

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", NEW DELHI
BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
AND
SHRI R. K. PANDA, ACCOUNTANT MEMBER**

**ITA No.1677/Del/2015
Assessment Year : 2011-12**

M. K. Overseas Pvt. Ltd., 14, Fire Brigade Lane, Connaught Place, New Delhi.	Vs.	ACIT, Central Circle- 19, New Delhi.
PAN : AAACM2076P		
(Appellant)		(Respondent)

**ITA No.2537/Del/2015
Assessment Year : 2011-12**

DCIT, Circle- 16(1), New Delhi.	Vs.	M. K. Overseas Pvt. Ltd., 39/5864, Basti Harphool Singh, Sadar Bazar, New Delhi.
		PAN : AAACM2076P
(Appellant)		(Respondent)

Assessee by : Ms. Hersimran Grewal, Adv.
Department by : Shri S. R. Senapati, Sr. DR
Date of hearing : 23-08-2018
Date of pronouncement : 10-09-2018

ORDER

PER BECNH :

These are cross appeals. The first one is filed by the assessee and the second one filed by the Revenue and are directed against the order dated 21.01.2015 of the CIT(A)- 1, New Delhi relating to assessment year 2011-12.

For the sake of convenience these were heard together and are being disposed of by this common order.

ITA No.1677/Del/2015 (By Assessee) :

2. Although a number of grounds have been raised, these all relate to the order of the Id. CIT(A) in confirming the disallowance of Rs.21,63,995/- u/s 14A of the I.T. Act, 1961 read with Rule 8D of the I.T. Rules, 1962 made by the Assessing Officer.

3. Facts of the case, in brief, are that the assessee is a private limited company engaged in the business of processing and export of fresh/frozen meat and manufacturing of poultry feed and tallow. It filed its return of income on 30.09.2011 declaring Nil income. During the course of assessment proceedings, the Assessing Officer observed that the assessee has shown expenses incurred in relation to such income which does not form part of the total income as per provisions of the Act which requires to be disallowed as per the provisions of section 14A r.w. Rule 8D. He, therefore, asked the assessee to explain as to why proportionate disallowance u/s 14A of the Act should not be made from the expenses incurred towards investments made in shares/securities of companies. Rejecting the various explanations given by the assessee and applying the provisions of section 14A read with Rule 8D, the Assessing Officer made disallowance of Rs.21,63,995/-.

4. Before the Id. CIT(A), it was submitted that no fresh investment was made during the year under reference and the entire investment of Rs.8.51 crores is brought forward. The company has made investment of Rs.5.43 crores in the subsidiaries from the strategic point of view for the promotion of business and not for trading in the investment. The investment of Rs.3.07 crores was made in the Bank of Baroda Mutual Funds, which is the banker of the company. The assessee has own paid up share capital and reserves of 85.28 crores. It was further submitted that the assessee has received only an amount of Rs.4,280/- as dividend income during the year which have been included under miscellaneous income. Relying on various decisions, it was submitted that no disallowance u/s 14A is called for. However, the Id. CIT(A) was not satisfied with the argument advanced by the assessee and upheld the action of the Assessing Officer.

5. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal.

6. The Id. counsel for the assessee, at the outset, submitted that the total dividend received during the year is only Rs.4280/- and, therefore, the disallowance, if any, cannot exceed the amount of dividend received. For the above proposition, he relied on the decision of the Hon'ble Delhi High Court in the case of Joint Investments (P.) Ltd. vs. CIT reported in 372 ITR 694 and various other decisions.

7. The Id. DR on the other hand heavily relied on the orders of the Assessing Officer and the Id. CIT(A).

8. We have considered the rival arguments made by both the sides and perused the material available on record. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case, applying the provisions of section 14A r.w. Rule 8D, made disallowance of Rs.21,63,995/- which has been upheld by the Id. CIT(A). It is the submission of the Id. counsel for the assessee that since the actual dividend income received during the year which is exempt is only Rs.4280/-, therefore, disallowance, if any, u/s 14A r.w. Rule 8D cannot exceed the actual amount of such exempt income received. We find some force in the above argument of the Id. counsel for the assessee. It has been held in various decisions that disallowance u/s 14A r.w. Rule 8D cannot exceed the actual dividend income received which has been claimed as exempt. We, therefore, hold that the disallowance u/s 14A in the instant case cannot exceed Rs.4280/- which is the actual exempt income received by the assessee during the year. We, therefore, set-aside the order of the Id. CIT(A) and direct the Assessing Officer to restrict the disallowance u/s 14A to the extent of actual exempt income received by the assessee which in the instant case is Rs.4280/-. The ground raised by the assessee is accordingly partly allowed.

ITA No.2537/Del/2015 (By Revenue) :

9. After hearing both the sides, we find the tax effect involved in the grounds raised by the Revenue in the impugned appeal is admittedly below

Rs.20 lakhs. Therefore, the appeal filed by the Revenue is not maintainable in view of the latest CBDT Circular No.03/2018 [F.No.279/Misc.142/2007-ITJ (Pt)] dated 11th July, 2018 which is applicable even to pending appeals. However, if the Revenue at any point of time finds that the case of the Revenue falls under any of the clauses as per amended para 10 of the said Circular vide Notification dated 20.08.2018, the Revenue is at liberty to file Miscellaneous Application for revival of the appeal. The appeal filed by the Revenue is dismissed in the terms indicated above.

10. In the result, the appeal filed by the assessee is partly allowed and the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on this 10th September, 2018.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 10-09-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi