

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

ITA No. 4373/Del/2015
(Assessment Year: 2011-12)

Pearey Lall & Sons (EP) Pvt. Ltd, Formerly known as M/s. Pearey Lall & Sons (EP) Ltd, 21-a, Janpath, New Delhi PAN: AAACP7410L	Vs.	ACIT, Rohtak
(Appellant)		(Respondent)

Assessee by :	Shri Pradeep Dinodia, Adv Shri R. K. Kapoor, Adv
Revenue by:	Shri Surender Pal, Sr. DR
Date of Hearing	17/12/2018
Date of pronouncement	31/01/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against order of the Id CIT (A), Rohtak, dated 19.05.2015 for the assessment year 2011-12.
2. The assessee has raised the following grounds of appeal:-
 - "1. *That the order passed by the Id CIT(A) in confirming the action of the Assessing Officer on account of addition of depreciation to the extent of Rs. 1,96,10,677/- is bad in law.*
 2. *That the Assessing Officer/ CIT(A) failed to appreciate that the claim of depreciation under the Income Tax Act law stands on different footing with the claim of the depreciation in the books of account.*
 3. *That the order passed by the Assessing Officer and confirmed by the Id CIT (A) is bad in law.*
 4. *That the disallowance of Rs. 29,91,405/- made by the Assessing Officer and upheld by the CIT(A) is bad in law.*
 5. *That the CIT(A) failed to consider the detailed submissions and has passed order in a casual manner to confirm the disallowance.*

6. *That the disallowance u/s 14A read with Rule 8D is not as per the provisions of these sections/ rules and is bad in law."*
3. The brief facts of the case is that the assessee is a company who filed its return of income on 30/09/2011 declaring loss of Rs. 11885404/-. The assessment u/s 143(3) of the Act was passed on 11/3/2012 disallowing a sum of Rs. 2991405/- u/s 14A of the Act. Further, the disallowance of Rs. 20384058/- was made on the deduction of depreciation written back by the assessee. The total income was computed at Rs. 13586003/-.
 4. The assessee preferred an appeal before the Id CIT(A) who passed an order confirming the disallowances u/s 14A as well as partly allowing the ground of the appeal with respect to deletion of the disallowances on write back of depreciation. Therefore, the assessee is in appeal before us.
 5. The first ground of appeal is on account of addition of depreciation of Rs. 19610677/-.
 6. The brief facts of the case is that while filing the computation of total income assessee has claimed depreciation u/s 32 of the Act at Rs. 2063149/- and further reduced the total taxable income by depreciation written back of Rs. 20384058/- credited in profit and loss account on change of method of depreciation as per the Companies Act 1956. The Id AO was of the view that as the assessee has been granted deduction u/s 32 of the Act, the second deduction of Rs. 20384058/- is not allowable. Therefore, he made this addition. On appeal before the Id CIT(A) he reduced the addition from Rs. 20384058/- to Rs. 19610677/- linking at correct amount of depreciation written back. Therefore, Id AO is in appeal before us.
 7. The Id AR submitted that above amount was written back in the books of account as per audited balance sheet of the assessee because of the reason that there was a change in the method of providing of depreciation from written down value method to straight line method. As a result there was a difference of depreciation provided up to the beginning of the year on the written down value method now changed to straight line method of Rs. 19610677/-. Same was credited to the profit and loss account of the assessee and therefore the same was

reduced in the computation. He submitted that this adjustment is book entry as per the guidance note of the ICAI on change in method of Depreciation and its accounting treatment. He therefore submitted that same cannot be added or disallowed by the Id AO.

8. The Id DR supported the order of the lower authorities.
9. We have carefully considered the rival contentions and perused the orders of the lower authorities. Apparently during year the company has changed the method of providing depreciation on its assets from written down value method to straight line method. Therefore, it is difference between the two depreciation methods resulted into excess depreciation provided by the assessee till then in the books of account was of Rs. 19610677/- which is now credited to profit and loss account. While preparing the computation of total income, assessee reduced above sum from the net profit as per profit and loss account as same was not chargeable to tax as it is merely a book adjustment on account of change in the method of depreciation. It is also supported by the guidelines issued by ICAI. The lower authorities have not understood the correct treatment of the same as the above item credited to the profit and loss account is merely book adjustment by which the profit in the books of account have gone up and as it does not have any tax impact, same is correctly reduced from the taxable income of the assessee. It has nothing to do with the claim of the depreciation on assets which is terms of the provision of section 32 of the Income tax Act. Hence we reverse the finding of the lower authorities and direct the Id AO to delete the disallowances of Rs. 19610677/-. Accordingly, ground No. 1 to 3 of the appeal of the assessee are allowed.
10. Ground No. 4 to 6 of the appeal are against the disallowances of Rs. 2991405/- u/s 14A of the Act. It is found that assessee has invested in shares and mutual funds and therefore, the Id AO issued notices to the assessee as to how the interest and expenditure attributable to the investment of Rs. 50367218/- made in the shares and mutual funds. AO notes that assessee has secured loan of Rs 51.28 cross and unsecured

loan of Rs. 28.46 lakhs . The assessee submitted its reply resisting the disallowances. However, the Id AO invoked the provisions of section 14A of the Act and made disallowances of Rs. 2991405/- under Rule 8D of the Income Tax Rules 1962 under section 14A of the Act. The assessee unsuccessfully contested the same before the Id CIT(A). Ld CIT(A) confirmed the disallowances following the order for Assessment Year 2008-09.

11. The Id AR vehemently submitted that there cannot be any disallowances on account of interest expenditure u/s 14A of the Act as the total share capital and reserves of the assessee are about Rs. 25 crores and the investment is merely Rs. 5.03 crores, however, it was stated that the assessee has offered disallowances in assessment proceedings of Rs. 2.70 lacs which is equivalent to 0.5% disallowances made by the AO.. In view of this he submitted that disallowances on account of interest under Rule 8D of Rs. 2720924/- is incorrect.
12. The Id DR supported the order of the Id AO and Id CIT(A).
13. We have carefully considered the rival contentions. On perusal of the assessment order it is apparent that assessee has made investment in shares and mutual funds of Rs. 5.03 crores income of which is exempt from tax. It is also apparent that assessee has share capital and reserve of Rs 2.50 crore which is far in excess of amount invested in mutual funds where from exempt income may be derived. Therefore, respectfully following the decision of Hon'ble Bombay High court in case of HDFC Bank Ltd. Vs. CIT 366 ITR 505 it is a parent that disallowances on account of interest expenditure cannot be made under rule 8D of the Income Tax Rules 1962 u/s 14A of the Act. Further, the Id AO has disallowed Rs. 270481/- as indirect expenses equal to 0.5 % on an average investment to which assessee also agreed. It was also admitted by the assessee before the lower authorities. In view of this we direct the Id AO to restrict the disallowances u/s 14A of the Act to Rs. 270481/- only. Accordingly, ground Nos. 4 to 6 of the appeal of the assessee is partly allowed.

14. In the result appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 31/01/2019.

-Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 31/01/2019
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi