



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

**BEFORE SHRI R.C.SHARMA, AM  
&  
SHRI AMARJIT SINGH, JM**

**ITA No.3476/Mum/2013  
(Assessment Year :2008-09)  
ITA No.4353/Mum/2013  
(Assessment Year :2007-08)  
ITA No.1226/Mum/2016  
(Assessment Year :2011-12)**

DCIT 1(3) R.No.540, 5 <sup>th</sup> Floor Aayakar Bhavan M.K.Road, Mumbai – 400 020	Vs.	M/s. Tata Motor Finance Ltd., 3 <sup>rd</sup> Floor, Nanavati Mahalaya, 18, Homi Mody Street, Mumbai – 400 001
<b>PAN/GIR No.</b>		<b>AACCT4644A</b>
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

**ITA No.3119/Mum/2013  
(Assessment Year :2008-09)  
ITA No.4860/Mum/2013  
(Assessment Year :2007-08)**

M/s. Tata Motor Finance Ltd., 3 <sup>rd</sup> Floor, Nanavati Mahalaya, 18, Homi Mody Street, Mumbai – 400 001	Vs.	Addl. CIT 1(3) / DCIT 1(3) Mumbai – 400 020
<b>PAN/GIR No. AACCT4644A</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Revenue by	Shri Rajesh Kumar Mishra
Revenue by	Shri F.V.Irani
<b>Date of Hearing</b>	<b>07/09/2018</b>
<b>Date of Pronouncement</b>	<b>19/09/2018</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

These are the cross appeals filed by assessee and Revenue against the order of CIT(A)-2, Mumbai dated 01/02/2003 for the A.Y.2007-08, 2008-09 & 2011-12 in the matter of order passed u/s.143(3) of the IT Act.

2. The following grounds have been taken by the Revenue:-

**A.Y.2008-09:-**

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in directing the AO to allow the entire DMA commission of Rs. 1,10,90,73,765/- as a deduction in the year under consideration without appreciating that the assessee has itself amortized the said expenditure in its accounts on a matching principle i.e. Revenue is recognized and expenses are claimed on a matching principle."*

1.1 *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in directing the AO to allow the entire DMA commission as a deduction against the income of the year without appreciating the ratio of the decision of the Apex Court in the case of Madras Industrial Investment Corporation [225 ITR 802] in which it was held that only proportionate expenditure vis-a-vis revenue on a matching principle should be allowed, since allowing the entire expenditure in one year would give a distorted picture of the profits of a particular year."*

2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the proportionate disallowance of Rs. 36,84,248/- on account of expenses on issue of NCDs without appreciating that this issue stands squarely decided in favour of the Revenue by the Hon'ble Apex Court in Madras Industrial Investment Corporation [225 ITR 802]."*

2.1 *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the proportionate disallowance of Rs. 36,84,248/- on account of expenses on issue of NCDs by relying on the decision of the Rajasthan High Court in the case of Udaipur Vs. Secure Meters Ltd. 321 ITR 611 without appreciating that in the case cited supra, the issue involved was whether expenditure incurred in issuing debentures is allowable as revenue expenditure and hence the facts of the said case are clearly distinguishable from the facts of the present case."*

**A.Y. 2007-08**

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in directing the AO to allow the entire DMA commission of Rs. 52,89,43,740/- as a deduction in the year under consideration "without appreciating that the assessee has itself amortized the said expenditure in its accounts on a matching principle- i.e Revenue is recognized and expenses are claimed on a matching principle."*

1.1 *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A)'erred in directing the AO to allow the entire DMA commission as a deduction against the income of the year without appreciating the ratio of-the decision of the Apex Court in the case of Madras Industrial Investment Corporation [225 ITR 802] in which it was held that only proportionate expenditure vis-a-vis revenue on a matching principle should be allowed, since allowing the entire expenditure in one year would give a distorted picture of the profits of a particular year."*

**A.Y.2011-12**

"I. *On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in appreciating the fact that allowing the entire expenditure in one year may give a distorted picture of the accounts of the particular year, where the expenses can be spread over the years as held by Hon'ble Supreme Court in the case of Madras Industrial Corporation (225 ITR 802).*

2. *On the facts and in circumstances of the case and in Law, the Ld. CIT(A) erred in allowing the claim of the assessee that on booking of contracts for financing of vehicles purchase, DMA commission incurred during the year be allowed in entirety in computing total income of the assessee, and thereby overruling the Assessing Officer who held that the assessee would be entitled only to the lower amount actually debited by in its P&L account in accordance with its accounting policy of deferring the DMA Commission incurred, in its books over the period of the contract."*

3. The following grounds have been taken by assessee

**A.Y.2008-09**

*The appellant being aggrieved by the order passed by learned Commissioner of Income Tax (Appeals) - 2 (hereinafter referred to as*

the "learned CIT(A)") has preferred this appeal on the following ground, which are without prejudice to each other:

**1. Disallowance of expenditure U/S.14A**

The learned CIT (A) has erred in law and in facts in confirming the disallowance u/s. 14A of the Income Tax Act, 1961 ("the Act") read with rule 8D of the Income Tax Rules, 1962 ("the Rules")

The learned CIT(A) ought to have appreciated that there is no nexus of expenses incurred with the exempt income. The learned Assessing Officer has erred in disregarding the . . . decision of the Bombay High Court in the case of Godrej & Boyce Mfg. Co. Limited, mandating him to establish the fact that expenditure has been incurred. Further the learned Assessing officer has also disregarded the decision in the case of Reliance utilities and Power Ltd, wherein the Bombay High court had observed that "if there be interest free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan, it can be presumed that the investments were from the interest free funds available",

The Appellant craves leave to add, to alter, delete or substitute all or any of the aforesaid grounds of appeal.

**A.Y.2007-08**

The appellant being aggrieved by the order passed by learned Commissioner of Income Tax (Appeals) - 4 (hereinafter referred to as the "learned CIT(A)") has preferred this appeal on the following ground, which are without prejudice to each other:

**1. Disallowance of provision for leave encashment of Rs.28,81,000/- under provisions of section 43B of the Income Tax Act**

The CIT (A) has erred in law and on facts in confirming the disallowance made by the AO in respect of provision for leave encashment under section 43B of the Act.

**2. Disallowance of post retirement benefit of Rs 24,48,000/- scheme under provisions of section 43B(b) of the Income Tax Act**

The CIT (A) has erred in law and on facts in confirming the disallowance made by the AO in respect of post retirement benefit scheme under section 43B (b) of the Act. In claiming the said deduction, we have relied upon the decision of Honourable Delhi high Court in the case of CIT vs Ranbaxy Laboratories Ltd. 334 ITR 341 (Del.)

**3. Disallowance of Expenses of Rs. 14,98,5947- under provisions of section 40(ia) of the Income Tax Act due to non deduction of TDS**

*The CIT (A) has erred in law and on facts in confirming the disallowance of Rs. 14,98,5947- made by the AO in respect of expenses under provisions of section 40(ia) of the Act. The learned CIT(A) ought to have appreciated that these payments represents the 3 reimbursement of expenses incurred, and are not an income in the hands of the recipient. This view has further been confirmed in the below judgements*

- *CIT vs. Fortis Health Care (2009) 181 Taxmann 257 (Del) HC*
  - *JDIT vs. Krupp UDHE GMBH (2010) 1 ITR 614 ITAT Mum*
  - *Mahindra & Mahindravs. DCIT (2009) 22 DTR 361 ITAT Mum (SB)*
  - *Cairn Energy India Pvt. Ltd. vs. ACIT (2009 TIOL 220 ITAT -Mad)*
  - *CIT vs. Tata Engineering and Locomotive Company Limited (2000 245 ITR 823 Bombay)*
  - *DIT (IT) vs. Krupp UDHE GMBH (2010-TIOL-214-HC-MUM-IT)*
- Further the photocopy of Invoices can be made available as and when required.*

*The Appellant craves leave to add, to alter, delete or substitute all or any of the aforesaid grounds of appeal.*

4. Rival contentions have been heard and record perused.

5. Facts in brief are that the assessee is a Non Banking Financial Company (NBFC] engaged in the business of financing the vehicles. The assessee e-filed its return of income for A.Y. 2008-09 on 30.09.2008 declaring total income of Rs. 56,96,93,100/-. In the assessment order u/s 143(3) dated 09.12,2010, the Assessing Officer added the following amounts with the returned income :

<i>i) Excess depreciation claim disallowed</i>	<i>Rs. 65,66,448/-</i>
<i>ii) Provision for Bhavishya Kalyan Yojana Contribution</i>	<i>Rs. 3,26,000/-</i>
<i>Provision for Leave Encashment</i>	<i>Rs. 62,44,000/-</i>
<i>iv) Disallowance u/s. 14 of the I.T. Act</i>	<i>Rs. 17,066,000/-</i>
<i>v) Disallowance of Non-convertible debenture expenses</i>	<i>Rs. 36,84,248/-</i>

6. The A.O. also disallowed the claim of DMA commission of Rs. 110,90,73,76s/- and allowed DMA commission of Rs. 91,66,45,456/- debited in the books of accounts.

7. By the impugned order, CIT(A) allowed assessee's claim of Direct Marketing Agent's Commission in the A.Y.2007-08, 2008-09 and 2011-12, against which Revenue is in further appeal before us.

8. We have considered rival contentions and found that Direct Marketing Agent's Commission was allowed by CIT(A) after following the decision of Delhi High Court in the case of Citi Financial Consumer Finance Ltd., and ITAT Ahmedabad Special Bench in the case of Ashima Syntex 117 ITD 1. From the record we found that when the Assessee finalizes a vehicle financing proposal received by it from a customer through a Direct Marketing Agent (DMA), it provides and pays to the DMA, the commission due to him for introducing the customer to the Assessee. For accounting purposes, the Assessee amortizes such commission over the period of the financing agreement. However, For tax purposes, the entire commission incurred and paid by the Assessee is claimed by it in the year in which the financing agreement is signed.

9. During the course of assessment, the AO has allowed only the amortized amount, on the ground that the Assessee, for the purpose of its accounts, has adopted amortization, and the AO has relied upon the Supreme Court decision in the case of Madras Industrial Investment Corporation. We found that in a subsequent decision, Hon'ble Supreme Court in

the case of Taparia Tools Ltd., 372 ITR 605 after considering its decision in the case of Madras Industrial Investment Corporation [1997] 225 ITR 802, has held that notwithstanding the accounting treatment followed by an assessee, expenditure incurred during the year has to be allowed in full irrespective of the action of the Assessee of amortizing it. Respectfully following the decision of the Hon'ble Supreme Court in case of Taparia Tools Ltd., (supra), wherein proposition laid down in the case of Madras Industrial Investment Corporation have already been considered, we do not find any infirmity in the order of CIT(A) for allowing deduction of Direct Marketing Agent's commission paid to the Direct Marketing Agent. As the facts and circumstances in all the three assessment years i.e., 2007-08, 2008-09 and 2011-12 are same, following the reasoning given hereinabove, the ground taken by the Revenue is dismissed.

10. In the A.Y.2008-09, Revenue is aggrieved by the action of CIT(A) for allowing of NCD issue expenses. The CIT(A) has allowed assessee's claim by relying on the decision of Rajasthan High Court wherein SLP filed by the department was dismissed by the Hon'ble Supreme Court in the case of Udaipur Milla Ltd., ITA No. 8/2007 order dated 20/11/2008 (321 ITR 611).

11. We have considered rival contentions and found that the A.O. noted that the above NCD 's are redeemable over a period of 4 years. Hence, as the expense involve benefit of enduring nature spread over a period of 4 years, the entire expenses is not allowable in the present A.Y. In this connection, the A.O. relied upon the decision of the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Ltd.,

12. As discussed above this issue is concluded in favor of the Assessee by the decision of the Supreme Court in the case of Taparia Tools Limited [2015] 372 ITR 605, where, after considering its decision in the case of Madras Industrial Investment Corporation [1997] 225 ITR 802, the Supreme Court has held that expenditure incurred during a particular year has to be allowed in full in that year itself.

13. Respectfully following the proposition of law laid down by Hon'ble Supreme Court in the case of Taparia Tools Ltd., we do not find any infirmity in the order of CIT(A) for allowing NCD issue expenses during the A.Y.2008-09.

14. In the result, Ground No.2 raised by Revenue in its appeal for A.Y.2008-09 is dismissed.

15. In the A.Y.2007-08, assessee is aggrieved for disallowance of provision for leave encashment u/s.43B(f) of the Income Tax Act, 1961.

16. We have considered rival contentions and found that Post retirement benefit scheme was treated by the AO in the nature of a fund created for the welfare of the employees and, therefore, it is covered u/s.43B(f), hence the disallowance of provision on this account of Rs.24,48,000/- was confirmed by the CIT(A).

17. From the order of the lower authorities, we observe that the CIT(A) has confirmed the disallowance in view of the decision of Hon'ble Supreme Court wherein SLP filed by the Department was accepted against the order of Calcutta High Court in case of Excide Industries Ltd., 292 ITR 470. As the issue is pending before the Hon'ble Supreme Court with regard to allowability of claim of provision for leave encashment, we direct the AO to decide the issue only

after the decision of Hon'ble Supreme Court on this issue. We direct accordingly.

18. Assessee is also aggrieved for disallowance of provision for post retirement benefits u/s.43B(b) of the Act. It was contention of learned AR that this is an amount provided by the Assessee, after a scientific determination based on an actuarial valuation, towards its contractual non-statutory liability to provide post retirement benefits to its employees. He further contended that the provisions of section 43B(b) of the Act have no application as this has been claimed only on the basis of a scientifically determined actuarial valuation and not as a contribution to any fund.

19. We have considered rival contentions and found that issue is squarely covered by the decision of Delhi High Court in the case of Ranbaxy Laboratories Ltd., wherein Hon'ble High Court held that the pension scheme of the assessee did not envisage any regular contribution to any fund or trust or any other entity. The pension scheme provided that pension would be paid by the assessee to its employee on his or her attaining the retirement age or resigning after having rendered services for a specified number of years. Thus, where the liability on this account accrued from year to year, it was payable on retirement/resignation of the eligible employees. It could not be disallowed under section 43B.

20. We have considered rival contentions and also gone through the decision of Delhi High Court wherein Hon'ble Delhi High Court observed

that the pension scheme of the assessee does not envisage any regular contribution to any fund or trust or any other entity. The pension scheme provides that pension would be paid by the assessee to its employees on their attaining the retirement age or resigning after having rendered services for specified years. Thus, where the liability on this account accrues from year to year, the same is payable on retirement/ resignation of the eligible employees. In view thereof, the ratio of the judgment of the Supreme Court in Metal Box Company of India Ltd. v. Their Workmen [1969] 73 ITR 53 (SC) and Bharat Earth Movers v. CIT [2000] 245 ITR 428 (SC) would clearly get attracted. Respectfully following the decision of the Delhi High Court, we do not find any merit for the disallowance so made by the lower authorities.

21. Last grievance of assessee relates to disallowance of Rs.14,98,594/- u/s. 40(a)(ia) of the Act for non-deduction of TDS on account of reimbursement of advertisement and training expenses incurred by the assessee's dealers.

22. Rival contentions have been heard and record perused. The facts of the case are that A.O. has disallowed Rs.14,98,594/- u/s. 40A(ia) holding that assessee has not made any TDS on these payments. It has been disputed by the assessee claiming that these are reimbursement expenses.

23. By the impugned order, CIT(A) confirmed the action of the AO after observing as under:-

*“Assessee has claimed that payment of Rs.14,98,594/- are in the nature of reimbursement of expenses, whereas, no TDS is required to be made in case of reimbursement of expenses. But assessee has filed no evidence to show that these are mere reimbursement of expenses and no evidence has also been filed that TDS was made by the parties to whom reimbursement have been made, at the time of payment by them. Therefore, the disallowance to the extent of Rs.14,98,694/- is confirmed.”*

24. It was argued by learned AR that these amounts are pure reimbursements, they are not of an income nature at all. Consequently, there is no obligation to deduct tax at source as such obligation arises only in case of payments of an income nature. On this basis, the disallowance under section 40(a)(ia) of the Act should be deleted.

25. We have considered rival contentions. TDS is required to be deducted in respect of alleged expenditure incurred by the assessee. AO as well as CIT(A) has recorded a finding that assessee has failed to show that these are mere reimbursement of expenses and no evidence was filed to show that TDS has been deducted by the parties to whom reimbursement has been made at the time of payment made by them. The finding so recorded by AO and CIT(A) has not been controverted by learned AR by bringing any material on record. Accordingly, we do not find any reason to interfere in the findings so recorded by lower authorities. Hence ground taken by assessee is dismissed.

26. In the result, appeal for A.Y.2007-08 is allowed in part in terms indicated hereinabove.

27. In the A.Y.2008-09 assessee is aggrieved by the action of the AO for disallowing administrative expenditure u/s.14A by invoking Rule 8D(2)(1) of the IT Rules. It was contention of learned AR that the Assessing Officer's invocation of Rule 8D(2)(i) is patently erroneous. If at all any disallowance is called for it can be made only under Rule 8D(2)(iii) of the Rules, PROVIDED THAT the conditions of Rule 8D(2)(iii) of the Rules are met.

28. In view of the above, we restore the matter back to the file of the AO with a direction to compute disallowance of administrative expenses in terms of 8D2(iii). We direct accordingly.

29. Assessee has also raised additional ground for claim of adjustment on account of delinquency support receipts. It was contention of learned AR that this ground arises on account of a rejection, by the Assessing Officer, of the Assessee's claim for such relief during the assessment proceedings for AY 2013-14, which were concluded on 30 March 2016. As the Assessee's claim was rejected in AY 2013-14, the Assessee has raised an additional ground in AY 2008-09, because a part of the Assessing Officer's rejection of the claim made by the Assessee in AY 2013-14 pertains to AY 2008-09.

30. We do not find any merit in the above contention of learned AR, however, learned AR is free to raise ground while filing an appeal for the A.Y.2013-14. We direct accordingly.

**31. In the result, appeals filed by assessee are allowed in part in terms indicated hereinabove.**

Order pronounced in the open court on this 19/09/2018

**Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER**

Mumbai; Dated / /2018  
Karuna Sr.PS

**Sd/-  
(R.C.SHARMA)  
ACCOUNTANT MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**