

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5090/Del./2015
(ASSESSMENT YEAR : 2002-03)**

DCIT, Circle 10 (1), vs. M/s. Gillette Group India Pvt. Ltd.,
New Delhi. 34, Okhla Industrial Estate,
New Delhi.

(PAN : AAACG2468D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Pradeep Dinodia, CA
Shri R.K. Kapoor, CA

REVENUE BY : Ms. Ashima Neb, Senior DR

Date of Hearing : 17.07.2019

Date of Order : 29.07.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, DCIT, Circle 10 (1), New Delhi (hereinafter referred to as the 'Revenue') by filing the present appeal sought to set aside the impugned order dated 07.05.2015 passed by the Commissioner of Income-tax (Appeals)-15, New Delhi qua the assessment year 2002-03 on the grounds inter alia that :-

“On the facts and circumstances of the case, whether the CIT (A)-15 has erred in restricting the disallowance from Rs.2,69,64,423/- to Rs.25,28,619/-.”

2. Briefly stated the facts necessary for adjudication of the issue at hand are : Assessing Officer (AO) noticed that the assessee company has earned dividend income of Rs.76,75,881/- from its equity investments in M/s. Gillette India Ltd.. AO further noticed that the assessee company is actually doing the work of establishing Gillette business in India. AO proceeded to hold that though the assessee may be in the business of making investment but since investments are resulting only in dividend income and not in any business income, the expenditure for making such investment and sustaining such investment should be allowed as deduction under section 57 of the Income-tax Act, 1961 (for short 'the Act') only. From the balance sheet, AO found that the average of loans of ICDs at the beginning and close of the year is Rs.1,26,14,29,710/- and the average of investment and the share application money at the beginning and at the end of the year is Rs.2,58,26,00,767/- with ratio between loans and investment is 1 : 2.04 and consequently, apportioned the expenses at Rs.4,02,12,082/- and made disallowance of Rs.2,69,84,423/- during the year under assessment, detailed as under :-

	<i>(Rs.)</i>
<i>Total expenditure claimed in profit and loss account</i>	<i>146020105</i>
<i>Less : added back in assessee's computation out of above</i>	<i>104566535</i>
	<i>41453570</i>
<i>Less : Deduction claimed in assessee's computation</i>	<i>2221305</i>
	<i>43674875</i>
<i>Less : Disallowed in assessment (other than under para 3)</i>	<i>3462793</i>
<i>Balance</i>	<i>40212082</i>

Expenditure to be allocated *Rs.4,02,12,082*
Allocation to investments in the ratio of loan : Investments of 1:2.04
= Rs.40212082 x 2.04 / 3.04 = Rs.2,69,84,423/-"

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has restricted the disallowance from Rs.2,69,64,423/- to Rs.25,28,619/- by partly allowing the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, while making disallowance u/s 14A, AO has taken the figure of total ICDs of assessee on which the assessee has earned interest income of Rs.126.14 crores and the total investment/ share application money during the year under assessment is Rs.258.26 crores giving a ratio of 1 : 2.04 and

thereafter identified the allowable expenses as per profit & loss account amounting to Rs.4.02 crores as detailed in the preceding para and apportioned the same in the ratio of 1 : 2.04 and made disallowance of Rs.2,69,64,423/-. It is also not in dispute that during AY 2001-02, similar disallowance by applying same formula was made in assessee's own case which was followed in the year under assessment. It is also not in dispute that the assessee has earned dividend income of Rs.76,75,881/- from its equity investment in M/s. Gillette India Ltd.. It is also not in dispute that the entire investment of the assessee company is old investment and no fresh investment has been made during the year under assessment. It is also not in dispute that while making disallowance u/s 14A, the assessee company has followed the decision rendered by the Tribunal in assessee's own case for AY 2005-06 and thereby suo motu made the disallowance of Rs.25,28,000/-.

6. Ld. DR for the Revenue challenging the impugned order contended that this case should be remanded back to the AO to decide afresh by taking into consideration surrounding facts and circumstances which may exhibit the expenses attributable to earning of the interest free income by following the decision rendered by the Tribunal in AY 2004-05.

7. However, on the other hand, Id. AR for the assessee in order to repel the arguments addressed by the Id. DR for the Revenue contended that the issue in controversy has been decided in favour of the assessee in AY 2005-06 in assessee's group cases by the Id. CIT (A), which order has been upheld by the *coordinate Bench of the Tribunal in ITA No.499/Del/2013 AY 2005-06 order dated 01.04.2016*, that no expenditure income has been incurred by the assessee for making the investment in earning the tax free income as the assessee was having sufficient surplus funds and supported the impugned order passed by the Id. CIT (A).

8. When we examine the impugned order passed by the Id. CIT (A) it shows that by adopting the formula for making disallowance u/s 14A, the Id. CIT (A) has followed the decision rendered by the tribunal in AY 2005-06 in assessee's group cases by returning following findings :-

“7.2. On considering the facts of the case as well as the submissions made by the appellant, it is observed that the issue of disallowance u/s 14A of the Act has already been dealt in the case of appellant's sister concern namely, M/s Gillette Diversified Operations Pvt. Ltd., for A Y 2005-06 by the appellate authorities. The Ld. CIT(A) has computed the disallowance in the following way:

“12.1 I have carefully considered various submissions made by the appellant. During the year under consideration, the appellant has earned Rs. 1,68,27,167 as dividend income which is exempt from taxation. The appellant has itself claimed that Rs. 7,99,967 are expense attributable to earning of dividend income and has

therefore returned Rs. 1,60,27,200 as tax free dividend income. The AO has observed that there are other expense which also need to be considered for working out expenses attributable to earning of dividend and has thus worked out Rs. 21,54,159 as proportionate expenses (in ratio of dividend income to gross total income) attributable to earning of dividend. The AO has thereby made addition of Rs. 13,54,474 which is difference of disallowance worked out by the AO and as made by the appellant itself.

*12.2 The appellant has submitted that investment on which dividend has been earned had been made in earlier years out of interest free funds. Further, the appellant has made submissions with reference to each of administrative expenses as appearing in P&L a/c as reproduced supra in para 1.6. It is clear from the said chart that the appellant has not considered expenses like rates & taxes, insurance, travelling, repairs & maintenance, freight, loss on sale of fixed assets, common service expenses and misc. expenses while working out expense attributable to earning of dividend income. On the face of it, these expenses do not appear to have any relation with earning of dividend income. However, the AO has worked out disallowance after considering all these expenses which is against the provisions contained in section 14A. Regarding interest expenses of Rs. 22,65,719, the appellant has simply contended that investment were made out of interest free funds and therefore this interest component can not be considered for working out disallowance. The appellant has however not substantiated its argument by furnishing any evidence to that effect. Admittedly the appellant is not in business of making investments and therefore if it were having any surplus funds, then it would have utilized it in more prudent way to reduce its interest liability instead of making investment where from earning of any substantial dividend income was not certainty. Therefore, there is no force in argument of the appellant that investment has been made out of interest free funds. Accordingly, proportionate interest expense (i.e. 22,65,719 * 6.65%) Rs. 1,50,670 can also be attributed to earning of dividend income and hence addition made by the AO to this extent is sustained. The appellant shall get relief in respect of balance addition of Rs.12,03,804. The ground of appeal is disposed off accordingly."*

7.3. Such action of the first appellate authority has been upheld by the Hon'ble ITAT also. The appellant in its written submissions has followed the ratio of decision upheld in its own case for AY 2005-06 and computed the disallowance at Rs.25.28 lacs. The computation is reproduced as under :-

<i>Particulars</i>	<i>Amount</i>
<i>Operating and other expenses</i>	<i>1426,55,061</i>
<i>Less :-</i>	
<i>Loss on sale of Asset</i>	<i>1,51,542</i>
<i>Loss on sale of investment</i>	<i>1006,17,950</i>
<i>Repair and Maintenance expenses</i>	<i>3,41,608</i>
<i>Rates and Taxes</i>	<i>2,076</i>
<i>Exchange loss</i>	<i>2,73,282</i>
<i>Insurance</i>	<i>1,15,913</i>
<i>Legal and Professional</i>	<i>60,51,224</i>
<i>Expenses (A)</i>	<i>351,01,466</i>
<i>Div % to total income (B)</i>	<i>7.20%</i>
<i>(Rs.76,75,881 / Rs.10,65,54,082)</i>	
<i>Disallowance(A *B)</i>	<i>25,28,619</i>

7.4. The provision u/s 14A of the Act is very clear on the issue of disallowance of expenses pertaining to earning of exempt income. The appellant has forwarded a reasonable basis of making a disallowance of expenses in proportion of the dividend income vis-a-vis the gross income of the appellant. In such exercise excluding those expenses which have no bearing in the mixed activities (earning taxable as well as non-taxable income) have been rightly excluded. Similar reasonable view has been accepted in the case of appellant's sister concern M/s Gillette Diversified Operations Pvt. Ltd. in A Y 2005-06 by Ld. CIT(A)-XXIX, Delhi. In view of the above, the disallowance u/s 14A of the Act is restricted at Rs.25,28,619/-. The appellant gets the consequential relief. The ground of appeal is, thus, partly allowed.”

9. Even otherwise, no fresh investment has been made by the assessee company during the year under assessment. When the disallowance has been computed by the Id. CIT (A) by following the formula approved by the coordinate Bench of the Tribunal in assessee's company group case for AY 2005-06 in the similar set of facts and circumstances, no interference is required in the findings returned by Id.CIT (A).

10. Coordinate Bench of the Tribunal in assessee's company group cases (supra) decided the issue in controversy by returning following findings :-

“20. The ld AR submitted before us that while working out the disallowance u/s 14A of the Act the assessee has not disallowed any expenditure on account of interest because of the reason that no interest expenditure have been incurred for making an investment in the investment yielding tax free income. He submitted that the assessee has reserve and surplus of Rs.1,36,15,29,740/- whereas the investment in tax free income earning assets made is Rs.42,81,98,183/-. It shows that the interest free sources of funds available with the assessee were far more than the amount invested in tax free income yielding securities. He submitted that there is an error in the order of the ld CIT(A) in holding that it would have utilized the funds in more prudent ways as that cannot be the reasons for disallowance of interest u/s 14A of the Act. Therefore he submitted that interest disallowance of Rs.150670/- made by the AO and confirmed by ld CIT(A) u/s 14A of the act is erroneous.”

11. In view of what has been discussed above, we are of the considered view that as per factual findings returned by the ld. CIT (A) in para 7.1, the assessee company has earned dividend income from its equity investment in Gillette Group India Pvt. Ltd., that too from the old investment and no investment has been made during the year under assessment as is evident form audited balance sheet, available at file as Annexure III, and as such restricted the disallowance from Rs.2,69,64,423/- to Rs.25,28,619/-

by adopting the formula which has already been upheld by the coordinate Bench of the Tribunal in assessee's group concern cases for AY 2005-06. Even otherwise, it is settled principle of law that only actual expenditure having direct or indirect nexus for earning the exempt income can be disallowed u/s 14A of the Act. So, in these circumstances, we find no illegality or perversity in the impugned order passed by the Id. CIT (A) restricting the disallowance from Rs.2,69,64,423/- to Rs.25,28,619/- u/s 14A of the Act. Consequently, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 29th day of July, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 29th day of July, 2019
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-15, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**