

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

**ITA No.1549/Del/2014
Assessment Year: 2001-02**

<p>Religare Enterprises Ltd., GYS Global, 7th Floor, A-3,4,5 Plot No.11, Sector 125. Noida. PAN: AAACV5888N (Appellant)</p>	vs	<p>DCIT, Circle 15(1), New Delhi. (Respondent)</p>
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Appellant by: Shri Rohit Jain , Advocate
MsTejasvi Jain, Advocate
Respondent by: Smt. Sulekha Verma, CIT DR

Date of hearing: 06.12.2018
Date of Pronouncement: 10.01.2019

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 23/12/2013 in appeal No. 407/11-12 passed by the learned Commissioner of Income Tax (Appeals)-XVIII, New Delhi ("Ld. CIT(A)"), assessee preferred this appeal.

2. Brief facts of the case for the disposal of this appeal are that M.s Religare Enterprises Ltd. (assessee) is a holding company of Religare Group of companies and their business is to provide support and strategic directions to its wholly owned subsidiaries, in the capacity of a holding company. For the Asstt. year 2009-10, they have filed their return of income on 30.9.2009 declaring a

total taxable income of Rs.16,58,03,380/- which subsequently was revised on 31.3.2011 by reducing it to Rs.13,26,56,013/- which was comprising loss under the head “profits and gains of business and profession” to the extent of Rs.1,62,43,912/-, income under the head “capital gains” of Rs. 61,981/- , under the head “income from other sources Rs.1,92,96,561/- . Assessment was complete u/s 143(3) by order dated 30.12.2011 at a total income of the assessee at Rs.21,88,39,885/-. Learned AO made several additions which includes, for the purpose of this appeal, the disallowance u/s 14A of the Act to the tune of Rs.18,52,855/- prior period expense, Rs.14,10,240/- denial of adjustment of brought forward losses and unabsorbed depreciation allowance to the tune of Rs.36,41,420/-. Assessee also was aggrieved by the learned AO not granting credit for tax deducted at source.

3. When the assessee preferred appeal, learned CIT(A) by way of impugned order confirmed the addition u/s 14A, disallowance of audit fee to the tune of Rs.14,240/- but directed the learned AO to verify the claim of the assessee in respect of short credit of TDS amount to the tune of Rs.1,21,46,885/- and also to verify the claim in respect of the brought forward losses and depreciation from earlier years.

4. Challenging this action of the learned CIT(A) assessee preferred this appeal stating that while computing the average value of investment for the purpose of disallowance u/s 14A which are incapable of yielding tax free income. The assessee further challenged that the disallowance of audit fee was also bad under law and the learned CIT(A) should have directly credited the tax deducted at source and allowed the set off of brought forward losses and unabsorbed depreciation. However, by way of additional grounds, assessee raised the question that the disallowance u/s 14A of the Act was bad for including strategic/business investment of the assessee; that the disallowance u/s 14A of the Act should have been computed only qua the investment which

yielded exempt income during the relevant previous year and in any case, the disallowance u/s 14A cannot exceed the dividend income actually earned by the assessee.

5. We have gone through the record. In so far as the disallowance u/s 14A is concerned, during the year the assessee earned dividend income of Rs.88,05,855/- and suo moto disallowed a sum of Rs.23,14 crores in the return on this count i.e. Rs.16,72,59,755/- on account of apportionment of income and expenditure and Rs.6,41,70,755/- towards 0.5% average value of the investment of Rs.12,83,41,15,527/-. Learned AO, however, computed the disallowance in terms of Rule 8D of the Rules and reached a figure of Rs.23,32,83,188/- consisting of Rs.16,86,08,015/- towards the interest expenditure apportionment and Rs.6,46,15,173/- towards 0.5% of the investments taken at Rs.12,92,30,34,511/-.

6. In so far as the contention of the assessee that the disallowance u/s 14A of the Act cannot be made on the strategic and business investment of the assessee is concerned, we find it difficult to agree with the assessee in view of the decision of the Hon'ble Apex Court in the case of Maxopp Investments Ltd. vs CIT, 91 taxmann.com 154.

7. Coming to the statement of the learned AR that in view of the decision in the case of ACB India Ltd. vs ACIT, 374 ITR 108 (Del) and REI Agro Ltd. vs DCIT, 144 ITD 141n (Kol-Trib), the appeal against which was dismissed by the Hon'ble Calcutta High Court in ITAT No.220 of 2013 while calculating the average investment under Rule 8D(2)(ii)(iii), only those investments which have actually yielded dividend income during the relevant year should be considered, we are convinced with this argument and in fact, the Hon'ble jurisdictional High Court in ACB India Ltd. (supra) held that the learned AO is required by the mandate of Rule 8D(2)(i) to (iii) detailed in the methodology to

be adopted; and the learned AO cannot adopt the average value of the total investment instead of the average value of investment of which income is not part of a total income i.e. value of tax exempt investment. In view of this binding precedent, we find that the learned AO had to consider only those investments which have actually yielded the tax exempt income during the relevant year and not the total investment.

8. On the aspect of the contention of the assessee that the disallowance should be restricted to some reasonable proportion of actual dividend received and such disallowance cannot in any case, exceed exempt dividend income at Rs.87,05,855/- earned during the relevant year, this proposition is based on the decision of the Hon'ble jurisdictional High Court in the case of Joint Investments P. Ltd. vs CIT, 372 ITR 694 (Del). The ratio of the Hon'ble High Court holds the field and while respectfully following the same, we find that the disallowance shall not exceed the exempt income. We, therefore, set aside the issue and remand the matter to the file of the learned AO to work out the disallowance by calculating the average investment under Rule 8D(2)(ii)/(iii) by taking only those investments which have actually yielded the dividend income during the relevant year and if it exceeds the exempt income, then restrict the same to the extent of exempt income only. Ground Nos. 1 and Additional Grounds are allowed for statistical purposes.

9. Now coming to Ground No.2, it relates to the disallowance of Rs.14,10,240/- made by the AO treating it as prior period expense whereas, according to the assessee, this payment was audit fee payable to statutory auditor, namely Price Waterhouse Cooper and the expenses are pertaining to the year under consideration only on which the assessee had duly deducted the tax at source.

10. Learned CIT(A) found that there is inherent contradiction in the stand

taken by the assessee inasmuch as according to him, there was payment of TDS on the payments made to the auditor and disallowance u/s 40A(ia) while computing the taxable income. Learned CIT(A), therefore, felt that it is an afterthought and refused to accept the same.

11. On this aspect, we do not find any reason to interfere with the findings of learned CIT(A) and it is not substantiated before us as to how the findings of the learned CIT(A) are incorrect. We, therefore, uphold the findings of the learned CIT(A).

12. In so far as the short credit of TDS amount is concerned, learned CIT(A) recorded that the assessee submitted an application for rectification and it was still pending. In such circumstances, learned CIT(A) directed the AO to allow the claim after proper verification.

13. Lastly, coming to the claim of the assessee in respect of the brought forward loss and depreciation, in this respect also, learned CIT(A) directed the learned AO to allow the same after proper verification. We do not find anything illegal or irregular in these directions of the learned CIT(A), which warrants interference on our part in respect of these two issues.

14. In the result, appeal of the assessee is allowed in part and for statistical purposes.

Order pronounced in the Open Court on 10th January, 2019.

Sd/-

sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 10th January, 2019
VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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