

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य, एवं श्री डी. करुणाकरा राव, लेखा सदस्य, के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.1643/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Kirloskar Proprietary Ltd.
13-A, Kirloskar Kisan Compound,
Karve Road, S. No.52/1, Kothrud,
Pune-411 038.
PAN :AAACK7506Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Joint Deputy Commissioner of
Income Tax, Range-11,
Pune.

.....प्रत्यर्थी / Respondent

Appellant by : Shri C.H. Naniwadekar

Respondent by : Shri M. K. Verma

सुनवाई की तारीख / Date of Hearing : 27.08.2018	घोषणा की तारीख / Date of Pronouncement : 28.08.2018
--	---

आदेश / ORDER

PER SUSHMA CHOWLA, JM

The appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-7, Pune dated 01.04.2016 relating to assessment year 2011-12 against order passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. The assessee has raised following grounds of appeal:

“1. Disallowance of Expenses u/s.14A.

The learned CIT (A) erred on facts and in law in disallowing expenses of Rs.5,05,066/- u/s.14A on the ground that the assessee has not shown any expense towards earning of exempt income. He failed to appreciate the fact that the company had invested in the Mutual Funds and any cost incurred by the Mutual Fund agency was recovered by them directly at the time of investment or redemption as the case may be by increasing or reducing the NAV, which was directly adjusted against the purchase or sale price of Mutual Fund units by the company and the same is not debited to books of account.

2. Disallowance of Brand Development activity expenses on account of non deduction of Tax at Source.

The learned CIT(A) erred on facts and in law in disallowing reimbursement of expenses of Rs.9,47,119/- paid to consultants, on account of non deduction of Tax at Source. He failed to appreciate the fact that the payments made to consultants are reimbursement of expenses hence the sections 194C or 194J are not applicable in the instant cases.

3. Disallowance on account of Repair & Maintenance Expenses

The learned CIT (A) erred on facts and in law in disallowing Repair & Maintenance of Rs.26,000/- on account of the expenditure incurred is of capital nature. He failed to appreciate the fact that the expenditure incurred is for replacement of existing UPS system.

4. Disallowance of Payment made to Saba & Co. on account of non deduction of Tax at source.

The learned CIT (A) erred on facts and in law in disallowing the payments of Rs.2,11,621/- made to Saba & Co. on account of non deduction of Tax at Source. He failed to appreciate the fact that Saba & Co. had provided legal service for initiating anti counterfeiting proceedings before the Tribunal of Commerce of Rabat and all the services are thus rendered outside India which does not attract deduction of Tax at Source as per DTAA with Morocco. The reasons assigned are wrong and untenable.

The assessee craves leave to add, alter, delete or substitute all or any of the above grounds of appeal.”

3. The issue raised in the ground of appeal No.1 is against disallowance of expenses under section 14A of the Act.

4. Briefly in the facts of the case, the assessee had declared exempt income of Rs.58,35,285/- on account of dividend income and interest from

current investment. The assessee had not debited any expenses against the said exempt income. The Assessing Officer, therefore, asked the assessee to explain the reasons for the same and as to why provisions of section 14A of the Act r.w.Rule 8D of the IT Rule, 1962 should not be invoked. The assessee claimed that no expenses were incurred to earn any such exempt income and hence, no disallowance of any expenses was to be made. The claim of the assessee in respect of indirect expenses having not being incurred to earn exempt income was rejected by the Assessing Officer and he computed disallowance as per Rule 8D(2)(iii) at 0.5% of average investment and disallowed the sum of Rs.5,05,066/-. The CIT(A) upheld the order of Assessing Officer against which the assessee is in appeal before us.

5. The Ld. AR for the assessee pointed out that the Assessing Officer failed to record any satisfaction. He also stated that disallowance of Rs.5 Lacs was made in assessment year 2010-11.

6. The Ld. DR for the Revenue relied on the orders of Authorities below.

7. We have heard the rival contentions and perused the record. We find no merit in the plea of the assessee in this regard. The Assessing Officer had recorded satisfaction before making any disallowance and had asked the assessee as to why no expenses were debited against the exempt income. So far as the disallowance having being made in the year under consideration under section 14A r.w. Rule 8D(2)(iii) of the Rule, the same has been worked out as per prescribed formula and the same merits to be upheld. Accordingly, we uphold the disallowance made u/s.14A of the Act at Rs.5,05,066/- and dismiss the ground No.1 raised by the assessee.

8. The issue raised in grounds of appeal No. 2 is in respect of disallowance

of Brand Development activity expenses on account of non deduction of Tax at source.

9. The Ld. AR for the assessee in respect of the said ground pointed out that similar issue was allowed in favour of the assessee by the Tribunal in assessee's own case in assessment year 2010-11.

10. The Ld. DR for the Revenue on the other hand placed reliance on the orders of Authorities below.

11. We have heard the rival contentions and perused the record. Briefly in the facts of the case, the assessee for the year under consideration had incurred Brand Promotion, Brand Development and Brand Protection activities. The assessee company owned "Kirloskar" brand which it had licensed to various concerns, against which it received royalty. The assessee had appointed various consultants for audit and had deducted tax at source out of the professional fees paid to the consultants. However, certain expenses were reimbursed to the consultants on which no tax was deducted at source. The Assessing Officer was of the view that the assessee should have deducted tax at source out of aforesaid expenses also and because of non deduction of tax, it disallowed the expenses totaling Rs.14,15,455/- under section 40(a)(ia) of the Act. The details of expenses are tabulated in Para 5.2 at page 4 and 5 of the assessment order. The CIT(A) relying on the appellate order for assessment year 2009-10 allowed the claim of the assessee to the extent of Rs.4,68,336/- i.e. payment made to Quadrant Communication Ltd.; however, upheld the disallowance on reimbursement of expenses of Rs.9,47,119/-.

12. We find that the similar issue of deduction of tax at source out of the expenses reimbursed to the consultants arose before the Tribunal in assessment year 2010-11. The Tribunal in ITA No.548/PN/2014 vide order

dated 27.07.2016 in para 10 held as under:

“10. Disallowances of expenses on account of non-deduction of Tax at Source u/s. 40(a)(ia) of the Act : The assessee has made payments under the head “Brand Development expenses” without deduction of Tax at Source. The Assessing Officer made disallowances of Rs.10,30,460/- u/s. 40(a)(ia). In first appeal the Commissioner of Income Tax (Appeals) restricted the disallowances to Rs.7,00,926/-. The contention of the Id. AR of the assessee is that the aforesaid expenditure is towards reimbursement of expenses in the nature of petrol, diesel, travelling expenses, telephone charges etc. On reimbursement of expenditure no TDS is liable to be deducted u/s. 194J of the Act. The assessee has placed on record at pages 31 to 92 of the paper book bills/invoices of expenditure which have allegedly been reimbursed to the assessee. A perusal of the documents placed on record show that the payments made by the assessee are in the nature of reimbursement of out of pocket expenses. On reimbursement of actual expenses the assessee is not required to deduct tax at source under the provisions of section 194J of the Act. Our view is further fortified by the decision rendered by the Delhi Bench of the Tribunal in the case of Assistant Commissioner of Income Tax Vs. Dakshin Haryana Bijli Vitran Nigam Ltd. (supra) and the decision of Mumbai Bench of the Tribunal in the case of Additional Commissioner of Income Tax Vs. India Index Services & Products Ltd. (supra). We find merit in the submissions made by the Id. AR of the assessee. Accordingly, the disallowances made u/s. 40(a)(ia) of the Act is deleted. Consequently, the ground No. 2 raised in the appeal by assessee is allowed.”

13. The issue arising in the present appeal is similar to the issue in assessment year 2010-11 and even the nature of expenses was also same i.e. reimbursement of the expenses, which is clearly mentioned by the Assessing Officer in the assessment order itself. Following the same parity of reasoning as noted earlier, we direct the Assessing Officer to allow the said expenditure of Rs.9,47,119/-, as no default has been made by the assessee for non deduction of tax at source; hence, there is no requirement to deduct tax at source out of reimbursement of expenses. The ground of appeal No. 2 raised by assessee is allowed.

14. The grounds of appeal No. 3 raised by assessee is not pressed and hence, dismissed.

15. The issue raised in ground No.4 is in respect of disallowance of Rs.2,11,621/- i.e. Payment made to Saba & Co. on account of non deduction of Tax at source out of legal charges paid.

16. The Ld. AR for the assessee pointed out that the payment was made to Saba & Co. for providing legal services for initiating anti counterfeiting proceedings before the Tribunal of Commerce of Rabat and all the services were thus rendered outside India which does not attract deduction of Tax at source as per DTAA with Morocco. The Ld. AR for the assessee pointed out that the same issue arose before the Tribunal in assessment year 2008-09 wherein in ITA No.536/PN/2013 vide order dated 06.01.2015, the Tribunal allowed the claim of the assessee after taking into consideration Article 14 of the DTAA between India and Morocco.

17. The Ld. DR for the Revenue placed reliance on the orders of Authorities below.

18. We have heard the rival contentions and perused the record. The assessee is in appeal against the disallowance of expenditure of Rs.2,11,621/- i.e. payment made to Saba & Co.. The Assessing Officer and CIT(A) disallowed the said amount for non deduction of tax at source out of the payment made to Saba & Co. The case of the assessee on the other hand is that there was no requirement to deduct tax at source as the services were rendered by the Saba & Co. outside India , the same did not attract deduction of tax at source in view of the provision of DTAA between India and Morocco. We find that the Tribunal in assessment year 2008-09 (supra) vide order dated 6th January, 2015 had elaborated upon the issue i.e. factual matrix and also Article 14 of the DTAA between India and Morocco in Para 7 to 14 at pages 5 to 11 of the order and held that since Saba & Co. was not having any fixed base in India, the condition of Article 14 was not fulfilled. It was further held that Saba & Co. was resident of Morocco and cannot be taxed in India in respect of fees paid by the assessee company for initiating and prosecuting the legal proceedings in the Morocco. We refer to the findings of the Tribunal in assessment year 2008-09 and also rely

upon the same; but the same are not being reproduced for the sake of brevity. Following the same parity of reasoning, we hold that the expenditure of Rs.2,11,621/- is to be allowed in the hands of the assessee. Accordingly, ground No.4 raised in appeal by assessee is thus allowed.

19. In the result, appeal of the assessee is partly allowed.

Order pronounced on this 28th day of August, 2018.

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28th August, 2018
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-7, Pune.
4. The CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.