

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'E', NEW DELHI**

Before Sh. Bhavnesh Saini, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1867/Del/2017 : Asstt. Year : 2012-13

DCIT, Circle-17(1), New Delhi	Vs	M/s Modi Industries Ltd., Modi Nagar, Ghaziabad Road, U.P.-201204
(APPELLANT)		(RESPONDENT)
PAN No. AAACM2063Q		

Assessee by : Sh. Vibhu Gupta, CA

Revenue by : Ms. Rinku Singh, Sr. DR

Date of Hearing: 10.07.2019

Date of Pronouncement: 10.07.2019
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the Revenue against the order of the Ld. CIT(A)-6, Delhi dated 12.01.2017.

2. The Revenue has raised the following grounds:

"1. Whether in the facts and circumstances of the case, the Ld. CIT(A) is legally justified in holding that the income from letting out of some of business assets of the assessee company was in nature "Income from House property" by ignoring ratio decidendi of Hon'ble Supreme Court in case of Universal Plast Limited vs CIT (1999) 237 ITR 454?"

2. Whether in the facts and on circumstances of the case, the Ld. CIT(A) is legally justified in allowing relief to the assessee on the basis of its earlier orders in the assessee's own case by ignoring decision of Hon'ble Apex Court in case of Universal Plast Limited vs CIT (Supra) and despite the fact that principle of res-judicata is not applicable to Income Tax proceedings as each assessment year is a separate year?"

3. Whether in the facts and on circumstances of the case, the Ld. CIT(A) is legally justified in restricting disallowance u/s 14A of the Income Tax Act, 1961 (the Act) by not considering the

provisions of Section 14A of the Act which stipulate computation of disallowance u/s 14A of the Act mandatorily under Rule 8D(2) of the Income Tax Rules?"

3. Ground No. 1 & 2 are related which pertains to treatment of revenues under the head "income from house property" instead of income from "business or profession". Before the Assessing Officer, the assessee submitted that the income derived out of letting up the property has always been assessed then the income from house property from the assessment year 2007-08 onwards. However, the Assessing Officer assessed the income under the head "business or profession" on the grounds that any income and on the assets shown in the balance sheet has to be treated as income from business and profession. He relied on Universal Plast Ltd. Vs CIT (1999) 237 ITR 454 (SC).

4. The Id. Commissioner of Income Tax (Appeals) has deleted the addition made by the Assessing Officer on the grounds that the addition has been deleted by the ITAT in assessee's own case for the assessment year 2011-12. Before us, the Id. AR submitted that the matter has been squarely covered by the order of the ITAT for the assessment year 2011-12 in ITA No. 2640/Del/2015.

5. Heard the arguments of both the parties and perused the material available on record. We find that the Revenue has assessed this income from the steel plant quarters and from letting of the building as income from house property from the years 1996-97 to 2006-07. For the first time, the Revenue has treated this income under the head "business income" which was subsequently reversed by the Id. CIT(A). Further, for the assessment year 2008-09, the revenues from the same have been considered as income from house property.

Whereas from the years 2009-10 and 2010-11, the addition has been made treating this income under the head "business income" again which stands reversed by the Id. CIT(A). For the assessment year 2011-12, the ITAT has passed an order treating this income as income from house property considering the provisions of Sections 14, 22 & 28 of the Income Tax Act, 1961. The Hon'ble Punjab & Haryana High Court in the case of CIT Vs Haryana Tourism Corporation Ltd. 327 ITR 26 held specifically that rental income earlier assessed u/s 22 of the Act as income from house property could not be assessed u/s 28 of the Act as business income in a later year, in the absence of any fundamental facts. Since, the amount has been treated as income from house property and also the Co-ordinate Bench of the Revenue has allowed the appeal of the assessee for the assessment year 2011-12 and since, the deletion made by the Id. CIT(A) is based on the order of the ITAT and since there is no change in the facts and circumstances of the case during this year as compare to earlier years where the issue was decided in favour of the assessee, we hereby decline to interfere with the order of the Id. CIT(A) on this ground.

6. Ground No. 3 pertains to disallowance u/s 14A of the Act read with Rule 8D(2) of the Income Tax Rules, 1962. The facts are that the assessee has received dividend income of Rs.80,58,754/- during the year and claimed as exempt. The Assessing Officer applied Section 14A of the Act and computed disallowance @ 0.5% of the average investment by applying Rule 8D(2)(iii) of the Income Tax Rules, 1962 and computed disallowance of Rs.4,00,600/-.

7. After hearing the arguments from both the sides, we find that the Co-ordinate Bench in assessee's own case for the assessment year 2011-12 has upheld disallowance made u/s 14A of the Act read with Rule 8D(2)(iii) of the Income Tax

Rules, 1962, but directed that the amount of disallowance to be restricted and re-computed in terms of Rule 8D by taking into consideration only such investments which had yielded exempt income. Since, the decision of the Id. CIT(A) is based on the order of the Co-ordinate Bench for the earlier year in assessee's own case and in the absence of any tangible change in the facts and circumstances of the case, we hereby decline to interfere with the order of the Id. CIT(A) on this ground.

8. In the result, the appeal of the Revenue is dismissed.
(Order pronounced in the open Court on 10.07.2019)

Sd/-

(Bhavnes Saini)
Judicial Member

Dated: 10/07/2019

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR