

आयकरअपीलीयअधिकरण“G” न्यायपीठमुंबईमें।

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवंश्री राजेश कुमार लेखा सदस्य के समक्ष।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 1823/Mum/2017

(निर्धारण वर्ष / Assessment Year 2011-12)

The Dy. Commissioner of Income Tax-14(1)(2), Mumbai	Vs.	M/s. Godrej Industries Ltd., Phirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी/ Respondent)
स्थायीलेखासं./PAN No.AACG2953R		

आयकर अपील सं./ ITA No. 1858/Mum/2017

(निर्धारण वर्ष / Assessment Year 2011-12)

Godrej Industries Ltd., C/o. Kalyaniwalla & Mistry LLP, 2nd Floor, Esplanade House,29, Hazarimal Somani Marg, Fort, Mumbai	Vs.	The Dy. Commissioner of Income Tax, Range-10(2), Now, The Asst. Commissioner of Income Tax, Range-14(1)(2) Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी/ Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Rajendra Prasad, DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri F.V. Irani, AR

सुनवाईकीतारीख/ Date of hearing:	09.04.2019
घोषणाकीतारीख/ Date of pronouncement :	05.07.2019



आदेश/ ORDER

महावीरसिंह, न्यायिकसदस्य/
PER MAHAVIR SINGH, JM:

These cross-appeals filed by the assessee and Revenue are directed against the order of the Commissioner of Income Tax(Appeals)-22, Mumbai, dated 08-12-2016.

2. The first common issue in these cross-appeals is as regard the order of CIT(A), restricting the disallowance of expenses relatable to exempt income by invoking the provisions of Section 14A of the Act r.w.r. 8D of Income Tax Rule, 1962 [Rules]. For this, Revenue has raised the following Ground No.1:

“On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of ₹29,20,10,000/- u/s.14A r.w. Rule 8D in respect of exempt income.”

For this the assessee has raised various grounds i.e., from 1 to 6, which reads as under:

“1) The learned Commissioner of Income Tax (Appeals) erred in holding that the provisions of Section 14A of the Act were applicable in the case of the Appellant, since the dividend from shares/units of mutual funds is subjected to tax in the hands of the payer under Section 115-O/ 115-R of the Act and as the Appellant receives an amount after the tax

has been paid, it cannot be said that such dividend income is not chargeable to tax under the Act and, consequent thereto, the provisions of Section 14A are not attracted.

2) The learned Commissioner of Income Tax (Appeals) erred in holding that interest expenditure on borrowings utilized for the purposes of the business activities of the Appellant was not allowable under Section 36(1)(iii) of the Act and in disallowing interest expenditure under Section 14A of the Act, as having been incurred towards the earning of exempt dividend income, in accordance with the provisions of sub-clause (ii) of clause 2 of Rule 8D.

3) Without prejudice to the Appellant's contention that no interest is allocable to the earning of exempt dividend income, the Appellant submits that the learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that investments in the group companies were made as strategic long term investments to maintain the controlling stake in the group companies and not solely for the purpose of earning exempt income and, therefore the same were to be excluded while computing the average value of investments for



the purpose of calculating the proportionate amount of interest expenditure to be disallowed u/s. 14A of the Act.

4) *The learned Commissioner of Income Tax (Appeals) erred in disallowing administrative and other expenditure under Section 14A of the Act, as having been incurred! towards the earning of dividend income in accordance with the provisions of sub-clause (iii) of clause 2 of Rule 8D.*

5) *Without prejudice to Ground No. 4, the Appellant further submits that the learned CIT(A) erred in holding that only strategic investments in subsidiary companies were required to be reduced from the average value of investment for the purpose of calculating amount of disallowance of administrative and other expenditure and in ignoring the fact that there were other group companies which were held as strategic investments as the Appellant had a controlling stake in such entities.*

6) *The learned Commissioner of Income Tax (Appeals) erred in relying on the provisions of Section 14A of the Act and Rule 8D of the Rules while computing the amount liable for being added back to the book profits lobe computed under Section 115JB of the Act. The*

Appellant submits that Section 115JB of the Act is a separate code by itself and the provisions of Section 14A and Rule 8D cannot be applied for computing the book profits under Section 115JB of the Act.”

But, the assessee has agitated only Ground Nos.4 & 6. Hence, the grounds raised by assessee vide 1, 2, 3 and 5 are dismissed, as not argued.

3. Brief facts relating to the issue of disallowance of expenses relatable to exempt income are that the assessee-company is carrying on several businesses and activities as can be found from its audited Balance Sheet. The suo motto disallowance of ₹46,85,029/-, is made by the assessee on account of expenses relatable to exempt income. The assessee disallowed the said sum on account of proportionate employee cost related to investment activity. The AO was not satisfied with the disallowancesuo motto made by the assessee and hence he invoked Rule 8D(2) of Rules. The AO made disallowance of direct expenses under rule 8D2(i) at ₹0. The AO made disallowance under Rule 8D(2)(ii) of the Rules at ₹2428.93 Lakhs and under Rule 8D2(iii) at ₹538.02 Lakhs. Thereby, the AO disallowed under both under Rule 8D2(ii) and 8D2(iii) at ₹2966.95 Lakhs. The AO allowed the benefit of already disallowance made by assessee at ₹46.85 Lakhs. Thereby, the AO actually made addition on account of disallowance of expenses relatable to exempt income under rule 8D2(ii) and 8D2(iii) at ₹2920.10 Lakhs. Aggrieved, assessee preferred an appeal before the CIT(A).



4. The CIT(A) directed the AO to re-compute the disallowance and the relevant directions are in para 7.4 of his order, which is as under:

“7.4. In view of the above, the Assessing Officer is directed to recompute the disallowances made u/s.14A r.w.r 8D(2)(ii) & 8D(2)(iii) as under:

A.Disallowance under Rule 8D(2)(ii)

To calculate the average rate of investment by excluding from the total investments the following:

(a) All investments the income from which are subject to tax

(b) Investments acquired out of own funds upto A.Y.2007-08 & held till March, 31, 2011 (As per the order of the Hon'ble ITAT)

(c) Investments acquired out of own funds in AY 2008-09 (As per the order of the learned CIT(A))

(d) Investments acquired in A.Y.2009-10 out of proceeds from share issue in AY 2008-09 (As per the order of the learned CIT(A))

(e) Investments out of Own funds for A.Y.2010-11 (As per the order of the learned CIT(A))

(f) Investment out of own funds during the year under consideration of ₹6,804.16 lakhs

B. Disallowance under Rule 8D(2)(iii)

To calculate the average rate of investment by excluding from the total investments the following:

(a) All investments the income from which are subject to tax

(b) Investments in subsidiary companies as shown in the Balance Sheet excluding investments covered by (a) above if any”.

Aggrieved, Revenue came in appeal on the above directions.

5. However, the assessee came in appeal against the directions of CIT(A), directing the AO to restrict the disallowance u/s.14A of the Act while computing the book profits u/s.115JB of the Act in the respective rules under 8D(2) of the Rules as restricted by the CIT(A).Aggrieved, now, both Revenue as well as the assessee came in appeal before the Tribunal.

6. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the CIT(A) has categorically given a finding that whatever the investments made by assessee out of own funds are the interest free funds available with the assessee in the instruments giving rise to exempt income, the same should not be disallowed. This view has support of Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd., [366 ITR 505]. The CIT(A) has



discussed the availability of own funds and even in earlier years, identical is the position, the CIT(A) has discussed this in para 7.3 of this order which is reproduced as under:

“7.3 I have considered the facts and circumstances of the case and the appellant’s submissions. I find that this issue of disallowance u/s 14A has been considered by my Id. predecessors and the Hon’ble ITAT for various earlier A.Y.s. It is seen that my Id. predecessor for Assessment Years 2008-09, 2009-10 and 2010-11 has followed Rule 6D but has recomputed the disallowance and has excluded certain investments based on the relevant facts for each Assessment Year, on the ground that the Hon’ble ITAT had given a finding that there were no borrowings attributable to investments in earlier years and consequent thereto, if such investments were still held by the Appellant Company in the current year, then no disallowance of interest expenditure was warranted on such investments. Along the same line of earlier years, the appellant has demonstrated that the investments of Rs 6,804.16 lakhs made during the year under consideration was out of its net own available funds of Rs. 11,024.66 lakhs.....”

7. Clearly, the available interest free funds with the assessee i.e. the own funds are more than the investment made in the instrument giving rise to exempt income and investment is out of mixed funds. Hence, the presumption is in favour of assessee in view of the decision of Hon'ble High Court in the case of HDFC Bank Ltd. (supra). Hence, we find no infirmity in the order of CIT(A) and this issue of Revenue's appeal is dismissed.

8. As regards the ground raised by assessee relating to disallowance of administrative and other expenses under Rule 8D2(iii) of the Rules, we noted that the assessee has made suo motto disallowance of ₹46,85,029/-, this will meet any anticipated cost that some expenditure was incurred by the company. At best cost of the funding and investment department of the company which has been assigned the task of managing the investment portfolio of the company as one of their many responsibility could possibly be covered. The said funding and investment department is in-charge of the financial activities of the company besides handling strategic function. Hence, we are of the view that the expenditure attributable to the earning of dividend income which has been offered by assessee suo motto for disallowance u/s.14A of the Act r.w.r. 8D2(iii) amounting to ₹46.85 Lakhs is reasonable.

7. As regards the issue of order of CIT(A), directing the AO to take the average rate of investment by excluding from the total investments, the investment income from which are subject to tax and the investment in subsidiary companies, excluding investments which are giving rise to income which are subject to tax, we are of the view that the assessee suo motto disallowed a sum of ₹46.85 Lakhs, which is quite reasonable

and AO is directed to restrict to that extent only. This issue of assessee's appeal is allowed and that of Revenue is dismissed.

9. As regards the disallowance made by AO and restricted by CIT(A) of expenses relatable to exempt income u/s.14A of the Act r.w.r.8D(2) while computing book profits u/s.115JB of the Act, we noted that this issue is squarely covered in favour of assessee and against Revenue by the decision of the Special Bench of this Tribunal in the case of ACIT Vs. Vireet Investment Pvt. Ltd., in ITA No.502/Del/2012, dt.16-06-2017, ITAT-Delhi, wherein it was held that - the provisions of Section 14A r.w.r.8D(2) of the Rules will not apply wherever book profit is computed u/s.115JB of the Act. Respectfully following the said decision of the Special Bench, we direct the AO not to make any disallowance under rule 8D(2) while computing book profits u/s.115JB of the Act. This issue of assessee's appeal is allowed.

10. The next issue in this appeal of assessee is against the order of CIT(A) disallowing a sum of ₹ 1,16,125/- as amortization premium. For this assessee has raised ground No. 7 as under: -

“Gr.7. The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in disallowing a sum of Rs.1,16,125/- being the amortization of the premium paid for Leasehold land.”

11. As regards to the said ground, it is observed that the issue involved therein relating to disallowance amounting to ₹ 1,16,125/- made by the A.O. and confirmed by the CIT(A) on account of amortization of premium paid by the assessee for leasehold land is

squarely covered against the assessee by the orders of the Tribunal in assessee's own case for earlier years i.e. A.Ys. 2006-07 to 2010-11. Respectfully following the said orders of the Tribunal, we confirm the disallowance made by the A.O. and sustained by the CIT(A) on this issue and dismiss ground No. 7 of the assessee's appeal. This issue of assessee's appeal is dismissed.

12. The next common issue in these cross appeals is as regards the order of CIT(A), deleting the addition of un-utilized CENVAT Credit of ₹ 2,17,32,640/- by directing the AO to recast the accounts of excise duty and other taxes. For this Assessee has raised the following ground No. 8: -

“The learned Commissioner of Income Tax (Appeals) erred in not following the Appellate Orders of earlier years and in not deleting the disallowance concerning the unutilized Cenvat credit of ₹2,17,32,640/- and in directing the Assessing Officer to recast the accounts of the Appellant by considering the element of excise duty and other taxes in the opening stock, purchases, sales and inventory”

Revenue has raised the following Ground No.2: -

“On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of ₹2,17,32,640/- as CENVET Credit on closing stock”

13. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the CIT(A) has considered the earlier year's order of ITAT and CIT(A) particularly referred to the order of predecessor CIT(A) for the AY.2006-07, dt.20-12-2010, wherein the matter was sent back to the file of AO with a direction to recast the accounts of the assessee by considering the elements of excise and other taxes in the opening stock, purchases, sales and inventory. The increase, if any, on account of these adjustments should be added to the income of assessee. We find that this issue is squarely covered in favour of assessee and against Revenue in assessee's own case by the decision of the Hon'ble Bombay High Court for the AY.2008-09 in ITA No.1126 of 2016 dated 09.01.2016, wherein Hon'ble Bombay High court held as under: -

"2 The issue pertains to inclusion of cenvat credit balance as part of the closing stock. We noticed that the Supreme Court in the case of Commissioner of Income Tax v/s Indo Nippon Chemicals Co Ltd reported in 261 ITR 275 confirmed the decision of the High Court in which the accounting practice consistently followed by the Assessee of excluding Modvat credit (which was prevailing at the relevant time and which was later on replaced by cenvat in the valuation of closing stock.) Following the judgment of the Supreme Court in the case of Indo Nippon Chemicals Co Ltd (supra), a Division Bench of this Court in the case of Commissioner of Income Tax v/s



Diamond Dye Chem Ltd 396 ITR 536 dismissed the Revenue's Appeal making following observations: -

“We have considered the submissions. It is not disputed that the assessee was liable to excise duty. The assessee got credit in the excise duty already paid on the raw materials purchased by it and utilized in the manufacturing of excisable goods. The assessee was adopting the exclusive method, i.e., valuing the raw materials on the purchase price minus (-) the Modvat credit. The same would be permissible. The apex court in the case of Indo Nippon Chemicals Co. Ltd (supra) while affirming the order of the High Court, has observed that the income was not generated to the extent of Modvat credit or unconsumed raw material. Merely because the Modvat credit was irreversible credit offered to manufacturers upon purchase of duty paid raw materials, that would not amount to income which was liable to the taxed under the Act. It is also held that whichever method of accounting is adopted, the net result would be the same”



14. Respectfully, following the Hon'ble Bombay High court, we allow this issue of assessee's appeal and dismiss the issue of revenue's appeal.

15. The next issue in this appeal of assessee relates to depreciation on the opening written down value of the block of assets. For this assessee has raised the following ground No. 9: -

“Gr.9. The learned Commissioner of Income Tax (Appeals) erred in holding that the Hon'ble ITAT had decided the issue concerning the value to be adopted with regards to the opening written down value of the book of assets against the Appellant. Having regard to the facts of the case and the provisions of law, the Appellant submits that the Assessing Officer be directed to accept the written down value of the block of assets and to allow depreciation, as claimed by the Appellant as per its return of income.

16. As regards to the said ground, it is observed that the issue involved therein relating to assessee's claim for depreciation on the opening written down value of the block of assets as per the appellate order for immediately preceding assessment year is also squarely covered against the assessee by the decision of the Tribunal in assessee's own case for A.Ys. 2003-04 to 2010-11, this has also been affirmed by the ITAT. Respectfully, following the same, we uphold the



impugned order of CIT(A) on this issue. This issue of assessee's appeal is dismissed.

17. In the result, the appeal of assessee is partly allowed and the appeal of Revenue is dismissed.

Order pronounced in the open court on 05.07.2019.

Sd/-

(राजेश कुमार /RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 05.07.2019.

TNMM

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि,आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार (Asstt. Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai