

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 23/Del/2016
(Assessment Year: 2011-12)

DCIT, Circle-1, LTU, New Delhi	Vs.	Hero Motors Ltd, 603, International Trade Tower, Nehru Place, New Delhi PAN: DELHO0536E
(Appellant)		(Respondent)

Revenue by :	Shri Sanjay Goyal, CIT DR
Assessee by:	Shri Sumit Bansal, CA
Date of Hearing	22/10/2019
Date of pronouncement	20/01/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the DCIT, Circle-1, LTU, New Delhi against the order of the Id CIT(A)-22, New Delhi dated 16.10.2015 Assessment Year 2011-12.
2. The revenue has raised the following grounds of appeal:-
 - “1. On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in directing to exclude the amount of Rs. 71, 17, 18,810/- being the investment made by the assessee in M/s Munjal Kiriu Industries (P) Ltd., M/s Hero Chassis System (P) Ltd. and M/s Hero Global Design Ltd. for working out the amount of average investment for the purpose of computation of disallowance u/s 14A read with Rule 8D by holding that there is no nexus between the interest paid by the appellant and the investments made in these companies.
 2. On the fact and in the circumstances of the case and in law, Ld. CIT(A) has erred in directing the Assessing Officer to exclude the amount of Rs. 19, 46, 87,405/- being the investment made by the assessee in Debt Oriented Mutual Funds under growth option for working out the amount of average investment for the purpose of computation of disallowance u/s 14A read with Rule 8D merely by passing a cryptic order accepting the claim of the assessee that investment in mutual funds was in a debt oriented scheme under growth option not entitled to tax exempt dividend and income on sale/redemption of such mutual fund is taxable under the head 'Capital Gain', without verifying the claim and in absence of any such finding by the Assessing Officer in the assessment order.”

3. Brief facts of the case shows that the assessee is a company engaged in manufacturing of two wheeler and auto components/ spare parts for automobile. It filed its return of income showing Nil income under normal provision of the Act and a book profit of Rs. 9,52,69,347/-. Subsequently, assessee revised return of income on 31.03.2013 to claim the higher amount of TDS. The assessment u/s 143(3) was passed by the ld AO on 11.03.2014 making a disallowance u/s 14A of Rs. 2,06,06,478/- to the book profit of the assessee. Subsequently, book profit was assessed at Rs. 11,58,75,825/-. In the normal computation of the total income the ld AO disallowed Rs. 2,06,06,478/- u/s 14A of the Act of Rs. 24060/- was disallowed u/s 40a(ia) and Rs. 155343/- was disallowed u/s 36(1)(va) for late deposit of employees' contribution to the PF Account. The assessee was assessed on book profit.
4. The assessee preferred appeal before the ld CIT(A). The ld CIT(A) upheld the applicability of disallowance u/s 14A. However, he directed ld AO to reduce the disallowance u/s 14A of the Act. He directed to exclude the investment in shares for working out 'average value of investment' in three subsidiaries for the reason that shares were allotted under the scheme of transfer of foundry division, assembly Unit and in lieu of sale. He further excluded the investment of Rs. 19,46,87,405/- being investment in Debt Oriented Mutual Fund. Thus, he directed the ld AO to re-compute the disallowance accordingly. The ld AO is aggrieved with that order and has preferred an appeal before us.
5. The ld DR vehemently supported the order of the ld AO and stated that the ld CIT(A) has erroneously directed to reduce the average value of investment of Rs. 71,17,18,810/- with respect to the investment made in other companies as well as Rs. 19,46,87,405/- being the investment in Debt Oriented Mutual Fund. It was stated that the debt oriented mutual funds are under growth option scheme. It was further stated that such debt oriented mutual fund cannot be excluded from the investment.
6. The ld AR submitted the details of investment made in the subsidiaries. He further stated that on investment made in the subsidiary, no exempt income has been earned. Therefore, he submitted that the investment which has not yielded any tax free income are even otherwise required to be excluded from the disallowance working out u/s 14A of the Act. He, therefore, submitted

that investment of Rs. 71,17,18,810/- did not result any exempt income as none of the subsidiaries declared dividend during the year. With respect to mutual fund he, submitted that same result into taxable short term capital gain which was offered for taxation and therefore, from that too no tax free income is generated. He further submitted that in ITA No. 4316/Del/2014 in case of assessee for Assessment Year 2010-11 the coordinate bench has decided this issue in favour of the assessee.

7. We have carefully considered the rival contentions and also perused the orders of the lower authorities. It is now an established fact that the investment which results into generation of any tax free income are only to be considered for the purpose of working out disallowance u/s 14A of the Act. The investment of Rs. 71,17,18,810/- in the various subsidiaries did not result in any tax free income during the year. Therefore, there is no infirmity in the order of the Id CIT(A) in excluding this investment from working out average value of investment for disallowance. Furthermore, with respect to exclusion of Rs. 19,46,87,405/- of debt oriented mutual fund having growth option, the assessee has not earned any tax free income from the same but it resulted into short term capital gain of Rs. 45,87,405/- during the year. In view of this, there is no infirmity in exclusion of the above investment from the average value of investment. In view of this, above ground Nos. 1 and 2 of the appeal of the Id AO are dismissed.
8. In the result appeal filed by the Id AO is dismissed.
Order pronounced in the open court on 20/01/2020.

-Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 20/01/2020
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating member	
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	