

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.307/Coch/2017 : Asst.Year 2007-2008

ITA No.308/Coch/2017 : Asst.Year 2008-2009

The Income Tax Officer Corp.Ward 1(4) Kochi.	Vs.	M/s.Kerala Ayurveda Ltd. Athani P.O. Aluva 683 585 PAN : AABCK4228Q
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu
Respondent by : Sri.Mathew Joseph

Date of Hearing : 05.09.2018	Date of Pronouncement : 18.09.2018
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ORDER

Per George George K., JM

These appeals at the instance of the Department are directed against two orders of the CIT(Appeals) dated 31.03.2017 and 30.03.2017. The relevant assessment years are 2007-2008 and 2008-2009.

2. We shall first adjudicate ITA No.307/Coch/2017 concerning assessment year 2007-2008.

ITA No.307/Coch/2017 (Asst.Year 2007-2008)

Two issues are raised in this appeal, namely, (i) disallowance by invoking section 14A of the Income-tax Act;

(ii) the claim of deferred revenue expenditure allowed by the CIT(A).

(i) Disallowance u/s14A of the I.T.Act

3. As per Annexure-1 attached to the assessment order, the Assessing Officer had made a total disallowance of Rs.30,78,095 by invoking rule 8D(2)(ii). Further by invoking Rule 8D(2)(iii), the A.O. disallowed Rs.2,92,965.

3.1 Aggrieved by the disallowance, the assessee raised the issue before the CIT(A). The CIT(A), following his order for assessment year 2010-2011, deleted the disallowance made u/s 14A of the I.T.Act.

3.2 Revenue being aggrieved is in appeal before the Tribunal. The Departmental Representative relied on the grounds of appeal and the findings of the A.O. The learned AR, on the other hand, submitted that an identical issue was decided in favour of the assessee by the ITAT in assessee's own case for assessment year 2009-2010 (ITA No.506/Coch/2016 – order dated 14.12.2017). The learned AR had also placed on record the financial statement of the assessee as on 31.03.2007.

3.3 We have heard the rival submissions and perused the material on record. As regards the disallowance of Rs.27,85,130 by invoking Rule 8D(2)(ii), we noticed that the total investment as on 31.03.2007 is Rs.11,33,68,682. (Refer Schedule F concerning investment forming part of the Balance

Sheet). Out of the total investment of Rs.11,33,68,682, a sum of Rs.4,87,58,962 was investment made in a foreign subsidiary company, which does not give rise to any exempted income, and therefore, the provisions of section 14A of the I.T.Act does not have application to the investment to the tune of Rs.4,87,58,962. The investment amounting to Rs.6,07,86,600 was made during the relevant year in shares of the subsidiary company, viz., Ayurvedagram Heritage Wellness Centre Private Limited. This investment in subsidiary company was made during the year out of the proceeds of fresh issue of capital of Rs.40 lakh and share premium amount collected during the year to the tune of Rs.10.69 crore (Schedule B of the Balance Sheet filed for the year ending 31.03.2007). During the relevant assessment year, the assessee had a loan of Rs.14.61 crore. This loan is fully covered by the inventory of Rs.5.39 crore, sundry debtors of Rs.4.19 crore and fixed assets of Rs.12.68 crore. The assessee also enjoyed interest free unsecured loan of Rs.3.73 crore from the parent company. Therefore, it is very clear that no part of the interest bearing funds have been utilized to make investment in shares, which yields exempt income. The assessee has furnished details to prove the availability of its own funds and proved beyond doubt that term loan and working capital was utilized for the business purpose and has not been diverted for making investment which has given rise to exempted income. Therefore, we are of the view that the CIT(A) after considering the relevant material has rightly

deleted the additions made by the A.O. towards disallowance of interest under Rule 8D(2)(ii).

3.4 As regards disallowance of Rs.2,92,965 by invoking Rule 8D(2)(iii), we noticed that ITAT in assessee's own case for assessment year 2009-2010 (supra) had considered an identical issue. The ITAT rejected the contention of the assessee that it had not incurred any administrative and general expenses. However, the ITAT restricted the disallowance to the exempted income earned during the relevant assessment year. In doing so, the ITAT followed the judgment of the Hon'ble Delhi High Court in the case of *Joint Investment Private Limited v. CIT* [(2015) 372 ITR 694 (Del.)]. The relevant finding of the ITAT in assessee's own case for assessment year 2009-2010 reads as follows:-

"10. Insofar as the disallowance of administrative and general expenses under Rule 8D(2)(iii) is concerned, the assessee claims that, it did not incur any expenditure for earning exempt income. The assessee further contended that the investments are made in group companies which are invested in earlier years. Though it has incurred certain common expenses in the nature of general administrative expenses, no specific expenditure has been incurred to earn exempt income. We do not find any merit in the arguments of the assessee for the reason that when there is no substantial investments in shares which yield exempt income, the possibility of incurring certain common expenditure attributable to investment cannot be ruled out. Though the assessee claims to have not incurred any specific expenditure, it is abundantly clear that the assessee has incurred various administrative and general expenses, which are in common nature. Therefore, we are of view that the A.O. was right in computing disallowance towards expenses incurred in relation to exempt income. However, the disallowances contemplated u/s 14A can in any way swallow the entire exempt income earned by the assessee. The window for disallowance for invoking the provisions of section 14A is only to the extent of

disallowing expenditure incurred by the assessee in relation to the exempt income. This proportion or portion of the tax exempt income surely cannot swallow the entire amount. In this case, admittedly, the assessee has earned dividend income of Rs.4,000 from investment in shares of Canara Bank, whereas the A.O. has determined disallowance of expenditure at Rs.3,23,520. Therefore, we are of the view that the disallowance determined u/s 14A cannot exceed the exempt income. This legal proposition is supported by the decision of the Hon'ble Delhi High Court in the case of Joint Investment Private Limited v. CIT [(2015) 372 ITR 694 (Del.)], wherein it was observed as under:-

"9. In the present case, the O has not firstly disclosed why the appellant / assessee's claim for attributing Rs.2,97,440 as a disallowance under s.14A had to be rejected. Taikisha Engg. India Ltd. (supra) says that the jurisdiction to proceed further and determine amounts is derived after examination of the accounts and rejection if any of the assessee's claim or explanation. The second aspect is there appears to have been no scrutiny of the accounts by the AO-an aspect which is completely unnoticed by the CIT(A) and the Tribunal. The third, and in the opinion of the Court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is Rs.48,90,000, the disallowance ultimately directed works out to nearly 110 per cent of that sum, i.e., Rs.52,56,197. By no stretch of imagination can s.14A or r.8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in s.14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case."

11. *In view of the matter and considering the ratio of the case law discussed above, we are of the considered view that disallowance as contemplated u/s 14A of the Act cannot exceed exempt income. Therefore, we direct the A.O. to restrict the disallowance worked out under Rule 8D(2)(iii) to the extent of exempt income earned by the assessee for the relevant period."*

3.5 For the relevant assessment year, the dividend income earned by the assessee was Rs.3,300. Therefore, following the order of the ITAT in assessee's own case for assessment year 2009-2010, we restrict the disallowance made u/s 14A of the I.T.Act to Rs.3,300, being the exempted income earned by the assessee during the relevant assessment year. It is ordered accordingly.

3.6 In the result, ground No.2 raised in ITA No.307/Coch/2017 is partly allowed.

(ii) Deferred Revenue Expenditure

4. The Assessing Officer had disallowed a sum of Rs.16,89,207 by observing as under:-

"The assessee has debited an amount of Rs.15,30,052 to the profit & loss account as deferred sales promotion expenditure, and Rs.1,59,15 as deferred R&D expenditure. Since these are expenses incurred in earlier years, and deferred revenue expenditure is not a recognized concept in the Income Tax Act, the above amounts cannot be allowed as a deduction. Hence, a total of Rs.16,89,207 being deferred revenue expenses is hereby disallowed."

4.1 Aggrieved by the assessment order, the assessee raised this issue before the CIT(A). It was submitted before the CIT(A) that the assessee had inadvertently omitted to add back a sum of Rs.16,89,207 being the deferred revenue expenditure written off. It was further submitted that it had omitted to claim the expenses deferred during the relevant assessment

year amounting to Rs.45,42,375. The CIT(A) allowed the deferred revenue expenditure claimed amounting to Rs.45,42,375.

4.2 The Revenue being aggrieved, has filed this appeal before the Tribunal. The learned Departmental Representative relied on the ground raised and also relied on the findings of the Assessing Officer. The learned AR, on the other hand, submitted that the genuine expenses claimed during the relevant assessment year is allowable and relied on the judicial pronouncement, which the CIT(A) has taken note of in the impugned order.

4.3 We have heard the rival submissions and perused the material on record. The CIT(A) has directed the A.O. to retain the addition of Rs.16,89,207. The CIT(A) further directed the A.O. to allow deduction of Rs.45,42,375. Therefore, the ground raised by the Revenue relating to an amount of Rs.16,89,207 is misplaced. The CIT(A) after perusal of ledger copies and other details, held that the sum of Rs.45,42,375 was the deferred revenue expenditure for the relevant assessment year. The assessment order on this issue is very cryptic. It is not very discernible that the material relied on by the CIT(A) for grant of deduction was available before the Assessing Officer. If fresh material was placed before the CIT(A), the same ought to have been put to the A.O. for his rebuttal. The CIT(A) has granted deduction after perusal of the ledger copies and other details. There is nothing on record

to suggest that the A.O. had the benefit of perusal of these detail and ledger copies. Therefore, in the interest of justice and equity, the issue is restored to the A.O. for *de novo* consideration. It is ordered accordingly.

4.4 In the result, ground No.3 raised in ITA No.307/Coch/2017 is allowed for statistical purposes.

ITA No.308/Coch/2017 (Asst. Year 2008-2009)

5. Three issues are agitated by the Revenue in this appeal. They are as follows:-

- (i) Disallowance u/s 14A of the I.T.Act.
- (ii) Grant of deduction for deferred revenue expenditure.
- (iii) Disallowance of employees' share of PF, since it was not paid within the due date of the respective statute.

(i) Disallowance u/s 14A of the I.T.Act.

6. We have considered an identical issue in ITA No.307/Coch/ 2017 concerning assessment year 2007-2008. For the reasons stated in para 3.3 to 3.6 of this order, we restrict the disallowance to the divided income earned for the relevant assessment year, i.e. Rs.4,000. It is ordered accordingly.

(ii) Deferred Revenue Expenditure

7. We have considered an identical issue in ITA No.307/Coch/2017 concerning assessment year 2007-2008. For the reasons stated in para 4.3 and 4.4 of this order, we restore this issue to the A.O. for his *de novo* consideration. It is ordered accordingly.

(iii) Disallowance of employees' share of PF:

8. The Assessing Officer had disallowed employees' share of PF amounting to Rs.15,75,431. The disallowance made by the Assessing Officer was for the reason that the employees' share of PF was belatedly paid, and therefore, cannot be allowed as deduction. The CIT(A) allowed the claim of the assessee for his reasoning mentioned in para 7 to 9 of the impugned order.

8.1 We have heard the rival submissions and perused the material on record. We find that the recent judgment of the Hon'ble jurisdictional High Court in the case of *Alliaz Corhill Information Services (P) Ltd. v. DCIT [(2018) 406 ITR 150 (Ker.)]* had held that if the employees' share of PF is not paid within the due date mentioned in the respective statute, the same cannot be allowed as a deduction u/s 36(a)(va) of the I.T.Act. Respectfully following the judgment of the Hon'ble jurisdictional High Court in case of *Alliaz Corhill Information Services (P) Ltd. (supra)*, we hold that the CIT(A) was not justified in granting deduction of the employees' share of the PF since it was paid belatedly and not within the due date under the respective statute. It is ordered accordingly.

8.2 In the result, ground No.2 raised by the Revenue is allowed.

9. In the result, the appeals filed by the Revenue are partly allowed, as indicated above.

Order pronounced on this 18th day of September, 2018.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 18th September, 2018.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The Pr.CIT-I, Cochin.
4. The CIT (A) – I, Kochi.
5. The DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin