

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI

Before Shri Rajesh Kumar, Accountant Member
& Shri Amarjit Singh, Judicial Member

ITA No.693/Mum/2018
Assessment Year: 2013-14

DCIT, Central Circle-3(3) Room No. 1923 Air India Building, 19 th Floor Nariman Point Mumbai-400 021	Vs.	M/sOricon Enterprises Ltd. 1076, Dr. E Moses Road Worli Mumbai-400 018 PAN AAACO0480F
(Revenue)		(Assessee)

Revenue By : Shri Abi Rama Kartikeyan
Assessee By : Shri Sunil Nahta

Date of Hearing :27.02.2019

Date of Pronouncement : 12 .04.2019

ORDER

Per Rajesh Kumar, Accountant Member

1. The Revenue by way of this appeal is challenging the order dated 16/11/2017 of the Ld. Commissioner of Income-Tax (Appeals)-51 {hereinafter called [CIT(A)]}, Mumbai, in Appeal No.CIT(A)-51/IT/DC-CC-3(3)/1/2016-17. The assessment for impugned assessment year was framed by Ld. Deputy Commissioner of Income Tax Central Circle-3(3), Mumbai [AO] u/s 143(3) of the Income Tax Act,1961 on 11/03/2016.The grounds raised by the Revenue are as under:

i)" On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing the Assessing Officer to exclude the said investments to the tune of Rs. 382.44 crores out of Rs. 391.91 crores considered by the AO for the computation of disallowance u/s. 14A r.w.r 8D(2)(iii) holding that investment arisen out of mergers/demergers does not require any cash outflow which is in contravention to the CGBDT circular no 5/2014 dated 11.02.2011 which does not mention any such exclusion for the purpose of computation of disallowance u/s 8D(2)(iii)".

2."On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing the Assessing Officer to exclude the investments arisen out of mergers/demergers for the purpose of computation of disallowance u/s 14A r.w.r 8D(2)(iii) relying on the decision of the Hon'ble ITAT in ITA No. 1145/Mum/2013 dated 12.09.2014 in AY 2009-10 without appreciating the fact that the department has not accepted the above order and has filed further appeal to the Bombay High Court against the order.

Considering the facts and circumstances of the case, the Ld. CIT(A)

2. The only issue raised by the revenue in the two grounds of appeal is against the direction of CIT(A) to AO to exclude the investments to the tune of Rs. 382.44 crores out of Rs. 391.91 crores the amount taken by the AO for computation of disallowances u/s 14A of the Act r.w.r 8D(2)(iii) of the Rules by holding that investments has arisen out of mergers/demergers and did not entail any cash out flow by way of expenses.

3. At the outset the Ld. AR of the assessee submitted before the bench that issue involved in the present appeal filed by the revenue is squarely covered in favour of the assessee in assessee's own case in an earlier year. The ld Counsel submitted that the Ld.CIT(A) ,by following the said decision of the Honourable Tribunal in the earlier year, has allowed the relief to the assessee by directing the AO to exclude the said investments resulting from mergers/demergers which do not involve any out flow of funds. The Ld. AR prayed that the appeal of the revenue may be dismissed in view of the said coordinate bench

decision. The Ld. DR on the other hand relied on the grounds of appeal filed by the revenue

4. After hearing both the parties and perused the material on record including the impugned order we observed that the issue raised by the revenue in the present appeal is squarely covered in favour of the assessee by the decision of the Coordinate Bench in assessee's own case in earlier assessment year 2009-10 which has been followed by the CIT(A) in para 5.4 of the appellate order passed by the Ld. CIT(A). The relevant operative part is reproduced as under:

5. *The contentions of the assessee have been duly considered. The First Appellate Authority while adjudicating the appeal of the assessee on this issue for AY 2009-10 had held that while computing the disallowance u/s 14A rwr.8D(2)(iii) as well as 8D(2)(iii)] the investments which have been acquired on account of mergers / demergers which do not require any cash outflow should be excluded. This decision of the FAA was upheld by the Hon'ble ITAT, Mumbai. The relevant portion of the order of the Hon'ble Tribunal in the case of assessee for AY 2009-10 is reproduced as under:*

"9. We have carefully perused the orders of authorities below. We have also carefully perused the balance sheet of the assessee. The undisputed fact is that assessee is having own funds in the form of share capital and reserves and surplus amount in Rs, 101.31.31 crores as against the investments of Rs. 69.08 crores. This clearly shows that the assessee is having sufficient own funds to make the investment Further, we find that out of the total investment of Rs, 69.08 crores are invested in subsidiary/associate companies. Further, we find that loan liability of Rs. 25.25 crores as on 31.03.2008 has come down to Rs. 15.61 crores as on 31.03.2009 i.e. year under consideration. This also proves that there is no fresh borrowing during the year under consideration.

9.1 Considering the above stated facts infertile, we do not Find any reason for the location of interest expenditure toward earning of income However, allocation of administrative and other expenses cannot be ruled out The disallowance as per rule 8D(2)(iii) is computed by branded Commissioner appeal comes to Rs. 2,10,756. In our considered opinion, this disallowance would meet the end of Justice The total disallowance sustained is Rs. 2,10,756/-.

10. In the result, the appeal filed by the venue is dismissed and the cross objection filed by the assessee is partly allowed"

5.5 For the subsequent years also, the FAA as well as the Tribunal have followed the decision taken in the case of the assessee-for AY 2009- 10. Respectfully following the decision of the Hon'ble Tribunal and also my Ld. Predecessors, the AO is directed to recompute the disallowance u/s 14A r.w.r 8D(2)(iii) after excluding the said investments which have arisen on account of mergers / demergers. Accordingly, the ground Nos 1 & 2 of the appeal are partly allowed.

5. Since the facts in the present case are identical one as decided by the Coordinate bench in AY 2009-10 which is followed by Ld. CIT(A) as stated hereinabove. Therefore, we are inclined to uphold the order of CIT(A) by dismissing the appeal of the revenue.

Order pronounced in the open court on this day of 12th April, 2019

Sd/-
(Amarjit Singh)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated :12.04.2019

*** Thirumalesh, Sr.PS**

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, `C Bench, ITAT, Mumbai

BY ORDER

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai