



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

BEFORE SHRI R.C.SHARMA, AM

&

SHRI RAM LAL NEGI, JM

ITA No.3492/Mum/2018

(Assessment Year :2014-15)

Jt.CIT(OSD), CC-6(4), R.No.1926, 19 th Floor, Air India Building Mumbai-400021	Vs.	M/s. J.M. Baxi & Co., 16, Bank Street, Fort Mumbai – 400 001
PAN/GIR No. AAAFJ5198E		
(Appellant)	..	(Respondent)

ITA No.3472/Mum/2018 & 3473/Mum/2018 &

(Assessment Year : 2013-14 & 2014-15)

M/s. J.M. Baxi & Co., 16, Bank Street, Fort Mumbai – 400 001	Vs.	DCIT, CC-6(4), R.No.1925, 19 th Floor, Air India Building Mumbai-400021
PAN/GIR No. AAAFJ5198E		
(Appellant)	..	(Respondent)

Revenue by	Shri Rajeev Gubgotra
Assessee by	Shri Y.P. Trivedi / Shri Satish Modi
Date of Hearing	24/06/2019
Date of Pronouncement	25/06/2019

आदेश / O R D E R

PER BENCH:

These cross appeals filed by assessee and revenue are against the order of CIT(A)-54, Mumbai dated 06/03/2016 for the A.Yrs.2013-14 & 2014-15 in the matter of order passed u/s.143(3) of the IT Act.

2. Common grounds have been taken both by the assessee and revenue in both the years under consideration, therefore, appeals of both

the years have been heard together and are now decided by this consolidated order.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee company M/s. J. M. Baxi Group was founded in 1916. It is the largest Shipping Agency House in India. The company has a strong presence in all its business activities and leadership in several of the shipping support services. Currently, over 200 National and International shipping companies avail their services. The group has offices in all major and minor port cities and other big cities. The company has set up a strong marketing network via various group companies/affiliates operating across the globe. The group companies of J. M. Baxi have their marketing offices located at London, Dubai and Singapore. The majority of the business activities are done through these marketing channels. Company is operating as Shipping Agents and licensed Custom House Agents at most Indian ports. M/s. J. M. Baxi & Co. and its group provide clearing and freight forwarding services including custom clearance, compliance with import/export regulations and comprehensive multi nodal 'point to point' service comprising land, rail, air and sea transport and warehousing. The appellant firm is the flagship firm of this group. During the assessment year 2014-15, the assessee incurred Rs.1,29,63,170/- under the head 'sundry expenses. The assessee had made suo moto disallowance 25% of such expenditure under the

provisions of 37(1) of the Act. However, AO disallowed the balance 75%. From the record, we found that the issue under consideration have been consistently decided by the Tribunal in assessee's favour. ITAT in assessee's own case for the A.Y. 1998-99 and from A.Y.2002-03 to 2007-08 and in the case of N. Jamanadas & Co., which is a group concern have passed a consolidated order for A.Y.1997-98, 1998-99 dated 11/02/2011 wherein disallowance to the extent of 25% was upheld and balance was deleted. In this year also we find that CIT(A) by following the order of the Tribunal for the A.Y.2012-13 deleted the addition after observing as under:-

*“6.3 Following this order my predecessor CIT(A) has decided the issue for AY 2012-13 wherein he had deleted the addition made by the AO as the assessee itself had made a suo moto disallowance of 25% of such expenses. This is a covered issue wherein the Hon'ble ITAT as categorically has stated that 25% of such sundry expenses only need to be disallowed and not the entire amount. During the relevant AY the assessee has incurred expenses to the tune of Rs.1,29,63,170 out of which it had made a suo moto disallowance of Rs.32,40,793/-. The AO made a disallowance of the balance amount of Rs.97,22,377/- Respectfully following the decision of the jurisdictional ITAT in the appellant's own case on identical facts for AY 2007-08, it is held that the disallowance of Rs.32,40,793/- is justified. As the assessee itself had made this disallowance, there is no need for any further disallowance. Therefore the disallowance made by the AO to the tune of Rs.97,22,377/- is deleted. This ground of appeal is **ALLOWED.**”*

3.1. Revenue is in further appeal before us against the above order of CIT(A). We have considered rival contentions and gone through the orders of authorities below and found that the facts and circumstances during the year under consideration as well as for the A.Y.2013-14 are

parameteria, we therefore, respectfully following the order of the Tribunal in assessee's own case, do not find any infirmity in the order of CIT(A) for upholding the addition to the extent of 25% and deleting balance disallowance.

3.2. In the result, grounds taken by the revenue in both the assessment years 2013-14 and 2014-15 are dismissed.

4. The revenue has also taken ground for deleting disallowance of expenditure u/s.14A r.w.r.8D. From the record, we find that disallowance made u/s.14A amounting to Rs.2,34,440/- was made by AO applying rule 8D. By the impugned order, CIT(A) deleted the same by observing as under:-

“The third ground of appeal is against the disallowance of an amount of Rs.2,34,440/- on account of section 14A of the Act by applying Rule 8D. The AO observed in the Assessment Order that the assessee has investments of 'Rs.-1,80,85,935/- as closing balance at the end of the year. The assessee has not earned any exempt income from these investments during the year. The AO, however placed his reliance on the decision of special Bench of ITAT Delhi in the case of Cheminvest Ltd vs ITO 317 ITR 86(AT) wherein it was held that the disallowance u/s 14A can be made even if no exempt income is actually earned or received during the year. However, this decision of Special Bench has been overruled by the Hon'ble Delhi High Court(378 ITR 33), wherein the Hon'ble High Court held categorically that section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

*7.1 In view of the above judgment of the Hon'ble Delhi High Court it is held that as the assessee has not earned any exempt income during the year, no disallowance u/s 14A is warranted. This ground of appeal is **ALLOWED.**”*

5. We have considered rival contentions and it is not in dispute that during the year under consideration, the assessee was not having any

exempt income, therefore, in view of the decision of the Hon'ble Delhi High Court as discussed by CIT(A), no disallowance is warranted. Accordingly, we upheld the action of CIT(A) for deleting the disallowance made u/s.14A.

5.1. Assessee in its appeal for A.Y.2013-14 & 2014-15 had taken ground for disallowance of 41.50% on account of expenditure incurred on gift / diwali puja expenses etc., We found that this issue is also covered by the decision of the Tribunal in assessee's own case and the CIT(A) has confirmed the disallowance to the extent of 41.50% by following the order of the Tribunal in assessee's own case. The precise observation of CIT(A) was as under:-

“8.3 The submissions of the Learned Counsel have been carefully considered. This is also a recurring issue. The issue has been decided by the Hon'ble ITAT Mumbai for AY 2007-08. While deciding the issue the Hon'ble ITAT relied upon its own decision in the assessee's own case for the AY 2006-07 and held as under:

"We have heard the Id AR of the assessee as well as the Id DR and considered the relevant material. It was pointed out by the Id AR of the assessee that a similar issue has been considered and decided by the Tribunal in assessee's own case for AY 2006-07 in ITA no. 263/Mum/08 vide order dated 12.12.2009 in paras 8 to 10."

5.2. We have considered rival contentions and found that this issue has also been decided by this Tribunal in assessee's own case, which has been followed by CIT(A). Respectfully following the order of the Tribunal in assessee's own case for A.Y.2006-07, we do not find any infirmity in

the order of CIT(A) for confirming the disallowance, in both the years under consideration.

6. In the result, appeal of the revenue for the A.Y.2014-15 and appeal of the assessee for A.Yrs.2013-14 and 2014-15 are dismissed.

Order pronounced in the open court on this 25/06/2019

**Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER**

**Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER**

Mumbai; Dated 25/06/2019

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai