

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : A : NEW DELHI  
BEFORE MS SUSHMA CHOWLA, VICE PRESIDENT  
AND  
SHRI R.K. PANDA, ACCOUNTANT MEMBER**

ITA No.6088/Del/2017  
Assessment Year: 2013-14

Apollo International Ltd.,  
303, DLF Court Yard,  
Saket, New Delhi.  
PAN: AAACA6447N

Vs. DCIT,  
Circle-3(1),  
New Delhi

Assessee by : Shri Manu K. Giri, Advocate  
Deptt. By : Shri Sanjog Kapoor, Sr. DR

(Appellants)

(Respondents)

Date of Hearing : 28.11.2019  
Date of Pronouncement : 31.01.2020

**ORDER**

**PER R.K. PANDA, AM:**

This appeal filed by the assessee is directed against the order dated 1<sup>st</sup> August, 2017 of the CIT(A)-1, New Delhi, relating to assessment year 2013-14.

2. The only effective ground raised by the assessee reads as under:-

ö1. The learned assessing officer has erred in disallowing an amount of Rs.37,32,000/- under section 14A of the Act read with Rule 8D of the Income-tax.ö

3. The facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturing and trading of export of tyres, tubes, flaps, leather garments and leather accessories, etc. It filed its return of income on 29.11.2013 declaring a loss of Rs.9,47,07,931/-. The AO in the order passed u/s 143(3) made

disallowance of Rs.37,32,000/- on the ground that the assessee has *suo motu* disallowed a sum of Rs.8,17,000/- only as against the disallowance as per section 14A of the Act r.w. Rule 8D of the Income-tax Rules, 1962 which comes to Rs.45,49,000/-.

4. Before the CIT(A), it was submitted that the assessee has considered the investment of Rs.1634.09 lakhs as average value of investment from which dividend has been received and on which 0.5% disallowance has been made. The investment made in foreign companies whose dividend income is subject to tax was held by the CIT(A) to be reduced from the value of investments made in Apollo International FZC Sharjah. So far as the argument of the assessee that only investment from which dividend is received has to be considered for disallowance under Rule 8D(2)(iii) was rejected by the Id.CIT(A) on the ground that once the assessee is receiving dividend income, the entire expenditure has to be considered for working out disallowance under Rule 8D(2)(iii). According to him, the purpose of Rule 8D(2)(iii) is to work out the expenses on the investments from which exempt income is received or receivable, so that such expenses are not claimed against taxable income. He, therefore, directed the AO to work out the disallowance after reducing the value of investment made in foreign company Apollo International FZC, Sharjah.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. After hearing both the sides, we find the Tribunal in assessee's own case in the immediately preceding assessment year in ITA No.6118/Del/2016, order dated 14<sup>th</sup> August, 2019, following the decision of the Special Bench in the case of *Vireet Investment Pvt. Ltd. and Anr. (2017) 165 ITD 0027 (Del) (SB)*, held that disallowance u/s 14A of the IT Act r.w. Rule 8D(iii) of IT Rules has to be allowed by considering the average value of investment which has yielded exempt income during the year. The relevant observation of the Tribunal in assessee own case read as under:-

¶4. The assessee-company had shown dividend income of Rs.87.64 lac which was claimed exempt u/s.10(34) of the Act. In response to the show cause notice, the assessee though offered disallowance of 0.5% of the expenditure; however, stated that investment in share capital of subsidiary companies which have not yielded exempt income should not be taken into consideration. However, Id. Assessing Officer rejected the assessee's contention and made disallowance of Rs.26,16,000/- which has been confirmed by the Id. CIT(A). We find that this precise issue has come up for consideration before the Tribunal wherein the Tribunal has decided this issue after following the judgment of Special Bench in the case of *Vireet Investment Pvt. Ltd. and Anr., (2017) 165 ITD 0027 (Delhi) (SB)* and partly allowed the appeal after observing and holding as under:

¶4.3 Before us, the learned counsel has prayed for following the decision of the Special Bench of the Tribunal in the case of *Vireet Investment Pvt. Ltd. (supra)*, wherein the Tribunal held as under:

"11.14 Now the position of law as stands is that the decision of Hon'ble Jurisdiction High Court is directly on the point in dispute whereas the decision of Hon'ble Supreme court in the case of *Rajendra Prasad Moody (supra)* has been rendered in the context of section 57(iii), the applicability of which has been ruled out by Hon'ble Delhi High Court in the case of *Cheminvest (supra)*.

11.15 Under Article 227 of the Constitution of India, the courts function under the supervisory jurisdiction of Hon'ble High Court. The decisions rendered by Hon'ble High Court are binding on all subordinate courts working within its jurisdiction. In this regard we may refer to the following decisions:

(i) CIT v. Thana Electricity Supply Ltd. (1994) 206 ITR 727 (Bom.), wherein on the issue of "whose decision-is binding on whom", the Hon'ble Bombay Court considered in detail the hierarchy of the courts and has observed as under:

"It is also well-settled that though there is no specific provision making the law declared by the High Court binding on subordinate courts, it is implicit in the power of supervision conferred on a superior Tribunal that the Tribunals subject to its supervision would conform to the law laid down by it. It is in that view of the matter that the Supreme Court in East India Commercial Co. Ltd. v. Collector of Customs, AIR 1962 SC 1893 (at page1905) declared:

"We, therefore', hold that the law declared by the highest court in the State is binding on authorities or Tribunals under its superintendence, and they cannot ignore it. ...."

This position has been summed up by the Supreme Court in Mahadeolal Kanodia v. Administrator General of West Bengal, AIR 1960 SC 936 (at page 941) as follows:

"Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if judges of co-ordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that earlier decision is wrong, itself gives effect to that view, the result would be utter confusion. The position would be equally bad where a judge sitting singly in the High Court is of opinion that the previous decision of another single judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench."

The above decision was followed by the Supreme Court in Baradakanta Mishra v. Bhimsen Dixit, AIR 1972 SC 2466, wherein the legal position was reiterated in the following words (at page 2469) :

"It would be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a Tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer,"

ITA No.9/Del/2015

(ii) CIT v. Svnil Kumar (1995) 212 ITR 238 (Raj.), it was observed as under:

"The point which has been raised could have been considered to be debatable because other High Courts have taken a different view. But since the view taken by this court is binding on the Tribunal and other authorities under the Act in this State, it could not be considered to be a debatable point in view of the decision of this court in the case of CIT v. M.I, Sanghi [1988] 170 ITR 670."

(iii) Indian Tube Company Ltd. v. CIT & others (1993) 203 ITR 54 (Col.) , it was observed as under:

"In the impugned order, respondent No.1 has rejected the petitioner's contention by stating that, although the Calcutta High Court had held that an assessee was entitled to interest on such refund calculated up to the date of the order passed consequent upon an appeal or revision of the original assessment, this view had not been accepted by the Bombay High Court, the Allahabad High Court and the Kerala High Court. Respondent No.1, accordingly, chose to accept the view of the Bombay, Allahabad and Kerala High Courts in preference to the view of the Calcutta High Court. In my view, the order of respondent No. 1 cannot be sustained on the simple ground that respondent No. 1 is an authority operating within the State of West Bengal and is bound by the decisions of the Nigh Court of this State ( see CIT v. Indian Press Exchange Ltd. [1989] 176 ITR 331 (Col) ; East India Commercial Co. Ltd. v. Collector of Customs AIR 1962 SC 1993, paragraph 29).

In that view of the matter, the impugned order must be set aside and the Commissioner is directed to consider the matter afresh in keeping with the decisions of this court after giving the petitioners an opportunity of being heard. At least 48 hours clear notice must be given to the petitioners. The Commissioner will communicate the final order to the petitioner within eight weeks from the date of hearing.

(iv) CIT v. J.K. Jain [1998] 230 ITR 839 (P&H), observing as under:

"We have carefully examined the records and have heard Ld. counsel representing the parties. We are in respectful agreement with the view expressed by the Allahabad High Court in Omega Sports and Radio Works' case [1982] 134 ITR 28, as also the decision of this court in Mohan Lal Kansal's case [1978] 114 ITR 583. Following the decision in the two cases referred to above, we hold that it was not a case of divergence of opinion inasmuch as the opinion expressed by this court was binding upon the Tribunal."

11.16 Therefore, in our considered opinion, no contrary view can be taken under these circumstances. We, accordingly, hold that only those ITA No.9/Del/2015 investments are to be considered for computing average value of investment which yielded exempt income during the year."

4.3 Respectfully, following the above decision, we direct the Assessing Officer to accordingly restrict the disallowance under Section 14A read with Rule 8D(2)(iii) of the Rules to average value of investment which yield exempt income during the year. The ground no. 4 of the appeal is partly allowed.ö

5. Thus, respectfully following the same, we direct the Assessing Officer to accordingly restrict the disallowance under Section 14A read with Rule 8D(2)(iii) in line with the direction of the Tribunal to average value of investment which has yielded exempt income during the year. Thus, the ground raised by the assessee is partly allowed.ö

7. In view of the decision of the Tribunal in assessee's own case, we direct the AO to restrict the disallowance u/s 14A r.w.r 8D(2)(iii) to the average value of investment which has yielded exempt income during the year. The ground raised by the assessee is accordingly partly allowed.

8. In the result, the appeal filed by the assessee is partly allowed.

The order pronounced in the open court on 31.01.2020.

Sd/-

(SUSHMA CHOWLA)  
VICE PRESIDENT

Dated: 31<sup>st</sup> January, 2020.

dk

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi