

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 4860/Del/2015
(Assessment Year: 2011-12)

ACIT, Circle-15(1), New Delhi	Vs.	Leasemen Fin-Vest India Pvt. Ltd, 301, Vardhman Plaza, Plot No. 14, Road No. 44, Pitampur Community Centre, New Delhi PAN: AAACL0389A
(Appellant)		(Respondent)

Revenue by :	Shri Atiq Ahmad, Sr. DR
Assessee by:	Ms. Rano Jain, Adv
Date of Hearing	21/08/2018
Date of pronouncement	12/10/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the Id Assistant Commissioner of Income Tax, Circle-15(1), New Delhi (The LD AO) against the order of the Id Commissioner of Income tax (A)-5, New Delhi (The Ld CIT (A)) dated 12.05.2015 for Assessment Year 2011-12.
2. Effectively, Appeal involves two grounds as under:-
 - "1. *That on the facts and circumstances of the case and in law the Id CIT(A) has erred in deleting the addition of Rs. 6,65,592/- made by R/w Rule 8D of the Act.*
 2. *That on the facts and circumstances of the case and in law the Id CIT(A) erred in deleting the addition of Rs. 40628975/- made by on account of suppression of stock.*
3. The brief facts of the case shows that the assessee is a company engaged in the business of sale and purchase of shares and mutual funds. It filed its return of income on 25/8/2011 at Rs. Nil and carried forward loss of Rs. 141636242/-. Ld AO noted that the assessee has

made investment of Rs. 18.60 crores and received the dividend of Rs. 59.62 lacs and therefore, asked the assessee to explain why not the disallowance u/s 14A read with Rule 8D should be made. The assessee submitted a calculation of disallowance of Rs. 305815/-. The Id AO verified the calculation and stated that the assessee has not included unquoted equity share for calculation of disallowance while giving computation of disallowance under rule 8D and therefore, he himself worked out disallowance of Rs. 665592/- u/s 14A of the Act.

4. Second disuse in the appeal he noted that as per tax audit report the method of valuation of closing stock of shares is changed from 'cost' to 'cost or net realizable value whichever is lower'. He further noted that due to this, profit of the assessee is understated by Rs. 40628975/-. Therefore, he issued show cause notice to the assessee on 06.01.2014. Assessee relied heavily on the accounting standard- 2 issued by ICAI and stated that method of valuation of the stock has been changed for the better presentation, acceptable method of stock valuation, bona fide and based on prudent accounting practices. The Id AO rejected the argument of the assessee and held that it is a device to evade the tax and he made the addition holding that it does not show the true computation of income notwithstanding that the system has been regularly employed by the assessee. He relied on the decision of the Kolkata High Court in case of CIT vs. UCO Bank 200 ITR 68. Consequently, assessment u/s 143(3) of the Act was passed on 31.01.2014 determining the total loss of Rs. 98822627/- against the returned loss of Rs. 141636242/-. Over and above two disallowance/additions discussed above, some minor disallowances were also made but same are not in dispute now.
5. The assessee carried the matter before the Id CIT(A), who deleted the disallowance u/s 14A of the Act. He held that as the assessee has voluntarily made the disallowance of Rs. 305815/- in its computation of total income, the disallowance to the extent of that sum should

have been reduced. He further held that value of unquoted shares should not be considered while working out disallowance u/r 8D as those shares have not yielded any tax-free income during the year. He therefore, deleted the disallowance u/s 14A of Rs. 665592/-.

6. The Id CIT (A) with respect to the addition on account of change in the valuation of the closing stock held that it is correct method of valuation u/s 145A of the Act. He further noted that this method of valuation of closing stock of the share has been consistently followed by the assessee at 'cost or net realizable value whichever is less' from Assessment Year 2007-08 to Assessment Year 2013-14. He further stated that valuation is in accordance with the accounting standard issued. Therefore, he deleted the addition of Rs. 40628975/-. The revenue aggrieved with the order has preferred an appeal before us.
7. The Id DR on ground No. 1 of the appeal has stated that the Id CIT (A) has deleted the addition on the basis that on investments of unquoted shares of Rs. 7.19 crores, no dividend is earned by the appellant during the year, therefore same cannot be considered for disallowance u/r 8 D. He submitted that when the rule 8 D applies there is no escape route for the exclusion of any sum from that under any pretext and only formulae needs to be applied in a mechanical manner.
He further stated that the Id CIT (A) has relied upon the decision of Hon'ble Delhi High Court, which is not applicable to the facts of the case.
8. On the second ground, he submitted that the LD CIT (A) did not consider the fact that the assessee has valued the shares for this year adopting the method 'At cost or net realizable value, whichever is less' without noting that in the past year, the assessee has valued shares 'at cost' only. He submitted that merely because the valuation of the share has gone down for this year it could not be said that change in the method of the valuation of the closing stock is bonafide. He further

- submitted that the Id AO has given the detailed reasons for disallowing the loss of Rs. 40628975/-. He relied heavily on the order of the Id AO.
9. The Id AR submitted that the assessee has itself disallowed a sum of Rs. 305815/- and therefore, to that extent the disallowance cannot be upheld. With respect to the other aspect, she stated that from the unquoted shares, the assessee has not received any income and therefore, the disallowance has been correctly deleted by the Id CIT (A). She heavily relied upon the order of the Id CIT (A).
 10. On the issue of change in the method of valuation of stock from 'At cost' to the 'at cost or market value, whichever is less' as per ground No. 2, she submitted that the assessee has valued closing stock this year adopting the method of 'cost or net realizable value, whichever is less'. She submitted that the assessee is a company and therefore, accounting standard_2 requires to be mandatorily followed by the assessee. She stated that AO has made the addition only for the reason that why the assessee was following incorrect method in previous years. She submitted that when the assessee corrects itself in this year no fault could be found with the assessee. She further submitted that in the subsequent years the assessment u/s 143(3) of the Act was made where the same method of valuation adopted by the assessee in this year is accepted. She further stated that the correct method has been followed by the assessee consistently; now, it should be accepted, as it is bonafide, in accordance with the law and applicable rules and regulations. She further submitted a written synopsis on the issue.
 11. We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also perused the various decision cited by the parties.
 12. Coming to ground No1, it is accepted fact that during the year assessee has earned dividend income of Rs. 59,62,173/- which is claimed as exempt income. Further long-term capital gain of Rs. 16.72

crores was also claimed as exempt income. Therefore, it is apparent that the assessee has claimed exempt income and issue of disallowance u/s 14A of the act arises. Therefore, the Id AO asked the assessee to explain that why disallowance u/s 14A of the Act should not be made. In response to this question, assessee has suo motto offered the disallowance under Rule 8D of Rs. 305815/- in the submission. However, such disallowance was not originally made in the return of income, the computation submitted by the assessee was verified by the Id AO, and he noted that the assessee has excluded the investment in unquoted shares for calculation of disallowance u/s 14A of the Act. Therefore, he rejected the working, computed the disallowance himself, and made the addition accordingly. The learned Commissioner of income tax appeals has allowed the appeal of the assessee relying on the decision of the Hon'ble Delhi High Court in case of Holcim India Ltd. We have carefully perused the decision of the Hon'ble Delhi High Court and find that issue before the Hon'ble Delhi High Court was whether investment made by the assessee for controlling interest is required to be covered for disallowance under section 14A of the act or not. The Hon'ble High Court held that disallowance under section 14A cannot be made where the dominant object of the investment is controlling interest. However the Hon'ble Supreme Court in case of Maxxopp investments Ltd Vs. Commissioner of income tax (2018) 402 ITR 640 (SC) has held that the dominant purpose in making investment in shares is not relevant for the purpose of disallowance to be made under section 14 A of the act. In view of this we reverse the finding of the learned CIT appeal and restore the order of the assessing officer so far as disallowance under section 14 A of the act is concerned. However the learned assessing officer is further directed to give the credit of the disallowance already offered by the assessee of ₹ 3 05815/- under section 14 A of the Act which is already offered by the assessee. If the above amount has already been

added by the assessee in its computation of total income or during the course of assessment proceedings and is already taxed, the learned assessing officer is required to reduce the disallowance of ₹ 665592/- by the sum of ₹ 305815/-. Accordingly, ground No. 1 of the appeal of the revenue is partly allowed.

13. Coming to ground number 2 of the appeal it is apparent that for this year the assessee has changed the method of valuation of the closing stock of shares from "at cost to "at cost or market value, whichever is less." Though As-2 Issued by ICAI does not apply to shares held as stock in trade, however the basic principle of accounting of 'Prudence' explains that no income, which has accrued to the assessee, should not be recognized and valuation at cost or market value whichever is less is part of that principle. . It is also submitted before asked that assessee has followed that method consistently in subsequent years and the learned authorized representative supported the same fact by submitting a copy of the assessment order under section 143 (3) of the income tax act for assessment year 2012-13 passed on 24/2/2015 where the assessee has followed the method of the valuation of closing stock 'at cost or market value whichever is less" has been followed by the assessee and accepted by the learned assessing officer. This fact is not disputed. The valuation of the closing stock at cost or market value whichever is less is the most prudent method as it does not recognize the revenue which has not been earned by the assessee. Further it was not shown by the revenue that how the change in the method of the valuation of the closing stock is not bona fides. The decision of Calcuta High Court in 200 ITR 68 relied upon by the Id AO supports the case of the assessee as assessee was following valuation method of 'At cost' which is changed to 'At cost or market value whichever is less' is more prudent. In view of this, we do not find any infirmity in the order of the learned Commissioner of income tax

appeals. Accordingly, ground number 2 of the appeal of the revenue is dismissed.

14. Accordingly, appeal of the revenue is partly allowed.

Order pronounced in the open court on 12/10/2018.

-Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:12/10/2018
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi