

आयकर अपीलीय अधिकरण “B” न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 6224/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

The Dy. Commissioner of Income Tax, Central Circle-2(1)(1), R. No. 561, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	Vs.	BSE Ltd. Phiroze Jeejeebhoy Towers, 25 th Floor, Dalal Street, Fort, Mumbai-400 001
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AACCB6672L		

आयकर अपील सं./ ITA No. 6292/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

आयकर अपील सं./ ITA No. 693/Mum/2019

(निर्धारण वर्ष / Assessment Year 2012-13)

BSE Ltd. Phiroze Jeejeebhoy Towers, 25 th Floor, Dalal Street, Fort, Mumbai-400 001	Vs.	The Asst. Commissioner of Income Tax, Central Circle-2(1)(1), R. No. 561, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Bharti Singh, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Niraj Sheth, AR

सुनवाई की तारीख / Date of hearing:	05.08.2019
घोषणा की तारीख / Date of pronouncement :	21.08.2019



आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

These two appeals of assessee and one appeal of Revenue are arising out of the order of the Commissioner of Income Tax (Appeals)-3, Mumbai [in short CIT(A)], in appeal No. CIT(A)-3/IT-128/ACIT-2(1)(1)/16-17 vide dated 07.07.2017. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle 2(1)(1) Mumbai (in short ITO/ AO) for the A.Y. 2012-13 vide order dated 20.03.2015 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee in ITA No. 6292/Mum/2017, is against the order of CIT(A) confirming the disallowance of depreciation made by the AO on assets taken on lease from Hewlett Packard Financial Services India Pvt. Ltd. (HPFS). For this assessee has raised the following ground No. 1: -

"The learned Commissioner of Income-tax (Appeals) erred in confirming the disallowance of depreciation of Rs.6,00,00,000/- on assets taken on lease from Hewlett Packard Financial Services Pvt. Ltd. (HPFS).

a) The learned Commissioner of Income-tax (Appeals) ["the CIT(A)"] erred in confirming the action of the Assessing Officer who had disallowed the depreciation of Rs.6,00,00,000/- on the servers purchased in Assessment Year



2011-12 from HPFS under Finance Lease Scheme on protective basis. The learned Commissioner of Income-tax (Appeals) failed to appreciate the fact that the appellant had purchased the assets under Finance Lease Scheme and is therefore the owner of the assets. Your appellant had also paid insurance premium as the owner of the assets and therefore had rightly claimed depreciation of Rs.6,00,00,000/- u/s.32 on the said assets. The Assessing Officer therefore be directed to allow the same.

b) Without prejudice to the above, the Commissioner of Income-tax (Appeals) failed to consider the alternate ground of allowing the installment paid during the year to HPFS of Rs.9,65,01,084/- as lease rent as a revenue expenditure on which the appellant had also deducted tax at source. The Assessing Officer therefore be directed to allow the same."

3. Briefly stated facts are that the assessee company is a corporate entity came into existence with effect from 19.08.2009. The assessee is governed by Companies Act, 1956, along with securities Contract Regulation Act, 1956. The nature of business of the assessee is as under: -

- “a) To safeguard the interest of investing public having dealing on the exchange and the trading members.*
- b) to establish and promote honorable and just practices in securities transactions.*
- c) To promote, develop and maintain a well-regulated market for dealing in securities.*
- d) To promote industrial development in the country through efficient resource mobilization by way of investment in corporate securities.”*

4. The assessee has taken server on finance lease from HPFS during the FY 2010-11 relevant to AY 2011-12 for a period of 36 days. As per Accounting Standard 19 (AS-19), the assessee has capitalized the asset and interest on lease payment has been debited to the profit and loss account and claimed depreciation as under: -

“Cost of Asset capitalized on 15.04.2010	₹ 25,00,00,000
Less: Depreciation @ 60 for FY 2010-11	₹ 15,00,00,000
WDV as on 01.04.2011	₹ 10,00,00,000
Less: Depreciation @ 60 for FY 2011-12	₹ 6,00,00,000
WDV s on 01.04.2012	₹ 4,00,00,000”

5. According to AO, HPFS also claimed depreciation on the said asset given on financial lease and according to AO once two persons claiming to be the owner of the asset, the claim of depreciation cannot be allowed to the assessee. Aggrieved, assessee preferred the appeal



before CIT(A). The CIT(A) also confirmed the action of the AO by observing in para 7.1 and 7.2 as under: -

“7.1 On the other hand, the appellant assessee submitted that has purchased some servers at a cost of Rs. 25,00,00,000/- from Hewlett Packard Financial Services P. Ltd. in the FY 2010-11 under Finance Lease Scheme. The appellant claimed depreciation of Rs. 6,00,00,000/- on the WDV at the rate applicable to fixed assets in the computation of income. The depreciation on the leased assets has been allowed by the AD in the AY 2023-14 and 2011-12 as well. The appellant also invited my attention in the case of Hewlett Packard India Sales Pvt. Ltd. Vs. DCIT [ITA No. 683/Rang/2010].

7.2 I have carefully considered the rival submissions and facts of the case. The appellant assessee has not disputed the fact that M/s Hewlett Packard India Sales Pvt. Ltd has not claimed the depreciation on these computers and had failed to justify the reason to claimed the depreciation by two entities on the same asset. The case law cited by the AR will not help the assessee once the depreciation has claimed by the lesser as owner of the computers in question. In view of the same I did not find any reason to interfere in the finding of the AO and hence, depreciation cannot be allowed on

these computers, therefore Ground No.2 is dismissed.”

Aggrieved, now assessee is in appeal before Tribunal.

6. We have heard rival contentions and gone through the facts and circumstances of the case. Before us, the assessee filed complete chart in regard to claim of depreciation on leased assets and in AY 2011-12 depreciation was allowed by the AO and no action whatsoever under the provisions of Act was taken thereafter. The learned Counsel for the assessee stated that once the asset is entered into block of assets, and depreciation is allowed in the very first year, subsequent depreciation cannot be disallowed. The learned Counsel for the assessee filed complete details including detail of interest and principal amount paid and lease rent paid and depreciation claimed which is as under: -

Details of Depreciation claimed on leased assets:-

Particulars	Amount	Remarks
Cost of Asset capitalized on 15.04.2010	25,00,00,000	
Less: Deprecation @60% for AY 2011-12	15,00,00,000	Depreciation allowed by assessing Officer
WDV as on 01.04.2011	10,00,00,000	
Less : Depreciation @ 60% for AY 2012-13	6,00,00,000	Deprecation NOT allowed by assessing officer
WDV as on 01.04.2012	4,00,00,000	
Less : Depreciation @ 60% for AY 2013-14	2,40,00,000	Depreciation allowed by assessing Officer
WDV as on 01.04.2013	1,60,00,000	
Less : Depreciation @ 60% for AY 2014-15	96,00,000	Deprecation NOT allowed by assessing officer
WDV as on 01.04.2014	64,00,000	
Less : Depreciation @ 60% for AY 2015-16	38,40,000	Depreciation allowed by assessing Officer
WDV as on 01.04.2015	25,60,000	
Less : Depreciation @ 60% for AY 2016-17	15,36,000	Deprecation NOT allowed by assessing officer
WDV as on 01.04.2016	10,24,000	

Details of interest and principal amount

Particulars	Installments	Interest Amount	Principal amount
Lease rent –First Year (FY 2010-11)	5,10,85,032	73,32,740	4,37,52,292
Lease rent-Second year (FY 2011-12)	10,17,88,412	1,03,70,978	9,14,17,434
Lease rent –Third year (FY 2012-13)	12,21,11,415	72,81,141	11,48,30,274



	27,49,84,859	2,49,84,859	25,00,00,000

7. On the other hand, the learned Sr. Departmental Representative relied on the order of the lower authorities.

8. We noted that the assessee company has installed servers at a cost of ₹ 25 crores from HPFS during the financial year 2010-11 under finance lease scheme. The assessee as per AS-19 capitalized the said amount in the books of account. The assessee claimed depreciation on the cost of acquisition in earlier years which were allowed by the Assessing Officer. It was claimed that the assessee company is the owner of the server and they have to take out insurance policy and paid the insurance premium to cover various risks attach to it and assessee company is the only user of the server. In term of the above facts, the assessee claim depreciation on the WDV at the rate applicable to fixed assets. It was claimed that the assessee company has not claimed any amount of revenue expenditure except interest paid to HPFS amounting to ₹ 1,03,70,798/- and this was claimed under the head of finance cost. We noted that the AO has disallowed depreciation of ₹ 6 crores on the ground that HPFS has claimed depreciation on the said asset not only in this year but in subsequent years. The assessee before us explained that the Income Tax Department for AY 2009-10 has already disallowed the claim of depreciation in the hands of the HPFS. We noted that in the very first year i.e. AY 2011-12, the depreciation has already allowed the claim of depreciation. We noted that in the income tax code, there is a provision/ concept of block of asset and once any asset enters into block asset and claim of depreciation in very first year is allowed, in subsequent year the deprecation cannot be disallowed in case the first year is not disturbed. We noted that even in subsequent years, the Revenue is allowing the claim of the assessee as noted in above chart. Hence, we

allow the claim of depreciation on the issue of consistency. This issue of assessee's appeal is allowed.

9. The next common issue in these appeals i.e. of the Revenue's appeal in ITA No. 6224/Mum/2017 and assessee's appeal in ITA No. 6292/Mum/2017 is as regards to the order of CIT(A) restricting the disallowance of expenses relatable to exempt income by invoking the provisions of section 14A read with Rule 8D of the Rules. For this assessee has raised the following ground No. 2: -

"2. The learned commissioner of Income Tax (Appeals) [“the CIT(A)”] has erred in observing that the assessing officer is directed to follow the honorable ITAT finding in this year also provided that he brought any new material on record to substantiate the disallowance made. Your Appellants submits that the proviso (rider) placed by the CIT(A) is without any basis. The learned CIT(A) failed to appreciate that there was no new material in the assessment order to substantiate the disallowance. The assessing officer should therefore be directed to delete the impugned disallowance of ₹ 7,19,09,738/- made under the rule 8D(2)(i) of the IT Rules, 1962; in accordance with the order of the honorable ITAT passed in favour of the appellant for AY 2006-07, 2007-08, 2008-09 and 2009-10”

Revenue has raised the following three grounds: -



"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to follow the Hon'ble ITAT's finding that suo moto disallowance made by the assessee of Rs. 40,13,000/- is reasonable in the assessee's case as against Rs. 7,19,09,738/- made by the AO.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in following the ITATs order and holding that AO has not recorded satisfaction u/s 14A(2) despite the AO discussing the assessee's method and expressing his dissatisfaction on the method employed by the assessee in para 5.6 of the assessment order.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that from AY 2008-09, the disallowance u/s 14A is required to be computed as per Rule 80 as held by the Bombay High Court in *Godrej & Boyce* and the method adopted by the assessee is not valid method."

10. Briefly stated facts are that the assessee company has earned exempt income in the form of dividend and interest on interest free bonds deposit amounting to ₹ 18.86 crores on units of mutual funds and tax free bonds and claim the same as exempt under section 10(34) and 10(35) of the Act. The assessee has made suo moto disallowance of expenses

relatable to exempt income under section 14A read with Rule 8D of the Rules amounting to ₹ 40,13,000/-. The AO noted that the said suo moto disallowance made by assessee, is not as per Rule 8D of the IT Rules and thereby, he invoked the provisions of section 14A read with Rule 8D of the Rules and made disallowance under Rule 8D(2)(i) at ₹ 18,68,443/- and under Rule 8D(2)(iii) being half percent of average value of investment at ₹ 7,40,54,295/-. Thereby, the AO worked out the disallowance of expenses at ₹ 7,59,22,738/-. The AO after allowing the suo moto disallowance made by the assessee, made balance disallowance at ₹ 7,19,09,738/-. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) restricted the disallowance at ₹ 43,87,355/- by observing in Para 6.3 as under: -

“6.3 I have carefully considered the rival submissions and facts of the case and observations of the Hon'ble ITAT, Mumbai. The appellant has disallowance under Rule 8D(2)(i) of the IT Rules and the AO has not disputed the said disallowance of Rs. 21,52,635/- relating to Direct Expenses. Further, the appellant made disallowance of Rs. 22,34,720/- wider Rule 8D(2)(iii) of the IT Rules, Assessing officer has not disputed with regard to direct expenses as he has accepted the amount worked out by the assessee. The Hon'ble ITAT has considered the suo-moto disallowance as reasonable in the appellant's own case as mentioned above, therefore, AO is directed to follow the Hon'ble ITAT finding in this year also provided he brought any new material on record to

*substantiate the disallowance made. Therefore,
Ground No. 1 is partly allowed.”*

Aggrieved, both came in appeal before Tribunal.

11. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has not disputed the disallowance restricted by CIT(A) under Rule 8D(2)(i) amounting to ₹ 21,52,635/-. But assessee's main contention is as regards to the disallowance restricted by CIT(A) under Rule 8D(2)(iii) at ₹ 22,34,720/-. We noted that the assessee itself has computed the disallowance under Rule 8D(2)(iii) at ₹ 21,44,348/- and the basis of allocation is given in the following chart: -

A	Direct Expenses		
	Salary to Staff		18,68,443/-
B	Indirect expenses		
(i)	Total expenses as per P & L A/c	1,89,64,00,000/-	
	Less: Salary to staff	18,68,443/-	
		189,45,31,557/-	
(ii)	Basis of Allocation		
	Total area occupied by the appellant company in square feet	88350 sq feet	
	Total area occupied by the Treasury section	100 sq. feet	
	Indirect expenses allocated to Treasury section (1,89,45,31,557X100/ 88,350)		21,44,348/-
	Total amount inadmissible under section 14A		40,12,791/-
	Rounded off to		40,13,000/-

12. When these facts were confronted to the learned Counsel for the assessee, he fairly agreed that the disallowance can be restricted to the extent of ₹ 21,44,348/- under Rule 8D(2)(iii). The learned Sr. Departmental Representative has not made any argument on the above facts. Hence, we direct the AO to compute the disallowance accordingly. This issue of assessee's appeal is partly allowed and that of the Revenue is dismissed.



13. In ITA No. 693/Mum/2019 arising out of rectification application filed before AO and consequent appeal filed on the order of CIT(A) passed under section 154 of the Act. Since, we have adjudicated the issue on the main appeal of assessee in ITA No. 6292/Mum/2017, this appeal become infructuous, hence, dismissed.

14. **In the result, the appeal of assessee in ITA No. 6292/Mum/2017 is allowed and appeals of assessee in ITA No. 693/Mum/2019 & Revenue in ITA No. 6224/Mum/2017 are dismissed.**

Order pronounced in the open court on 21.08.2019

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 21.08.2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai