

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH, COCHIN</b>
<b>BEFORE S/SHRI CHANDRA POOJARI, AM &amp; GEORGE GEORGE K., JM</b>

I.T.A. No.564/Coch/2018
Assessment Year : 2010-11

M/s. The Malayala Manorama Co. Ltd., Manorama Building, K.K. Road, Kottayam-686 001. [PAN:AAACT 7597G]	<b>Vs.</b>	The Assistant Commissioner of Income-tax, Circle-1, Kottayam.
<b>(Assessee-Appellant)</b>		<b>(Revenue-Respondent)</b>

<b>Assessee by</b>	Shri Iype John, CA
<b>Revenue by</b>	Smt. A.S. Bindhu, Sr. DR

<b>Date of hearing</b>	29/07/2019
<b>Date of pronouncement</b>	01/08/2019

### **ORDER**

Per CHANDRA POOJARI, AM:

This appeal filed by the assessee is directed against the order of the CIT(A), Kottayam dated 01/10/2018 and pertain to the assessment year 2010-11.

2. The assessee has raised the following grounds of appeal:

1. The order of the Commissioner of Income Tax (Appeals) is opposed to law, facts and circumstances of the case.
2. The Learned Commissioner of Income Tax (Appeals) has erred in not considering the detailed submission in the argument note filed and the supporting judgments attached thereto.
3. The Learned Commissioner of Income Tax (Appeals) ought to found that based on the accounts and statements furnished, it stands proved that no

expenditure was incurred for earning exempt income as contemplated in sub section (2) of section 14A.

4. The Learned Commissioner of Income Tax (Appeals) ought to have found that no satisfaction was entered into by the Assessing Officer based on the accounts and statements prior to invoking Rule 8D.

5. The Learned Commissioner of Income Tax (Appeals) ought to have found that the amount estimated and disallowed by the assessee towards probable administrative expenses was reasonable and no amounts were borrowed for investment purposes and hence interest on borrowings is not applicable.

6. The Learned Commissioner of Income Tax (Appeals) ought to have found from the statements of loans that the loans granted by banks are specific business loans, the terms and conditions spelt out in the loan agreement prevents the company from diverting the borrowed funds for any other purpose.

7. The Learned Commissioner of Income Tax (Appeals), after finding that a substantial portion of the investment is in subsidiaries, ought to have found that such investments are only for commercial expediency.

8. The Learned Commissioner of Income Tax (Appeals) erred in stating that the possession of substantial reserves is not relevant.

9. The Learned Commissioner of Income Tax (Appeals) erred in relying on the decision of the Commissioner of Income-tax(Appeals), Trivandrum, in the case of Muthoot Bankers, the facts therein having no connection with assessee's business and ignoring the various High Court and Supreme Court decisions on the point as applicable and referred to in the argument note.

10. For the above and other grounds that may be advanced at the time of hearing, it is respectfully submitted that the order of the Learned Commissioner of Income Tax(Appeals) be set aside.

3. The Ld. AR has filed an application for revival of ground which reads as follows:

*"At the time of hearing, it was observed by the Hon. Bench that ground No. 4 was not before the Commissioner of Income-tax(Appeals) and accordingly, was directed to be conceded as not pressed. In obedience to the direction from the Hon. Bench it was accordingly submitted.*

*However, the said ground is one arising from the assessment order and since it has a legal implication, by virtue of the judgment of the Hon.*

*Supreme Court in the case of National Thermal Co. Ltd. vs. CIT (229 ITR 383), it is submitted that the said ground is admissible.*

*Accordingly it is respectfully submitted that ground No. 4 noted as not pressed, may be revived and considered for adjudication.*

3.1 The additional ground of appeal reads as follows:

“The Ld. Commissioner of Income Tax(Appeals) ought to have found that the Assessing Officer had himself entered into a categorical finding that the borrowed funds were not used for the purpose of investment and as such there is no expenditure in the form of interest incurred for earning exempt income.”

3.2 We have heard the rival submissions and perused the record. We find bona fide reasons in the act of the assessee in not raising the additional ground on an earlier occasion. We place reliance on the judgment of the Supreme Court in the case of National Thermal Power Corporation Ltd. vs. CIT (229 ITR 383) wherein it was held that Tribunal has the discretion to allow or not to allow additional ground to be raised for the first time before the Tribunal. Accordingly, we admit the additional ground for adjudication.

4. Coming on merits of the ground, the facts of the case are that during the assessment proceedings, the Assessing Officer observed that the assessee had received during FY 2009-10 dividend income of Rs.10,49,358/- and at the same time made interest payment of Rs.10,03,98,769/- on the borrowed funds. The assessee had disallowed 2% of the dividend income as expenditure attributable to earning dividend income. The Assessing Officer rejected the said method adopted by the assessee and computed the disallowance u/s. 14A of the Act by applying

Rule 8D of I.T. Rules, 1962. The total disallowance made by the Assessing Officer u/s. 14A of the Act was Rs.1,23,89,765/-.

4.1 Before the CIT(A) , the Ld. AR submitted that there was no fresh investment during the F.Y. 2009-10. Further, it was submitted that substantial investment was made in the subsidiaries of the assessee and the said investments were made only on account of commercial expediency. It was submitted that the assessee had substantial reserves and surplus many times over the value of investments and there can be no case as assumed by the authorities that any loan was utilized for investment.

4.2 The CIT(A) rejected the argument of the assessee that investments in subsidiaries would amount to commercial expediency. According to the CIT(A), the commercial expediency flows from the business relationship and the assessee had to show how the said investment protected or improved the business of the assessee. The CIT(A) observed that the assessee had paid interest on borrowed funds and the assessee had earned exempt income during the F.Y. 2010-11. Therefore, the CIT(A) held that disallowance had to be made. However, regarding the question whether the said allowance can be more than the exempt income earned, the CIT(A) relied on the order of the CIT(A), Trivandrum dated 15/12/2017 wherein it was held as under:

"2.5 by no stretch of imagination can section 14A or Rule 8D be interpreted so as to mean that much more than the exempted income earned against

which the expenditure is to be disallowed. Disallowance u/s. 14A therefore, cannot exceed the exempted income earned. Reliance is placed here to the decision of Hon'ble Mumbai Bench of the ITAT in the case of Nimbus Communications Ltd. vs. ACIT reported in 47 ITR (Trib.) 496 wherein it was held that disallowance could not be made u/s. 14A more than the exempted income. As a result, if any disallowance could be made that can be restricted only to the dividend income earned of Rs.55,80,741/- but not to Rs.88,68,993/- disallowed by the Assessing Officer by invoking the provisions of section 14A of the Act. In view of this, the disallowance is hereby restricted to Rs.55,80,741/- to the extent the exempted income was earned and thereby, the balance amount of Rs.32,88,252/- is hereby deleted. As a result the appeal is partly allowed."

4.3 Following the decision in the case of Muthoot Bankers, the CIT(A) held that the interest disallowance should be limited to the amount of exempt income earned by the assessee i.e., Rs.10,49,358/- and the balance disallowance of Rs.1,13,40,407/- was deleted.

5. Now the Ld. AR submitted that Ground No. 4 was a new ground and was raised for the first time before the Tribunal and it was not raised before the lower authorities. As seen from the order of the CIT(A), the CIT(A) has not considered the ground with regard to recording of satisfaction before invoking the provisions of Rule 8D r.w.s. 14A of the Act. This being a legal ground and which goes to the root of the issue, in the interest of justice, we remit Ground No. 4 of this appeal to the file of the CIT(A) for fresh consideration.

5.1 Since we have remitted this ground of appeal raised by the assessee to the file of the CIT(A), we refrain from going into other grounds of appeal including the

additional ground of appeal raised by the assessee at this stage. Thus, this ground of appeal of the assessee is partly allowed for statistical purposes.

6. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on this 1<sup>st</sup> August, 2019

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

Place: Kochi

Dated: 1<sup>st</sup> August, 2019

GJ

Copy to:

1. M/s. The Malayala Manorama Co. Ltd., Manorama Building, K.K. Road, Kottayam-686 001.
2. The Assistant Commissioner of Income-tax, Circle-1, Kottayam.
3. The Commissioner of Income-tax(Appeals), Kottayam.
4. The Pr. Commissioner of Income-tax, Kottayam.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin

