

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'I-1', NEW DELHI**

**BEFORE SHRI RS SYAL, VICE PRESIDENT
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 1271/Del/2015
A.Y. 2010-11**

UFO Moviez India Ltd. 1-B, 1 st Floor Sagar Apartment 6 Tilak Marg New Delhi 110 001 PAN: AABCV8900E	vs.	Dy.CIT, Circle 3(1) New Delhi
(Appellant)		(Respondent)

Assessee by	Shri Rishabh Malhotra, AR
Department by	Sh. Sanjay I Bara, CIT,DR
Date of Hearing	18/07/2018
Date of Pronouncement	19.07.2018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER.

Present appeal has been filed by assessee arises out of order dated 01.06.2018 passed in MA 281/Del/16 for limited purposes of adjudication of following grounds.

“4. That in the facts and circumstances of the case and in law, the Ld.AO/DRP erred in making a disallowance u/s 14A of the Act r.w.Rule 8 D of the Rules. That the Ld.AO/DRP grossly erred in ignoring the fact that during the year under consideration the assessee has neither earned any income which is claimed as exempt nor has incurred any expenditure in relation thereto.

5. *Without prejudice to ground no.4 & 4.1 above, the Ld.AO has erred in including bank charges and forward contract charges amounting to Rs.14,058,490 and Rs.746,410 in the amount of interest expense while computing the disallowance u/s 14A of the Act r.w. Rule 8D of the Rules.*

6. *That the Ld.AO/DRP grossly erred in disallowing prior period expenses amounting to Rs.136,185/- without appreciating that this amount was crystallised during the current FY 2009-10.”*

2. The present appeal was heard by this Tribunal vide order dated 08/01/2016. However, inadvertently above referred grounds were not disposed off, in view of which assessee preferred MA No.281/Del/16. M.A. was heard on 01.06.2018 and vide order dt. 01/06/2018, appeal for the year under consideration in ITA no, 1271/Del/2015 was recalled only to the extent of considering above referred ground nos. 4, 5 and 6.

Ground No 4& 5

3. These grounds alleged by assessee are in respect of disallowance computed by Ld.AO u/s 14A r.w. Rule 8D of ITAT Rules. From the final assessment order dt. 29.12.2014 passed u/s 143(3) r.w. 144C(4) of the Act. It is observed that assessee vide its letter dt. 16.01.2014 had submitted before Ld.AO, regarding there being no dividend income earned by assessee for the year under consideration. However, Ld.A.O., computed disallowance to the extent of Rs.4,64,523/-.

4. Ld.Counsel also placed reliance upon the Schedule 14, forming part of P&L a/c for year under consideration, wherein dividend on current investment is shown at 'nil'. He thus placing reliance upon decision of *Hon'ble Delhi High Court* in the case of *Cheminvest Ltd. vs. CIT* reported in (2015) 378 ITR 33, submitted

that there cannot be any disallowance since assessee has not earned any exempt income during the year under consideration.

5. Ld.CIT,DR placed reliance upon the order of Ld.AO.

6. We have perused the submissions advanced by both the sides in the light of the records placed before us. It is observed that there is no exempt income earned by assessee during the year under consideration, and, therefore, provisions of S.14A do not get attracted.

6.1. In view of decision of *Hon'ble Delhi High Court* in the case of *Cheminvest Ltd. vs. CIT (supra)*, we allow **Ground nos. 4 and 5** raised by assessee.

7. Ground no.6 pertains to disallowance of prior period expenses amounting to Rs.1,36,185/-.

7.1. Ld.Counsel submitted that the prior period expenses comprises of 'repairs and maintenance' amounting to Rs.1,21,150/- and freight and forwarding charges amounting to Rs.15,035/-. He submitted that the said amount has been reported in Audit Report, for which invoices were received during the current F.Y. 2009-10 relevant to A.Y. under consideration. He submitted that liability to pay the same crystallised during A.Y. under consideration and is an allowable expenditure u/s 37(1) of the Act.

7.2. He drew our attention to order of DRP, wherein direction has been issued to ld.AO to allow deduction, after verifying the claim of assessee that the expenditure was not booked in the A.Y. 2009-10 and that it actually crystallised in A.Y. under consideration.

7.3. Ld.Counsel submitted that Ld.AO while passing final assessment order observed that it is regular expenses incurred by assessee every year and such expenses crystallises every year. It was observed by Ld.AO that assessee was silent about the status in earlier years or next FY, the said amount was added back to the total income of assessee. Ld.Counsel submitted that the issue may be set aside to Ld.AO, as proper opportunity of being heard was not granted by Ld.AO.

7.4. On the contrary, Ld.CIT, DR did not object for setting aside this issue to be verified by Ld.AO in accordance with law.

8. Considering the above submissions and on perusal of records placed before us, we direct Ld.AO to verify from the records for A.Y. 2009-10 regarding expenditure being considered, and then to determine whether the said amount was crystallised in A.Y. 2009-10 or A.Y. 2010-11. He shall then consider the claim of assessee as per law.

8.1. In the result this ground is allowed for statistical purposes.

9. In the result, ground nos. 4 and 5 stand allowed and ground no.6 stands allowed for statistical purposes.

Pronounced in the open court on 19/07/2018.

Sd/-

(R.S.SYAL)
VICE PRESIDENT

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 19th July, 2018

*mv

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

		Date
1.	Draft dictated on	18.07.2018
2.	Draft placed before author	18. 07.18
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	
6.	Kept for pronouncement on & Order uploaded on :.....	19.07.18
7.	File sent to the Bench Clerk	
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk.	

10.	Date of dispatch of Order.	
-----	----------------------------	--