



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

ITA no.2306/Mum./2018  
(Assessment Year :2012-13)

HITCO Investments Pvt. Ltd.  
5<sup>th</sup> Floor, Bharat House  
104, Mumbai Samachar Marg  
Fort, Mumbai 400 001  
PAN – AAACH2047M

..... Appellant

v/s

Income Tax Officer  
Ward-2(1)(4), Mumbai

..... Respondent

Assessee by : Shri V. Mohan  
Revenue by : Shri S.K. Bepari

Date of Hearing – 06.12.2018

Date of Order – 30.01.2019

**ORDER**

**PER SAKTIJIT DEY, J.M.**

The aforesaid appeal has been filed by the assessee challenging the order dated 23<sup>rd</sup> February 2018, passed by the learned Commissioner (Appeals)-4, Mumbai, pertaining to assessment year 2012-13.

2. In ground no.1, the assessee has challenged disallowance of ₹ 8,82,310, under section 14A of the Income Tax Act, 1961 (for short "the Act").

3. Brief facts are, the assessee company is engaged in investment activity. For the assessment year under dispute, the assessee filed its return of income on 12<sup>th</sup> September 2012, declaring total income of ₹ 2,81,229. During the assessment proceedings, the Assessing Officer while examining the computation of income filed by the assessee noticed that the assessee has claimed share in profit of partnership firm amounting to ₹ 6,00,790, as exempt. Whereas, it has not disallowed any expenditure under section 14A of the Act for earning the exempt income. Therefore, he called upon the assessee to explain why disallowance under section 14A r/w rule 8D should not be made. Though, the assessee submitted that no expenditure is attributable to the earning of exempt income, however, the Assessing Officer did not find merit in the submissions of the assessee and disallowed an amount of ₹ 8,82,310, under section 14A r/w rule 8D, which comprised of direct expenditure of ₹ 2,00,000 u/r 8D(2)(i), indirect interest expenditure of ₹ 6,19,683 u/r 8D(2)(ii), and administrative expenditure of ₹ 62,627 u/r 8D(2)(iii). Being aggrieved with such disallowance, the assessee preferred appeal before the first appellate authority.

4. The learned Commissioner (Appeals), however, granted partial relief to the assessee by directing the Assessing Officer to exclude the investment of ₹ 1.60 lakh made in the equity shares of M/s. Batliboi

Environmental Engineering Ltd., which has not yielded any exempt income during the year.

5. The learned Authorised Representative submitted, on the share capital investment made in the partnership firm the assessee has received interest income of ₹ 10,99,593, which has been offered to tax. He submitted that interest income from inter-corporate deposits have also been offered to tax. Only exempt income earned by the assessee during the year is share in profit of the partnership firm. Therefore, he submitted, no disallowance under rule 8D(2)(i) and rule 8D(2)(ii) can be made. He submitted, disallowance under section 14A of the Act may be restricted to the amount disallowed under rule 8D(2)(iii).

6. The learned Departmental Representative relied upon the observations of the learned Commissioner (Appeals).

7. We have considered rival submissions and perused material on record. Undisputedly, only exempt income earned by the assessee during the year is the share in the profit of partnership firm amounting to ₹ 6,00,790. Whereas, the interest earned on the share capital in partnership firm has been offered to tax. The assessee has not earned any exempt income on the investment in equity shares. In the aforesaid facts and circumstances, the only expenditure which can be

disallowed under section 14A of the Act is the amount attributable to the earning of share in the profit of the partnership firm. That being the case, we find merit in the submissions of the learned Authorised Representative that the disallowance under section 14A of the Act has to be restricted to the administrative expenditure under rule 8D(2)(iii). Accordingly, we direct the Assessing Officer to restrict the disallowance under section 14A of the Act to ₹ 62,627. Ground raised is partly allowed.

8. In ground no.2, the assessee has challenged disallowance of consultancy charges paid of ₹ 2,00,000.

9. Brief facts are, during the assessment proceedings the Assessing Officer noticing that the assessee has claimed deduction of ₹ 2,00,000 towards consultancy charges paid called for necessary details. On verifying the details furnished by the assessee, the Assessing Officer observed that the aforesaid amount was paid to Ms. Farah Bhogilal, who is related to the directors of the company. He also observed that such payment has been made for the first time in the impugned assessment year beginning from the month of June, 2011 @ ₹ 20,000 per month. When the Assessing Officer called upon the assessee to furnish the details of services obtained from the said consultant, it was submitted by the assessee that the amount was paid for doing equity research. The Assessing Officer observed, the investment portfolio of

the assessee reflects investment in share capital of the partnership firm amounting to ₹ 1,17,69,940, and equity share of M/s. Batliboi Environmental Engineering Ltd. amounting to ₹ 1,60,000. The Assessing Officer, therefore, held that since the assessee has failed to establish that services were actually rendered to justify the payment made, the expenditure is not allowable as business expenditure. Therefore, he held that the consultancy fees paid to the director's relative being unreasonable and excessive has to be disallowed. However, since the said amount was already disallowed by him under section 14A of the Act, no separate disallowance was made by the Assessing Officer.

10. Though, the assessee challenged the disallowance before the first appellate authority, however, learned Commissioner (Appeals) also sustained the disallowance made by the Assessing Officer.

11. The learned Authorised Representative submitted, the concerned person was appointed as a consultant by the company and the amount was paid in terms with the condition of her appointment. In this context, he drew our attention to a copy of the letter dated 29<sup>th</sup> June 2011, placed at Page-13 of the paper book. The learned Authorised Representative submitted, though, the person concerned is a relative of the assessee, however, the payment made cannot be held to be unreasonable and excessive without bringing any material on record to

hold so. Therefore, he submitted, the provisions of section 40A(2)(b) of the Act is not applicable. Further, he submitted, the consultant has rendered services with regard to the investment activities, therefore, it has to be allowed as expenditure since it is for the purpose of business.

12. The learned Departmental Representative relied upon the observations of the learned Commissioner (Appeals).

13. We have considered rival submissions and perused material on record. Though, the Assessing Officer has not specifically referred to provisions of section 37(1) of the Act while disallowing the amount of ₹ 2,00,000, however, he has recorded a finding that the assessee has failed to establish that the expenditure was for the purpose of business. Therefore, the observation of the learned Commissioner (Appeals) that the disallowance has been made under section 37(1) of the Act appears to be correct. In any case of the matter, apart from submitting the appointment letter, the assessee has not proved the business expediency of the aforesaid payment by furnishing any cogent evidence to demonstrate that services were actually rendered by the consultant. That being the case, we do not find any reason to interfere with the decision of the learned Commissioner (Appeals) on this issued. Ground raised is dismissed.

14. In the result, appeal is partly allowed.

Order pronounced in the open Court on 30.01.2019

**SD/-**  
**N.K. PRADHAN**  
**ACCOUNTANT MEMBER**

**SD/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 30.01.2019**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Sr. Private Secretary)  
ITAT, Mumbai