



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

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

ITA no.3512/Mum./2018
(Assessment Year : 2013-14)

DSP Adiko Holdings Pvt. Ltd.
11th Floor, Mafatlal Centre
Nariman Point, Mumbai 400 021
PAN – AAACA3438M

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-2(1), Mumbai

..... Respondent

ITA no.3831/Mum./2018
(Assessment Year : 2013-14)

Jt. Commissioner of Income Tax (OSD)
Circle-2(1)(1), Mumbai

..... Appellant

v/s

DSP Adiko Holdings Pvt. Ltd.
11th Floor, Mafatlal Centre
Nariman Point, Mumbai 400 021
PAN – AAACA3438M

..... Respondent

ITA no.3832/Mum./2018
(Assessment Year : 2013-14)

Dy. Commissioner of Income Tax
Circle-2(1)(1), Mumbai

..... Appellant

v/s

DSP HMK Holdings Pvt. Ltd.
11th Floor, Mafatlal Centre
Nariman Point, Mumbai 400 021
PAN – AAACH1037K

..... Respondent

ITA no.3513/Mum./2018
(Assessment Year : 2013-14)DSP HMK Holdings Pvt. Ltd.
11th Floor, Mafatlal Centre
Nariman Point, Mumbai 400 021
PAN – AAACH1037K

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-2(1), Mumbai

..... Respondent

ITA no.3514/Mum./2018
(Assessment Year : 2013-14)DSP Investment Pvt. Ltd.
11th Floor, Mafatlal Centre
Nariman Point, Mumbai 400 021
PAN – AAACB1574H

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-2(1), Mumbai

..... Respondent

Revenue by : Shri D.G. Pansari
Assessee by : Shri Madhur Agarwal

Date of Hearing – 11.07.2019

Date of Order – 19.07.2019

ORDER**PER BENCH**

These appeals in respect of three different assesseees consist of two sets of cross appeals and an appeal by the assessee alone challenging three separate orders of even date 12th March 2018, passed by the learned Commissioner (Appeals)-4, Mumbai, for the assessment year 2013-14.

2. Since all these appeals involve common issue arising out of identical set of facts and circumstances, therefore, as a matter of convenience, these appeals were heard together and are being disposed of by way of this consolidated order. However, for the sake of brevity, we are discussing the facts as they appear in the appeal relating to one of the assessee, namely, DSP Adiko Holdings Pvt. Ltd.

3. The only common dispute in all these appeals relates to disallowance under section 14A r/w rule 8D.

4. Brief facts are, during the assessment proceedings, the Assessing Officer noticed that during the year the assessee has earned exempt income by way of dividend on mutual fund and shares amounting to ₹ 12,52,50,710. Whereas, it has disallowed ₹ 2,02,688, under section 14A of the Act. Therefore, he called upon the assessee to show cause why disallowance expenditure for earning exempt income should not be made by applying the provision of rule 8D(2). While objecting to disallowance proposed by the Assessing Officer the assessee submitted, it has already disallowed the direct expenses relating to exempt income as well as proportionate disallowance of the balance expenditure as a proportion of the exempt income to the total income. Further, the assessee submitted, under identical facts and circumstances, the Tribunal while deciding the issue in earlier

assessment years had restricted the disallowance to the amount voluntarily disallowed by the assessee. However, the Assessing Officer did not find merit in the submissions of the assessee and proceeded to compute disallowance under rule 8D(2) at ₹ 3,57,95,064. After adjusting the disallowance already made by the assessee, the Assessing Officer added back an amount of ₹ 3,55,92,376. Being aggrieved with the disallowance made by the Assessing Officer, the assessee preferred appeal before the first appellate authority.

5. The learned Commissioner (Appeals), after considering the submissions of the assessee, granted partial relief to the assessee by restricting the disallowance to ₹ 5,34,326.

6. Shri Madhur Agarwal, learned Counsel for the assessee submitted, the total expenditure debited to the Profit & Loss account for the year under consideration is ₹ 6,71,000. Out of which, the assessee apportioned an amount of ₹ 2,02,688, towards expenditure incurred for earning exempt income and disallowed voluntarily under section 14A of the Act. He submitted, during the year under consideration the assessee had taxable income of more than ₹ 18 crore, whereas, expenditure debited to the Profit & Loss account is only ₹ 6.71 lakh. Therefore, in proportion to taxable and exempt income, the assessee had made disallowance under section 14A of the

Act. He submitted, following the same method of apportioning expenditure on proportionate basis between the taxable and exempt income, the assessee had been making disallowance under section 14A in the past assessment years. He submitted, while deciding the appeals for the assessment year 2008-09, 2010-11 and 2011-12, the Tribunal has accepted the method followed by the assessee and restricted the disallowance to the amount voluntarily disallowed. He submitted, even the aforesaid decisions of the Tribunal has been approved by the Hon'ble Jurisdictional High Court while dismissing the appeals preferred by the Department. In support of such contention, he furnished before us the decisions of the Tribunal and the Hon'ble Jurisdictional High Court. Thus, he submitted, the disallowance under section 14A r/w rule 8D should be restricted to the quantum of disallowance made by the assessee voluntarily.

7. The learned Departmental Representative relied upon the observations of the Assessing Officer.

8. We have considered rival submissions and perused the material on record. Though there is no dispute that during the year under consideration, the assessee had earned both taxable as well as exempt income, however, fact remains, the total expenditure claimed by the assessee in respect of all sources income earned during the year is ₹ 6.71 lakh. Even out of the said amount, the assessee has further

disallowed ₹ 2,02,688, under section 14A, towards earning of exempt income. The aforesaid disallowance was made by the assessee on proportionate basis keeping in view the quantum of taxable income and exempt income earned during the year. It is also evident, assessee had been following the aforesaid methodology of apportioning expenditure between the taxable and exempt income from the past several years and accepting the methodology adopted by the assessee, the Tribunal while deciding the issue in assessment year 2008-09 in ITA no.7598/Mum./2011, dated 22nd January 2014, has directed the Assessing Officer to restrict the disallowance to the amount already disallowed by the assessee voluntarily. The same view was expressed by the Tribunal while deciding assessee's appeals in assessment years 2010-11, vide ITA no. 7135/Mum./2013 &Ors., dated 22nd April 2016 and in the assessment year 2011-12, vide ITA no.5467/Mum./2014 & Anr., dated 17th March 2016. Pertinently, the aforesaid decisions of the Tribunal have been upheld by the Hon'ble Jurisdictional High Court vide order dated 3rd June 2019 while dismissing the appeals filed by the Revenue. In any case of the matter, the disallowance made by the Assessing Officer is far in excess of the total expenditure claimed by the assessee. Therefore, under no circumstances, the disallowance made by the Assessing Officer could have been sustained. Therefore, following the decisions of the Tribunal and the Hon'ble Jurisdictional High Court in the preceding assessment

years, as referred to above, we hold that the disallowance under section 14A r/w rule 8D, should be restricted to the amount already disallowed by the assessee under section 14A of the Act. The grounds raised by the assessee are allowed and those of the Revenue are dismissed.

9. Facts being identical, our aforesaid decision would apply mutatis mutandis to the appeals relating to the other two assessee's which are under consideration in the present order.

10. In the result, assessee's appeals are allowed and Revenue's appeals are dismissed.

Order pronounced in the open Court on 19.07.2019

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 19.07.2019

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.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai