

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “C” BENCH: BANGALORE
BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

ITA. No.1726/Bang/2016
Assessment Year: 2008-09

M/s. Tata Coffee Limited, N-57. Railway Parallel Road, Kumara Park, West Bangalore, - 560020. PAN: AABCC 0241 R (Appellant)	vs.	Deputy Commissioner of Income Tax, Central Circle-5(1)(1), Bengaluru. (Respondent)
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For Assessee:	Sri K.R. Vasudevan
For Revenue :	Dr. P.V. Pradeep Kumar, Addl. CIT

Date of Hearing :	04.04.2019
Date of Pronouncement :	24.04.2019

ORDER

PER B.R. BASKARAN, AM:

The assessee has filed this appeal challenging the order dated 28-07-2016 passed by Ld CIT(A)-7, Bengaluru and it relates to the assessment year 2008-09. The assessee is aggrieved by the decision rendered by Ld CIT(A) on the following issues:-

- (a) Disallowance u/s 14A of the Act.
- (b) Non-granting of credit for Foreign Tax.

2. We heard the parties and perused the record. This is second round of proceeding before the Tribunal. We shall first take up the issue relating to disallowance u/s 14A of the Act. The assessee received dividend income of Rs.310.85 lakhs. The assessee had borrowed funds and invested the same in a mutual fund scheme. The interest paid on the above said borrowings

was Rs.155.02 lakhs. The assessee voluntarily disallowed the above said interest expenditure. Hence the net dividend income claimed as exempt was Rs.155.83 lakhs.

3. The original assessment u/s 143(3) of the Act was completed by the AO on 29-09-2008, wherein the AO computed disallowance u/s 14A at Rs.403.63 lakhs, but restricted the disallowance to the net dividend income of RS.155.83 lakhs. The assessee had declared business loss of Rs.1348.93 lakhs. Hence the AO, inter alia, reduced the loss by the amount of Rs.155.83 lakhs disallowed by him u/s 14A of the Act.

4. In the first round of appellate proceedings before Ld CIT(A), the first appellate authority computed disallowance u/s 14A at Rs.95.73 lakhs, which consisted of interest disallowance of Rs.73.34 lakhs u/r 8D(2)(ii) and expenses disallowance of Rs.22.39 lakhs u/r 8D(2)(iii) of I.T Rules. Accordingly he granted relief of Rs.60.10 lakhs. Aggrieved by the order so passed by Ld CIT(A), both the parties filed appeal before the Tribunal.

5. The co-ordinate bench of Tribunal, vide its order dated 06-09-2013 passed for AY 2008-09, restored the issue to the file of AO for examination of following questions with regard to the disallowance made u/s 14A of the Act.

(a) Whether there was any nexus between the borrowed funds on which interest was paid and the investments made.

(b) Whether the AO had verified the correctness of the assessee's claim that no expenditure was incurred in relation to such income.

(c) If the AO was not satisfied with the claim of the assessee, whether the reason for rejection of the assessee's claim has been recorded.

6. Consequent thereto, the assessing officer passed the assessment order u/s 143(3) r.w.s 254 of the Act on 31.03.2015, wherein he accepted that the investments (other than investment on which interest was voluntarily disallowed by the assessee) have been made out of past surplus funds. Accordingly he held no disallowance of interest expenditure u/r 8D(2)(ii) is called for. Accordingly he held that the expenses disallowance of Rs.22.39

lakhs made u/r 8D(2)(iii) alone is required to be disallowed u/s 14A of the Act. Accordingly he increased the business loss of the assessee by Rs.133.44 lakhs (Rs.155.83 lakhs originally disallowed by him (less) Rs.22.39 lakhs, being the addition sustained by him in the consequential order). Thus the AO gave relief of Rs.133.44 lakhs to the assessee as per the order passed by Ld CIT(A) in the original round of proceedings and after verification of the details as directed by the ITAT in the first round.

7. The assessee was not satisfied with the order passed by the AO and hence he preferred appeal before Ld CIT(A), who confirmed the order passed by the AO on this issue. Aggrieved, the assessee has filed this appeal before us.

8. The Ld A.R submitted that the disallowance of Rs.22.39 lakhs made by the AO in the consequential order is beyond the scope of remand made by the Tribunal and accordingly contended that the same should be deleted. On the contrary, the Ld D.R submitted that the above said disallowance of Rs.22.39 lakhs was made by the Ld CIT(A) u/r 8D(2)(iii) in the first round itself and it has been accepted by the assessee in the first round.

9. Having heard rival submissions, we are of the view that there is no merit in the submissions made by Ld A.R. We noticed that the Ld CIT(A), in the first round, had made disallowance of Rs.22.39 lakhs under Rule 8D(2)(iii) of I T Rules. The main contention of the assessee before the Tribunal, in the first round, was with regard to the interest disallowance made by Ld CIT(A) under Rule 8D(2)(ii) on the plea that the investments have been made out of surplus funds. In any case, it was not shown before us as to why the disallowance out of administrative expenses should not be made under Rule 8D(2)(iii) of I T Rules. Accordingly we confirm the order passed by Ld CIT(A) on this issue.

10. The next issue relates to the non-granting of credit for Foreign tax paid. We notice that the Ld CIT(A) has already restored this issue to the file of the AO with the direction to examine the claim of the assessee. Hence we

do not find it necessary to give any other direction except stating that the AO shall allow the credit in accordance with the law.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 24th April, 2019.

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Dated: 24th April, 2019.

OKK, Sr.PS

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