

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No.7591/DEL/2018
[Assessment Year: 2014-15]

M/s Talbros Motors Pvt Ltd
[Now merged with Talbros International
Pvt. Ltd., 1411 & 1412 Nicholson Road
Kashmiri Gate, New Delhi

Vs.

The I.T.O
Ward 25(1)
New Delhi

PAN: AAAC 0126 F

[Appellant]

[Respondent]

Date of Hearing : 24.04.2019
Date of Pronouncement : 26.04.2019

Assessee by : Shri V.K. Aggarwal, CA.

Revenue by : Shri S.L. Anuragi, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals] - 9, New Delhi dated 19.09.2018 pertaining to A.Y 2014-15.

2. The grievance of the assessee is two-fold. Firstly, the assessee is aggrieved by the confirmation of disallowance of Rs. 6,46,476/- u/s 14A of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] r.w.r 8D of the Rules and secondly, the assessee is aggrieved by the disallowance of Rs. 20,96,958/- on account of business loss.

3. Briefly stated, the facts of the case are that return declaring loss of Rs. 1.94 lakhs was e-filed on 16.10.2014. Return was selected for scrutiny under CASS and, accordingly, statutory notices were issued and served upon the assessee.

4. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has made investment in unquoted equity shares in various companies, the income of which is exempt u/s 10(34) of the Act. The Assessing Officer found that the assessee has not made any disallowance u/s 14A of the Act, though it has received dividend income of Rs. 6,46,476/-.

5. The assessee was asked to explain why disallowance should not be made u/s 14A r.w.r 8D.

6. In its reply, the assessee explained that all the investments in equity shares were made either from surplus funds or from interest free funds and no expenditure on account of interest was incurred in respect of these investments neither in this year nor in earlier years.

7. Submissions of the assessee were dismissed by the Assessing Officer who was of the firm belief that provisions of section 14A r.w.r. 8D squarely apply and accordingly, computed the disallowance at Rs. 21,89,789/-.

8. Proceeding further, the Assessing Officer noticed that the assessee has written off an amount of Rs. 20,96,958/- as unrecoverable. The assessee was asked to furnish the details of write off. In its reply, the assessee stated that this amount was given as advance to Shri Nikhil Talwar and since Shri Nikhil Talwar has expired, the amount has been written off as unrecoverable. The contention of the assessee did not

find any favour with the Assessing Officer who was of the firm belief that the said write off cannot be allowed as bad debt u/s 36(2) of the Act and, accordingly, made the addition.

9. The assessee agitated the matter before the CIT(A) but without any success.

10. In so far as the disallowance u/s 14A is concerned, after considering the facts and submissions, the CIT(A) restricted the disallowance to the extent of dividend income amounting to Rs. 6,46,476/-. Disallowance of write off was confirmed.

11. Before me, the ld. AR drew my attention to the balance sheet of F.Y. 2008-09 and pointed out that all the investments have been made in F.Y. 2008-09 from available own funds and no interest bearing funds were utilised in making the investment in these shares. It is the say of the ld. AR that since no interest bearing funds have been

utilised, there is no question of any disallowance u/s 14A of the Act in so far as interest component is concerned.

12. On disallowance of expenditure, in respect of administrative expenses, the ld. AR relied upon the decision of the Mumbai Tribunal in the case of HDFC Bank Ltd 2011-TIOL-691. It is the say of the ld. AR that as the assessee has derived dividend income of Rs. 6.46 lakhs wholly from one company and no expenditure was incurred in earning this dividend income. Reliance was placed on the decision of the Hon'ble Bombay High Court in the case of Reliance Industries Ltd 339 ITR 632.

13. Per contra, the ld. DR read the relevant portion of the assessment order and the order of the first appellate authority and stated that the disallowance should be confirmed.

14. I have given thoughtful consideration to the orders of the authorities below. I have also gone through the balance sheet of the earlier years. I find force in the contention of the ld. AR. The

investments are coming from the F.Y. 2008-09 and in the first year of investment, no borrowed funds were utilised and the entire investments have been made from interest free own funds. In my considered opinion, on such facts, no disallowance is to be made in so far as interest component is concerned.

15. In so far as administrative expenses are concerned, I draw support from the decision of the co-ordinate bench in the case of HDFC [supra] wherein the co-ordinate bench has held as under:

“When it has been brought on record that no expenditure actually incurred for earning the exempt income, then the provisions of section 14A cannot be invoked. It is not the case of investment in tax free securities every year, but the investment in the earlier years has been carried forward as it is evident from the particulars where the balance at the end of the year shows that the investment is appearing in all the earlier years. Therefore, the disallowance u/s 14A is rightly deleted by the CIT(A).”

16. The Hon'ble Bombay High Court in the case of Reliance Industries Ltd [supra] has held as under:

“The assessee has earned dividend income only from three companies. There is no fact of having incurred any expenditure for the purpose of earning the dividend income. The disallowance in our view is misconceived and the same is deleted.”

17. In the light of the decision of the Hon'ble Bombay High Court, I find that in the case in hand, the assessee has derived dividend income only from one company and no expenditure has been incurred. Therefore, no disallowance needs to be made. Considering the facts in totality, I direct the Assessing Officer to delete the disallowance of Rs. 6,46,476/-. Ground No. 1 is allowed.

18. Coming to the second grievance of the assessee, I find that the assessee has made advance to Shri Nikhil Talwar in F.Y. 2009-10. The advance was given in respect of tours and travels for business purposes. Shri Nikhil Talwar happens to be the President of the assessee company who died in June, 2013. Since no travelling bills/ bills of expenses incurred by Shri Nikhil Talwar were submitted, the assessee wrote off the advance given to Shri Nikhil Talwar. The contention of the Id. AR that the advances were given in the ordinary course of business cannot be brushed aside lightly. It is true that the write off does not come within the purview of section 36(2) of the Act,

but at the same time, the same has to be considered as business loss u/s 28 of the Act.

19. Similar view has been taken by the Hon'ble Delhi High Court in the case of Mohan Meakin Ltd 348 ITR 109 and the co-ordinate bench in the case of Lucky Goldstar Company Ltd 2018-TIOL-2154. Considering the facts of the case in totality, the write off may not be allowable as bad debt but the same is definitely allowable as business loss. I, accordingly, direct the Assessing Officer to delete the addition of Rs. 20,96,958/-. Ground No. 2 is also allowed.

20. In the result, the appeal filed by the assessee in ITA No. 7591/DEL/2018 is allowed.

The order is pronounced in the open court on 26.04.2019.

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 26th April, 2019.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	