IN THE INCOME TAX APPELLATE TRIBUNAL
"J" BENCH, MUMBAI

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

ITA no. 5600/Mum./2011
(Assessment Year : 2007–08)

Tata Motors Ltd.
Bombay House, 24, Homi Street
Hutatma Chowk, Mumbai 400 001
PAN – AAACT2727Q
……………. Appellant

v/s

Dy. Commissioner of Income Tax
Range–2(3), Mumbai
……………. Respondent

Assessee by : Shri Rajan Vora a/w
Shri Nikhil Tiwari
Revenue by : Shri Debashish Chanda

Date of Hearing – 30.01.2019	Date of Order – 25.04.2019

O R D E R

PER SAKTIJIT DEY, J.M.

Aforesaid appeal has been filed by the assessee challenging the final assessment order dated 26th May 2011, passed under section 143(3) r/w section 144C of the Income Tax Act, 1961 (for short *"the Act"*) for the assessment year 2007–08 in pursuance to the directions of the Dispute Resolution Panel–II (DRP), Mumbai.

2. In ground no.1, the assessee has challenged disallowance of expenditure under section 14A r/w rule 8D.

3. Brief facts are, the assessee company is engaged in the business of manufacturing of chassis and vehicles including motorcar and its spares for transportation of goods and passengers. Besides, the assessee is also engaged in the business of hire purchase and leasing of the vehicles manufactured by it. For the impugned assessment year, the assessee filed its return of income originally on 30th October 2007, declaring total income of ₹ 1284,54,70,964 under the normal provisions of the Act and ₹ 2188,13,41,552, under section 115JB of the Act. Subsequently, the assessee filed revised return of income on 30th March 2009, declaring income of ₹ 1287,08,04,652, under the normal provisions of the Act and ₹ 2188,13,41,552, under section 115JB of the Act. During the assessment proceedings, the Assessing Officer noticed that in the previous year relevant to the assessment year under dispute, the assessee had earned dividend income of ₹ 198,90,32,804, and claimed it as exempt from tax under section 10(34) of the Act. Similarly, it had earned interest income of ₹ 2,43,50,578, and claimed it as exempt under section 10(35) of the Act. From the annual report of the assessee, the Assessing Officer observed that it had incurred interest expenditure of ₹ 313.07 lakh. He, therefore, called upon the assessee to explain why disallowance of expenditure for earning exempt income should not be made under section 14A r/w rule 8D. Through letter dated 27th November 2009,

though, the assessee objected to the proposed disallowance of expenditure, however, the Assessing Officer rejecting the submissions of the assessee disallowed 5% of the exempt income towards expenditure for earning such income. The aforesaid disallowance made by the Assessing Officer was also upheld by learned DRP.

4. Shri Rajan Vora, learned Authorised Representative appearing for the assessee submitted, while dealing with identical issue in assessee's own case for the assessment year 2006–07 the Tribunal has restricted the disallowance under section 14A to 1% of the exempt income earned during the year. Therefore, he submitted, the disallowance in the impugned assessment year should also be restricted to 1% of the exempt income earned.

5. Shri Debashish Chanda, the learned Departmental Representative, though, agreed that in assessment year 2006–07 the Tribunal has restricted the disallowance to 1% of the exempt income, however, he relied upon the observations of the Assessing Officer and learned DRP.

6. We have considered rival submissions and perused material on record. As could be seen, the Assessing Officer on an ad–hoc basis has disallowed 5% out of the exempt income earned towards expenditure attributable to earning such income. Learned DRP has upheld such

disallowance following its order passed in the assessment year 2006–07. Notably, while deciding identical issue in assessee's own case for assessment year 2006–07 in ITA no.8926/Mum./2010, dated 28th January 2019, the Tribunal has restricted such disallowance to 1% of the exempt income earned during the year with the following observations:–

> *"We have considered rival submissions and perused material on record. It is legally accepted position that the provisions of rule 8D is not applicable to the impugned assessment year. Therefore, what is necessary to examine is, whether the disallowance made @ 5% of the exempt income earned during the year is reasonable. Notably, while deciding identical issue in assessee's own case for assessment year 1999–2000 to 2002–03, in ITA no.3329/Mum./2011 & Ors., dated 31st August 2017, the Tribunal has restricted the disallowance under section 14A of the Act to 1% of the exempt income earned during the year. The same view was reiterated by the Tribunal while deciding assessee's appeal for assessment year 2005–06 in ITA no.3336/Mum./ 2011, dated 13th April 2018. Consistent with the aforesaid view of the Co–ordinate Bench in assessee's own case, as referred to above, we direct the Assessing Officer to compute the disallowance under section 14A of the Act @ 1% of the exempt income earned during the previous year. This ground is partly allowed."*

7. Facts being identical, following the consistent view of the Tribunal on the disputed issue, as referred to above, we direct the Assessing Officer to restrict the disallowance under section 14A to 1% of the exempt income earned during the year. This ground is partly allowed.

8. In ground no.2, the assessee has challenged disallowance of deduction claimed on account of pro–rata amount of lease hold land.

In the course of assessment proceedings, the Assessing Officer while verifying the computation income noticed that in Note no.4, the assessee has claimed deduction of ₹ 41,13,103, on account of amortization of upfront payment made for lease hold land. The Assessing Officer observed that the assessee had not claimed this deduction either in the original return of income nor in the revised return of income. Accordingly, he disallowed assessee's claim of deduction. Learned DRP also upheld the decision of the Assessing Officer relying upon the ratio laid down by the Hon'ble Supreme Court in Goetze (India) Ltd. Vs. CIT, [2006] 284 ITR 323 (SC).

9. Learned Authorised Representative submitted, though, the assessee may not have claimed the deduction either in the original or in the revised return of income, however, the assessee can raise such claim not only in the course of assessment proceedings, but before the appellate authorities also. In support of such contention, he relied upon the following decisions:–

i) *CIT v/s Pruthvi Brokers & Shareholders Pvt. Ltd., [2012] 349 ITR 336 (Bom.); and*

ii) *Jute Corporation of India Ltd. v/s CIT, [1991] 187 ITR 688 (SC).*

10. He submitted, in the assessment year 2006–07 also, though, the assessee had claimed similar deduction in the computation of income

without having done so in the return of income, however, the Assessing Officer has allowed assessee’s claim. He submitted, the deduction claimed by the assessee on account of amortization of upfront payment made towards lease hold land is an allowable deduction. In this context, he relied upon the following decisions:–

i) *DCIT v/s Sun Pharmaceuticals Ltd., [2010] 329 ITR 479 (Guj.); and*

ii) *ACIT v/s Delhi International Airport Pvt. Ltd., [2018] 89 taxmann.com 326 (Del.).*

11. The learned Authorised Representative submitted, the decision of the Hon’ble Gujarat High Court in Sun Pharmaceuticals Ltd. (supra) has been upheld by the Hon'ble Supreme Court while dismissing the SLP filed by the Revenue. Thus, he submitted, the Assessing Officer may be directed to consider assessee’s claim on merit.

12. The learned Departmental Representative relied upon the observations of the Assessing Officer and the DRP.

13. We have considered rival submissions and perused material on record. It is evident, the assessee’s claim of deduction on account of amortization of upfront payment made towards leasehold land was rejected both by the Assessing Officer and learned DRP only for the reason that such deduction was not claimed either in the original or in the revised return of income. However, it is a fact on record that in the

computation of income the assessee has claimed such deduction. Moreover, though, the ratio laid down in Goetz India Ltd. (supra) is applicable to the Assessing Officer, however, it is not applicable to the appellate authorities. Therefore, assessee's claim of deduction should have been examined on merit by learned DRP instead of rejecting it on technical ground. Be that as it may, in view of the ratio laid down by the Hon'ble Jurisdictional High Court in Pruthvi Brokers & Shareholders Pvt. Ltd. (supra), we restore the issue to the Assessing Officer for deciding afresh assessee's claim of deduction. While doing so, the Assessing Officer should also take note of assessee's contention that similar deduction claimed by the assessee in preceding assessment year was allowed. Further, the Assessing Officer is also directed to decide the issue on merit keeping in view the decision of the Hon'ble Gujarat High Court in Sun Pharmaceuticals India Ltd. (supra) and that of the Tribunal in Delhi International Airport Pvt. Ltd. (supra) and any other decision which may be cited by the assessee. With the aforesaid observations, this ground is allowed for statistical purposes.

14. In ground no.3, the assessee has challenged the disallowance of assessee's claim for excluding write–back of provisions for doubtful debts / advances.

15. Brief facts are, in the course of assessment proceedings the Assessing Officer found that in Note no.9 to computation of income,

the assessee had claimed that in the assessment year 2004–05 and 2005–06, Tata Finance Ltd., which got amalgamated with the assessee in assessment year 2006–07, had claimed deduction in respect of provisions of doubtful debts / advances. It was stated that in the impugned assessment year, the assessee had reversed the provisions made in assessment years 2004–05 and 2005–06 and offered it to tax. It was submitted, though the actual reversal of provision during the year was ₹ 7,17,70,032, however, in the return of income the assessee had inadvertently offered an amount of ₹ 11,03,04,467. In this context, the assessee furnished a year–wise break–up of provisions made towards doubtful debts / advances. Further, it was submitted that deduction claimed towards provision for doubtful debt and advances in the assessment year 2004–05 was disallowed by the Assessing Officer while completing assessment under section 143(3) of r/w section 147 of the Act. Therefore, it amounts to double addition of the same income. After considering the submissions of the assessee, the Assessing Officer held that since the deduction claimed by the assessee was not made either in the return of income or in the revised return of income, it cannot be accepted.

16. Learned DRP also upheld the decision of the Assessing Officer.

17. The learned Authorised Representative submitted, as per the books of account the actual reversal of provision claimed during the

year was ₹ 7,17,70,032. However, in the return of income, the assessee has wrongly offered the amount of ₹ 11,03,04,467. Thus, he submitted, the excess amount offered of ₹ 3,85,34,435, should be excluded. Further, he submitted, the provision made towards doubtful debts / advances in assessment year 2004–05 amounting to ₹ 3,04,06,099, was disallowed by the Assessing Officer while completing the assessment under section 143(3) r/w section 147 of the Act for that assessment year. He submitted, this amount was again offered by the assessee in the impugned assessment year. He submitted, either it has to be allowed in assessment year 2004–05 or in the impugned assessment year. He submitted, since assessee’s appeal challenging the aforesaid disallowance is still pending before the Hon'ble Jurisdictional High Court, the Assessing Officer may be directed to decide the issue on the basis of Hon’ble High Court’s decision.

18. The learned Departmental Representative relied upon the observations of the Assessing Officer and learned DRP.

19. We have considered rival submissions and perused material on record. As could be seen, in the computation of total income the assessee had claimed that, though, as per the books of account the provision for doubtful debts / advances relating to assessment year 2004–05 and 2005–06, was reversed to the extent of ₹ 7,17,70,032, however, the assessee has wrongly offered an amount of ₹

11,03,04,467, as income on account of such reversal. However, the Assessing Officer had rejected the aforesaid claim of the assessee merely because such claim was not made in the return of income. In our view, the claim of the assessee, at least, should have been considered by learned DRP on merit, keeping in view the settled legal principle referred to earlier, rather than rejecting it on technical ground. Since assessee's claim was not considered on merits either by the Assessing Officer or by learned DRP and was rejected on technical ground, we restore the issue back to the Assessing Officer for examining assessee's claim on merit. While doing so, the Assessing Officer should also consider assessee's claim of double addition in respect of the provision for bad debt pertaining to the assessment year 2004–05 and decide the issue on the basis of the decision of the Hon'ble High Court on the said issue. It goes without saying, the Assessing Officer must afford reasonable opportunity of being heard to the assessee before deciding the issue. This ground is allowed for statistical purposes.

20. Ground no.4, is not pressed, hence, dismissed.

21. In ground no.5, the assessee has challenged disallowance of professional and legal fees amounting to ₹ 1,84,62,440.

22. Brief facts are, during the year, the assessee had incurred expenditure towards professional and legal fee in connection with proposed fund raising by way of divestment of its stake in subsidiary. This expenditure, though, was added back in the computation of income, however, in Note no.22 to the computation of income, the assessee had reserved its right to claim it as deduction during the assessment proceedings. In the course of assessment proceedings, the assessee claimed the aforesaid amount as deduction. However, the Assessing Officer rejected the claim of the assessee firstly; on the reasoning that it was not claimed in the return of income and secondly; the expenditure is capital in nature.

23. Learned DRP also upheld the aforesaid decision of the Assessing Officer.

24. The learned Authorised Representative submitted, the deduction claimed by the assessee in the course of assessment proceedings even if not claimed in the return of income should have been considered by the Assessing Officer. Further, he submitted, the deduction claimed by the assessee is allowable as revenue expenditure. In this context, he relied upon the following decisions:–

i) *CIT v/s Bombay Dyeing and Manufacturing Co. Ltd., [1996] 219 ITR 521 (SC); and*

ii) *NYK Line (India) Ltd. v/s ACIT, ITA no.8549/Mum./2011, dated 23.09.2015;*

25. We have considered rival submissions and perused material on record. In our view, the departmental authorities were not justified in rejecting assessee's claim purely on the technical ground of having not raised such claim in the return of income. Therefore, following the settled legal principle referred to earlier in this order, we restore the issue to the file of the Assessing Officer for de novo adjudication after considering the submissions of the assessee. While doing so, the Assessing Officer must decide the issue on merit keeping in view the decisions to be cited by the assessee. Needless to mention, the Assessing Officer must afford reasonable opportunity of being heard to the assessee. Ground is allowed for statistical purposes.

26. In ground no.6, the assessee has challenged the addition of ₹ 35,76,072, on account of transfer pricing adjustment made to the interest on loan to the AE.

27. Brief facts are, in the course of transfer pricing proceedings the Transfer Pricing Officer noticing that the assessee had advanced loan to its AEs without charging any interest proceeded to determine the arm's length price of interest chargeable on such loans @ 14% per annum. This resulted in an adjustment of ₹ 4,44,68,152, which was added back to the income of the assessee in the draft assessment

order. While considering assessee's objection on the issue, learned DRP directed to compute the arm's length price of the interest at LIBOR plus 200 basis points, which reduced the addition to ₹ 35,76,072.

28. The learned Authorised Representative submitted, during the year assessee had received interest on loan advanced to its AE in U.K. which was benchmarked by using Comparable Uncontrolled Price method at LIBOR plus 50 basis points. He submitted, interest on loan received by the AE from a third party in U.K was at LIBOR plus 30 basis points. Thus, he submitted, the interest rate at which loan was received by the AE in the country where loan is given should be applied as a CUP for determining the arm's length price of interest. The learned Authorised Representative submitted, while deciding similar issue in assessee's own case in assessment year 2006–07, the Tribunal has restored the issue to the Assessing Officer for examining assessee's claim of applying internal CUP. Thus, he submitted, the issue may be restored to the Assessing Officer.

29. The learned Departmental Representative relied upon the observations of the Assessing Officer and learned DRP.

30. We have considered rival submissions and perused material on record. As could be seen, the dispute is confined to the rate of interest

applicable to the loan advanced to the AEs. While the DRP has directed the Assessing Officer to compute interest at LIBOR plus 200 basis points, it is the contention of the assessee that as per internal CUP available, interest rate cannot exceed LIBOR plus 50 basis points. In this context, it has been submitted by the assessee that the overseas AE in U.K. has taken a loan from third party in U.K. at LIBOR plus 30 basis points. Similarly, he had submitted that the AE in Spain has taken loan from an unrelated party in the same period at the interest rate of Euribor plus 127.79 basis points.

31. Having considered rival submissions and perused material on record, we are of the view that assessee's contention regarding availability of internal CUP requires examination. Moreover, while deciding similar issue in assessment year 2006–07, in ITA no.8926/ Mum./2010, dated 28th January 2019, we have restored the issue to the Assessing Officer for considering various submissions made by the assessee with regard to the rate of interest. In view of the aforesaid, we restore the issue to the Assessing Officer / Transfer Pricing Officer for de novo adjudication after considering assessee's claim of availability of internal CUP. This ground is allowed for statistical purposes.

32. In ground no.7, the assessee has raised the issue of short TDS credit.

33. Having considered rival submissions, we direct the Assessing Officer to allow actual credit for TDS after verifying assessee's claim.

34. In ground no.8, the assessee has challenge levy of interest under section 234C of the Act.

35. The learned Authorised Representative has submitted that interest under section 234C of the Act can be charged only on the returned income and not on the assessed income. In this context, he has relied upon the following decisions:–

i) *Bombay Gymkhana Ltd. v/s ITO, [2009] 27 SOT 58 (Mum.) (URO);*

ii) *Wipro Information Technology Ltd. v/s DCIT, [2004] 88 TTJ 778 (Bang.);*

iii) *CIT v/s Smt. Premlata Jalani, [2003] 264 ITR 744 (Raj.);*

iv) *Mrs. Prabha Lal v/s CIT, [2004] 269 ITR 212 (Patna).*

36. The learned Departmental Representative relied upon the assessment order.

37. Having considered rival submissions and examined the provisions of section 234C of the Act in the light of the decisions cited before us, we are of the view that interest under section 234C of the Act has to be charged on the income returned by the assessee and not on the assessed income. Accordingly, we direct the Assessing Officer to

compute interest under section 234C of the Act on the income returned by the assessee. This ground is allowed.

38. Ground no.9, is consequential in nature, hence, does not require adjudication.

39. Besides the above grounds, the assessee has raised additional grounds no.10, 11 and 12, challenging the validity of the order passed under section 92CA(3) of the Act.

40. The learned Authorised Representative has submitted that the Addl. CIT is not authorised / empowered to pass the order under the aforesaid provision. However, the learned Authorised Representative fairly submitted that this issue is being raised for the first time before the Tribunal. He submitted, while deciding additional grounds on identical issue in assessment year 2006–07, the Tribunal has restored the issue to the Assessing Officer for adjudication after due opportunity of being heard to the assessee. Thus, he submitted, the issue may be restored to the Assessing Officer for considering assessee's claim and contentions.

41. We have considered rival submissions and perused material on record. Undisputedly, the assessee has not challenged the validity of the order passed under section 92CA(3) of the Act either in the course of Transfer Pricing proceedings or even before learned DRP. For the

first time, the assessee has raised the issue before the Tribunal. Though, the issue raised in the additional ground is a purely jurisdictional issue going to the root of the matter, hence, requires to be admitted, however, following our decision in assessment year 2006–07 (supra), we restore the issue to the Assessing Officer to decide the same after considering assessee's submissions. These grounds are allowed for statistical purposes.

42. In the result, assessee's appeal is partly allowed.

Order pronounced in the open Court on 25.04.2019

Sd/- **N.K. PRADHAN** **ACCOUNTANT MEMBER**	**Sd/-** **SAKTIJIT DEY** **JUDICIAL MEMBER**

MUMBAI, DATED: 25.04.2019

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.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

(Sr. Private Secretary)
ITAT, Mumbai