S. PANNU, AM &
HON'BLE SH. SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 3832/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2009-10)

ITO 7(3)(3) R. No. 23, Ground floor, Aayakar Bhava, M. K. Road, Mumbai-400020	बनाम/ Vs.	M/s Phoenix Hospitality Co. Pvt. Ltd. Phoenix Mills Prmises, 462, SenapatiBapatmarg, Lower Parel, Mumbai-400 013
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAFCA8863K		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Ashish Kumar, DR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri Rakesh Mohan, AR
सुनवाईकीतारीख/ Date of Hearing	:	22/05/2018
घोषणाकीतारीख / Date of Pronouncement	:	08/06/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the revenueis against the order of Ld. CIT (Appeal) – 21, Mumbai dated 29.03.16for AY 2009-10on the grounds mentioned herein below:-

1) On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that the expenses made by the assessee are minimal in nature and need to be incurred for day to day activities of the appellant business without considering or examining the extraordinary expenses of Rs.60,14,200/- relating to professional fees paid on accountof business advisory fees or consulting fees in the field of interest of theappellant company.

2) On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that the provisions of section 14A r.w.r 8D are not applicable without appreciating the facts that the investments made during the year will result in earning exempt income for the assessee.

3) The appellant prays that the order of the Ld.CIT(A) on the above grounds be confirmed the order of the A.O

4) The appellant craves leave to amend or alter any ground or add a newground, which may be necessary.

2. The brief facts of the case are that assessee filed return of income on 23.09.2009 showing loss of Rs. 81,00,016/-. The AO noted that no business activity was carried out during the year. However, as per the submission of the assessee, the assessee company is a holding company of companies in which hotel projects would come up. The AO noted that the assessee had claimed administrative and other expenses of Rs. 80,83,390/-. The only income shown was Rs.15,000/- as fees for consultancy service offered under the head income from other sources. In the balance sheet it had shown investments in other companies. The AO observed that the investment in equity shares of various companies may fetch dividend income in the future, which is exempt to tax and therefore the expenses in this respect is not allowable expenses u/s 14A of the I.T. Act.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties, allowed the appeal of the assessee.

Now before us, the revenue has preferred the present appeal by raising the above grounds.

Ground No. 1

3. This ground raised by the revenue relates to challenging the order of Ld. CIT(A) in holding that the expenses made by the assessee are minimal in nature and need to be incurred for day to day activities of the assessee business without considering or examining the extraordinary expenses of Rs.60,14,200/- relating to professional fees paid on account of business advisory fees or consulting fees in the field of interest of the assessee company.

4. Ld. DR submitted that assessee company was not engaged in any business activity and even the nature of business as submitted by the assessee during the course of scrutiny proceeding was '*The assessee company is a holding company of companies in which hotel projects would come up*'. It was submitted that keeping in view the above admission on the part of the assessee, it is proved that assessee was not engaged in any business activities and thus relied upon the orders passed by AO.

5. On the other hand, Ld. AR appearing on behalf of the assessee submitted that AO while passing the order of assessment

had made actual mistake by mentioning that assessee company was not engaged in any business activity during the year under consideration. It was further submitted that during the appellate proceedings, certain documents were filed by the assessee and thus remand report was sought from the AO vide letter 17.12.13 which is contained in para no 13 to 15 of the order of Ld. CIT(A). It was further submitted that during the appellate proceedings, it was found that assessee was engaged in the business activity on the basis of remand report and thus Ld. CIT(A) has passed a detailed order in para no. 16 of its order, which is reproduced below:-

16. I have considered the submissions of the appellant and the assessment order and the remand report carefully. Investment in other companies which are in same line of business as the appellant is part of incidental objects of the appellant. Details filed show that such investments made are in companies which are in to real estate and construction of hotels and malls. Further, such investments made in earlier years and current year show that business has commenced. Furthermore, many of the expenses such as audit fees

are such as are required to maintain the existence of the company.

6. We have heard counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that Ld. CIT(A) has correctly relied upon the remand report filed by the AO and the detail rejoinder filed by the assessee which has been mentioned in para no. 13 to 15 of the order of Ld. CIT(A). We also find that assessee had given advances and had lent monies and also made investment in securities of other companies, which are in same line of business as that of assessee. Even Ld. CIT(A) after considering the details filed by the assessee had rightly concluded that balance sheet of the assessee also reflected such investments made are in companies which are into real estate and construction of hotels and malls. We also find that such investments made in earlier years and current year show that business has commenced, therefore many of the expenses such as audit fees are such as are required to maintain the existence of the company.

We have also considered that Ld. CIT(A) while reaching to the above conclusion had rightly relied upon the judgment referred by jurisdictional High Court in the case of **CIT Vrs. Rajeeva Lochan Kanoria**, wherein the Hon'ble Jurisdictional High Court has held that investing in shares to control and manage the company is to be treated as 'business activity'.

As per the facts, during the year under consideration, the assessee had substantially invested money as shares and share application money in the group entities, therefore on the basis of above judgment and object clause of the assessee company, it was rightly concluded that assessee has started its business activity.

Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld.CIT(A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, this groundraised by the revenue stands **dismissed**.

Ground No. 2

7. This ground raised by the revenue relates to challenging the order of Ld. CIT(A) in holding that the provisions of section 14A r.w.r 8D are not applicable without appreciating the facts that the investments made during the year will result in earning exempt income for the assessee.

8. Ld. DR submitted that the assessee company had invested in the equity shares of various companies, which will fetch dividend income of the assessee in the future, which is exempt to tax, therefore the expenses in this respect were not allowable expense u/s 14A of the Act and thus relied upon the orders passed by AO.

9. On the other hand, Ld. AR submitted before us that assessee has not received any dividend during the year under consideration and there was no exempt income to the assessee. It was further submitted that Ld. CIT(A) had deleted the disallowance on many ground including the above mentioned

ground. This fact is clearly mentioned in par no. 17 of the order of Ld. CIT(A), which is reproduced below:-

*17. The application of section 14A has been vehemently objected to. It is seen that similar arguments put forth before me have been accepted by the assessing officer in the appellant's own case for subsequent AY 2010-11 and AY 2011-12. The assessment order for AY 2010-11 is by the same assessing officer who has passed order in the case before me. The disallowance was computed only on investment in mutual funds in those years and not on investments in group companies as is the case before me. Consistency demands that on identical facts, the assessing officer cannot seek to have different interpretation. In the present case the investments are also as per the objects of the appellant company and strategic investment. No interest expenses are incurred. **No exempt income has been earned in the current year.** Lastly profit on sale of investment on shares has been offered in AY 2010-11 and AY 2011-12 which shows that the income from investments has given rise to taxable income.*

10. We have heard counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that Ld. CIT(A) has rightly appreciated the facts of the present case and reached to the conclusion that since no exempt income has been earned in the current year. We have also considered the judgments cited by the assessee titled '**CIT Vrs. Lakhani Marketing, ITA No. 970/M/2008 (P & H High Court)**', wherein also the Hon'ble High Court has taken a view that unless there is an exempt income in a year, no disallowance u/s 14A can be made for that year. Therefore, in such circumstances, Ld. CIT(A) has correctly held that no exempt income earned by the assessee during the year under consideration and thus, section 14A rule 8D is not required.

Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld. CIT(A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld.CIT(A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are

judicious and are well reasoned. Resultantly, this ground raised by the revenue stands **dismissed**.

Ground No. 3 & 4

11. These grounds raised by the revenue are general in nature, thus requires no specific adjudication.

12. In the net result, the appeal filed by the revenue stands **dismissed**.

Order pronounced in the open court on 8th June. 2018

Sd/-

(G. S. Pannu)

Sd/-

(Sandeep Gosain)

लेखासदस्य / Accountant Member न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 08.06.2018

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai