

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "E" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.Nos.3855, 3856 & 3857/Del./2015  
Assessment Years 2008-2009, 2009-2010 & 2010-2011

The ACIT, Central Circle-7, Room No.330, ARA Centre, Jhandewalan Extn., New Delhi.	VS	M/s. R.J. Corp Ltd., F-2/7, Okhla Indl. Area, Phase-1, New Delhi. PAN AAACA2573R
(Appellant)		(Respondent)

Cross Objection Nos. 51, 52 & 53/Del./2016  
Arising out of  
ITA.Nos.3855, 3856 & 3857/Del./2015  
Assessment Years 2008-2009, 2009-2010 & 2010-2011

M/s. R.J. Corp Ltd., F-2/7, Okhla Indl. Area, Phase-1, New Delhi. PAN AAACA2573R	VS	The ACIT, Central Circle-7, Room No.330, ARA Centre, Jhandewalan Extn., New Delhi.
(Cross Objector)		(Respondent)

For Revenue :	Ms. Pranita M. Biswal, CIT-D.R.
For Cross Objector :	Shri Akshit Jain, C.A. And Shri Rajat Jain, C.A.

Date of Hearing :	28.03.2019
Date of Pronouncement :	02.04.2019

**ORDER**

**PER BENCH :**

All the above Departmental Appeals and Cross  
Objections by Assessee are directed against the different

Orders of the Ld. CIT(A)-24, New Delhi, Dated 26.03.2015, for the A.Ys. 2008-2009, 2009-2010 and 2010-2011. In all the appeals and cross objections, similar issues have been raised. Therefore, all the matters are disposed of through this common consolidated Order.

2. We have heard the Learned Representatives of both the parties and perused the material available on record.

3. Briefly the facts of the case are that a search and seizure operation under section 132 of the I.T. Act, 1961, was carried-out on M/s. Jaipuria group of cases on 27.03.2012. Warrant of authorisation under section 132 of the I.T. Act was also issued in the name of the assessee company. Notice under section 153A of the I.T. Act was issued to the assessee and in response thereto, assessee filed returns of income for all the years. The assessee deriving income from house property, income from business and profession and income from capital gains. The assessee filed details which were examined by the A.O. The A.O. noted that during the course of search, it was observed that

Group has booked substantial expenses under the Head “Advertisement Expenses”. Some of the expenses do not appear to be genuine/justified. The A.O. accordingly, framed assessments under section 153A r.w.s. 143(3) of the Income Tax Act, 1961, in all the above years and made several additions against the assessee. In the back ground of these facts, we decide the appeals of the Department and Cross Objections of the Assessee as under.

ITA.No.3855/Del./2015 - A.Y. 2008-2009 :

4. The Department has raised the following effective grounds of appeals :

- “2. *On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs.8,78,816/- made by the AO on account of unexplained advertisement expenses.*
3. *On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs.72,85,822/- made by the AO u/s 14A r.w.r 8D of the I.T. Rules. (The AO had made an addition of*

*Rs.2,86,42,275/- u/s 14A r.w.r 8D of the I.T. Rules which was subsequently reduced u/s 154 of the I.T. Act to Rs.72,85,822/-)*”.

5. The assessee has filed the cross objections on the following grounds :

- “1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the disallowance of Rs.26.86.438/- under section 14A read with rule 8D of the Income Tax Act & Rules respectively.*
- 2. That the Ld. CIT (A) erred in holding that some expenses are to be allocated in earning exempt income.*
- 3. That the CIT(A) ought to have appreciated that if there is no exempt income then no disallowance is to be made u/s 14A even if itself had offered the disallowance, the same was liable to be deleted in view of the interpretation of that provisions by Hon’ble Delhi High Court in the case of CIT Vs*

*Holcim India Pvt. Ltd. I.T.A.No. 486 and other high court in various cases.*

4. *That the aforesaid cross objections on legal issue are admissible in view of the / judgment of Hon'ble Supreme Court in the case of National Thermal Power Corporation Ltd. vs. CIT [1998] 229-ITR-383-SC."*

6. The A.O. in the post-search investigation asked the assessee to provide details of advertisement expenses. As per the details submitted, there are number of parties to whom advertisement expenses have been booked but no address or PAN have been provided. No reply was filed to the questionnaire issued by the A.O. The statement of assessee was recorded but till date, no confirmation and details have been provided. Notice under section 133(6) were issued to the parties to whom advertisement expenses have been paid, but, they did not comply with the same. The A.O. accordingly held the advertisement expenses not to be genuine and made addition of Rs.8,78,816/-.

6.1. The A.O. has verified Schedule-10 of the balance sheet and details of unsecured loans as on 31.03.2008, which has not shown any balance of unsecured loans. However, as per the balance-sheet filed in A.Y. 2009-2010, the amount of balance of such loan given outstanding on 31.03.2008 was Rs.50 lakhs which have not been explained by assessee in assessment year under appeal. Therefore, Rs.50 lakhs was added to the income of assessee. The A.O. further made addition on account of interest on loans in a sum of Rs.6 lakhs. The A.O. further made addition on account of disallowance under section 14A read with Rule 8D of the I.T. Act in a sum of Rs.2,86,42,274/- and computed the income of assessee accordingly.

7. The assessee challenged all these additions before Ld. CIT(A). the submissions are noted in detail in the impugned order of the Ld. CIT(A). The Ld. CIT(A) following the order for A.Y. 2007-2008, deleted the addition on account of disallowance of advertisement expenses. The Ld. CIT(A) also deleted the addition of Rs.50 lakhs and Rs.6 lakhs. The Ld. CIT(A) following his order for A.Y. 2007-2008

also deleted the addition made under section 14A of the I.T. Act, 1961. The appeal of assessee was accordingly allowed.

8. The Revenue is in appeal challenging the deletion of additions on account of advertisement expenses and disallowance under section 14A of the I.T. Act.

9. The assessee in the cross objections has contended that since assessee did not earn any exempt income, therefore, no disallowance under section 14A could be made. The assessee in all the above three Departmental Appeals as well as Cross Objections have also raised legal ground which reads as under :

*“1. That on the facts and circumstances of case, additions made under section 153A of the Income Tax Act, 1961 is bad in law as the same were not made on the basis of incriminating material found during the course of search and seizure operation and the case of relevant assessment year has already been assessed under section*

*143(1)/143(3) which could not abate on the date of search.”*

10. The Learned Counsel for the Assessee submitted that since no incriminating material was found during the course of search and the additional ground is legal in nature, therefore, same may be admitted for hearing. He has admitted that such ground was not raised in A.Ys. 2008-2009 and 2010-2011 before Ld. CIT(A) and also did not raise in cross objections. The assessee has raised for the first time before the Tribunal. He has submitted that the issue is covered by the Judgment of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawls 380 ITR 573 (Del.). Learned Counsel for the Assessee also submitted that on both the issues involved in Departmental Appeal, the Ld. CIT(A) followed his order for the A.Y. 2007-2008, in which the Departmental Appeal have been dismissed by the Tribunal because of the low tax effect and therefore, there is no adjudication of these issues on merit. He has further submitted that since assessee did not earn any exempt income, no disallowance under section 14A is permitted.

11. The Ld. D.R. relied upon the Order of the A.O.
12. After considering the rival submissions, we are of the view that additional ground raised in all the matters are legal in nature and there is no need to investigate into fresh facts, therefore, additional ground shall have to be admitted. We rely on Judgment of Hon'ble Supreme Court in the case of NTPC Ltd., 229 ITR 383. We, therefore, admit the additional ground in all the above matters. It is well settled law that completed assessments can be interfered with by the A.O. while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search, which was not produced or not already disclosed or made known in the course of original assessment. We, rely upon the Judgments of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla 380 ITR 573 (Del.) and Pr. CIT vs. Meeta Gut Gutia 395 ITR 526 (Del.). Since the additional ground raised for the first time and have not been adjudicated in two years by the authority below, therefore, the same requires consideration at the level of the Ld. CIT(A). We, accordingly, set aside the orders

of the authorities below and restore the additional ground to the file of Ld. CIT(A) with a direction to decide this additional ground as per law, by giving reasonable and sufficient opportunity of being heard to the assessee and A.O. in all the three years.

13. As regard addition on merit considered by the Ld. CIT(A) on account of advertisement expenses and disallowance under section 14A of the I.T. Act, 1961, it appears that Ld. CIT(A) has not considered the findings of the A.O. while deleting the addition. The Ld. CIT(A) merely followed his order for the A.Y. 2007-2008 and deleted the addition. Since in A.Y. 2007-2008, admittedly, the departmental appeal have been dismissed by the Tribunal on account of low tax effect, therefore, the same requires re-adjudication at the level of the Ld. CIT(A). We, accordingly, set aside the Orders of the authorities below and restore this issue to the file of Ld. CIT(A) with a direction to re-decide this ground on merits giving reasons for decision in the same, by giving reasonable, sufficient opportunity of being heard to the assessee and A.O.

14. As regards disallowance under section 14A of the I.T. Act, 1961, the assessee has not raised any specific ground before the Ld. CIT(A) that assessee has not earned any exempt income. We find from the impugned order that assessee has merely submitted before Ld. CIT(A) that he has not earned any substantive exempt income, on which, no finding of fact have been recorded by the Ld. CIT(A) as well. The Ld. CIT(A) merely followed his order for the A.Y. 2007-2008 and deleted the addition, on which, the Tribunal dismissed the departmental appeal because of low tax effect. It is well settled law that if the assessee did not earn any exempt income, no disallowance under section 14A could be made. We rely upon the Judgment of Hon'ble Delhi High Court in the case of Cheminvest Ltd., 378 ITR 33 (Del.). No finding of fact have been recorded by the Ld. CIT(A) on the same. Therefore, this issue also requires re-consideration at the level of the Ld. CIT(A). We may also note here that since we have admitted additional ground which is purely legal in nature and directed the Ld. CIT(A) to decide the same as per Law, therefore, the issue on merit shall have to be decided

after deciding the legal issue which would have bearing on the assessment of income of assessee as per law. In case assessee succeeds on legal ground, perhaps, there may not be any need to decide grounds on merits. In view of these peculiar facts and circumstances, we have already set aside the Orders of the authorities below and restore the matter in issue to the file of Ld. CIT(A) to decide the issues afresh as is directed above, therefore, this issue is also restored to Ld. CIT(A) with a direction to decide this issue afresh, by giving reasonable, sufficient opportunity of being heard to the assessee and A.O.

15. In the result, ITA.No.3855/Del./2015 of the Department and Cross Objection No.51/Del./2016 of the Assessee are allowed for statistical purposes.

ITA.No.3856/Del./2015 – A.Y. 2009-2010 :

16. The Revenue has raised two effective grounds of appeal as under :

- “2. *On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of*

*Rs.11,27,042/- made by the AO on account of unexplained advertisement expenses.*

3. *On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs.2,49,74,701/- made by the AO u/s 14A r.w.r 8D of the I.T. Rules. (The AO had made an addition of Rs.7,08,92,279/-/- u/s 14A r.w.r 8D of the I.T. Rules which was subsequently reduced u/s 154 of the I.T. Act to Rs.3,44,32,432/-/)*”.

17. The assessee in the C.O.No.52/Del./2016 has raised the following grounds :

- “1. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the disallowance of Rs.51,12,178/- under section 14A read with rule 8D of the Income Tax Act & Rules respectively.*
2. *That the Ld. CIT (A) erred in holding that some expenses are to be allocated in earning exempt income.*

3. *That the CIT(A) ought to have appreciated that if there is no exempt income then no disallowance is to be made u/s 14A even if itself had offered the disallowance, the same was liable to be deleted in view of the interpretation of that provisions by Hon'ble Delhi High Court in the case of CIT Vs Holcim India Pvt. Ltd. I.T.A.No. 486 and other high court in various cases.*
4. *That the aforesaid cross objections on legal issue are admissible in view of the / judgment of Hon'ble Supreme Court in the case of National Thermal Power Corporation Ltd. vs. CIT [1998] 229-ITR-383-SC.”*

18. The A.O. in the assessment order has made additions on account of disallowance of advertisement expenses, disallowance unexplained loan, disallowance of interest on loans, disallowance under section 14A of the I.T. Act. The Ld. CIT(A), similarly, deleted all the additions and allowed the appeal of assessee. The Revenue is in appeal only on two grounds as against the additions made by the

A.O. on more items. The assessee on the cross objections has contended that since assessee has not earned any exempt income, therefore, no disallowance under section 14A could be made.

19. We have already admitted additional ground of appeal in all the matters. Therefore, following the reasons for decision for the A.Y. 2008-2009, we set aside the Orders of the authorities below and restore the departmental appeal and cross objections of the assessee along with additional ground to the file of Ld. CIT(A) with a direction to decide the same afresh, in accordance with law, by giving reasonable, sufficient opportunity of being heard to the assessee and A.O.

20. In the result, ITA.No.3856/Del./2015 of the Revenue and C.O.No.52/Del./2016 of the Assessee are allowed for statistical purposes.

ITA.No.3857/Del./2015 – A.Y. 2010-2011 :

21. The Department has raised two effective grounds of appeal as under :

- “2. On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs.22,68,806/- made by the AO on account of unexplained advertisement expenses.
3. On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs.3,44,32,432/- made by the AO u/s 14A r.w.r 8D of the I.T. Rules, which was subsequently reduced under section 154 of the I.T. Act to Rs.3,44,32,432/-.”

22. The assessee in the C.O.No.53/Del./2016 has raised the following grounds :

- “1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law in upholding the disallowance of Rs.74,62,089/- under section 14A read with rule 8D of the Income Tax Act & Rules respectively.
2. That the Ld. CIT (A) erred in holding that some expenses are to be allocated in earning exempt

*income.*

3. *That the CIT(A) ought to have appreciated that if there is no exempt income then no disallowance is to be made u/s 14A even if itself had offered the disallowance, the same was liable to be deleted in view of the interpretation of that provisions by Hon'ble Delhi High Court in the case of CIT Vs Holcim India Pvt. Ltd. I.T.A.No. 486 and other high court in various cases.*
4. *That the aforesaid cross objections on legal issue are admissible in view of the / judgment of Hon'ble Supreme Court in the case of National Thermal Power Corporation Ltd. vs. CIT [1998] 229-ITR-383-SC."*

23. In this year, the A.O. made additions on account of disallowance of advertisement expenses, unexplained loan, disallowance of interest and disallowance under section 14A of the I.T. Act, 1961. The Ld. CIT(A) allowed the appeal of assessee. The department has raised only two issues in the departmental appeal and assessee has raised

the issue in the cross objection that since no exempt income has earned, therefore, no disallowance under section 14A could be made.

24. We have already admitted additional ground of appeal in all the matters. Therefore, following the reasons for decision for the A.Y. 2008-2009 and 2009-2010, we set aside the Orders of the authorities below and restore the departmental appeal and cross objections of the assessee along with additional ground to the file of Ld. CIT(A) with a direction to decide the same afresh, in accordance with law, by giving reasonable, sufficient opportunity of being heard to the assessee and A.O.

25. In the result, ITA.No.3857/Del./2015 and Cross Objection No.53/Del./2016 of the Assessee are allowed for statistical purposes.

26. To sum-up, all the Departmental Appeals and Cross Objections of the Assessee are allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 02<sup>nd</sup> April, 2019.

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'E' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.