

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. H. S. Sidhu, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 249/Del/2017 : Asstt. Year : 2012-13

Deputy Commissioner of Income Tax, Circle-1, LTU, New Delhi-110017	Vs	M/s Hero Motors Ltd. 603, International Trade Tower, Nehru Place, New Delhi-110019
(APPELLANTT)		(RESPONDENT)
PAN No. AAACH8459F		

Assessee by : Sh. Satish Bansal, CA

Revenue by : Sh. S. N. Meena, Sr. DR

Date of Hearing: 25.02.2020

Date of Pronouncement: 26.02.2020

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the orders of the Id. CIT(A)-22, New Delhi dated 02.11.2016.

2. Following grounds have been raised by the revenue:

"1. On the facts and in the circumstances of the case and in law, Id. CIT (A) has erred in directing to exclude the amount of Rs.2,74,86,627/- being the investment made by the assessee in M/s Munjal Kiriu Industries Pvt. 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 investment made in these companies.

2. On the facts and in the circumstances of the case and in law, Id. CIT (A) has erred in deleting the

addition of Rs.28,27,564/- made by the AO on the ground that the payment of expenses made to M/s Hero Global Design Ltd. were not incurred in ordinary course of business.

3. On the facts and in the circumstances of the case and in law, Id. CIT (A) has erred in deleting the addition on payment of Rs.28,27,564/- to M/s Hero Global Design, without giving any finding in his appellate order whether the same expenses were incurred wholly and exclusively for the purpose of business."

3. Brief facts relevant to the case are that the assessee invested Rs.79.19 crores in the equity shares and mutual funds and received dividend income of Rs.1,320/- during the year under consideration. The Assessing Officer has disallowed an amount of Rs.2.74 crores u/s 14A of the Income Tax Act, 1961. The Id. CIT (A) has directed the Assessing Officer to rework the disallowance u/s 14A excluding the investments made in the group concerns and in the debt oriented mutual funds.

4. Aggrieved the revenue filed appeal before us.

5. The issue of disallowance of expenses u/s 14A relating to income not includable in the total income of the assessee has been dealt in various cases by the Tribunal and the High Courts wherein it was held that no disallowance is warranted in cases where no exempt income has been earned by the assessee. The Hon'ble Courts has also ruled that, at the most the disallowance should be restricted to the tune of the dividend earned. For the sake of ready reference, the relevant portion of the order of the Hon'ble Jurisdictional High Court in the case of Cheminvest Ltd. Vs CIT 378 ITR 33 (Del.) is reproduced below:

*"Turning to the central question that arises for consideration, the Court finds that the complete answer is provided by the decision of this Court in CIT v. Holcim India (P.) Ltd. [2015] 57 taxmann.com 28. In that case a similar question arose, viz., whether the ITAT was justified in deleting the disallowance under Section 14A of the Act when no dividend income had been earned by the assessee in the relevant assessment year? The Court referred to the decision of this Court in Maxopp Investment Ltd.'s case (supra) and to the decision of the Special Bench of the ITAT in this very case i.e. Cheminvest Ltd. v. ITO [2009] 121 ITD 318. The Court also referred to three decisions of different High Courts which have decided the issue against Revenue. The first was the decision in CIT v. Lakhani Marketing Inc. [2014] 226 Taxman 45/49 taxmann.com 257 of the High Court of Punjab and Haryana which in turn referred to two earlier decisions of the same Court in CIT v. Hero Cycles Ltd. [2010] 323 ITR 518/189 Taxman 50 and CIT v. Winsome Textile Industries Ltd. [2009] 319 ITR 204. The second was of the Gujarat High Court in CIT v. Corrttech Energy (P.) Ltd. [2014] 223 Taxman 130/45 taxmann.com 116 and the third of the Allahabad High Court in CIT v. Shivam Motors (P.) Ltd. [2015] 230 Taxman 63/55 taxmann.com 262. **These three decisions reiterated the position that when an assessee had not earned any taxable income in the relevant AY in question "corresponding expenditure could not be worked out for disallowance."***

6. Hence, following the established judicial pronouncement, we hereby direct that the disallowance be restricted to Rs.1,320/-.

7. Ground Nos. 2 & 3 pertains to disallowance of Rs.28,27,564/- paid to an associate concerns M/s Hero Global Design Ltd. The Assessing Officer held that since M/s Hero Global Design Ltd. is deriving income only from the assessee and does not have business expertise in providing engineering services, the expenditure claimed is disallowed. Apart from this observation, no other reasoning has been given by the AO.

8. It was submitted before the revenue authorities that M/s Hero Global Design Ltd. rendered Engineering Consultancy, CAD/CAM designing which are professional services technically called Re-Engineering Services using specialized software by which the fragmentation of drawings supplied by the customers of assessee into sub-parts is done to facilitate manufacturing and costing. Three diploma engineers and one ITI is the total staff of M/s Hero Global Design Ltd. and the total salary of these persons in the books of M/s Hero Global Design Ltd is Rs. 26.49 lakhs, while the total employee benefit expenses are Rs. 28.22 lakhs. The billing is on man hour basis and the payment made by the assessee almost equals the salary cost of above four persons being employees of M/s Hero Global Design Ltd.

9. The assessee also explained that when it receives designs in respect of orders from its clients like BMW etc, these persons examine the drawings and fragmented designs are issued on the basis of which the manufacturing is done by suppliers. Moreover, M/s Hero Global Design Ltd. also renders assistance in costing.

10. The Id. CIT (A) held that it is a fact that M/s Hero Global Design Ltd is located in the same premises as assessee and is a lessee of the assessee. It was doing the work of only the assessee and is running in losses mainly because of the interest and software cost/amortization/depreciation. The finance has also been provided by the assessee. There is no written agreement between the assessee and M/s Hero Global Design Ltd and the nature of services claimed are also of very basic nature as the basic designs are received from clients and the product is to be manufactured as per the said designs. The nature of services can at best be called a bridge with the ancillary suppliers/manufactures. The qualifications of the persons employed also do not establish any specialised technical services as none of them is even a graduate engineer. The quantum of payment is very small considering the turnover of the assessee. Moreover, once the sample production is approved, the same product is manufactured and supplied to the client in large numbers without any further payment to M/s Hero Global Design Ltd. The work done by M/s Hero Global Design Ltd could have been done by a small section in the assessee company within the very same premises by the same four employees. However, even then the assessee would have been required to pay salary to those four persons. Though the services have been rendered through M/s Hero Global Design Ltd, the payment made by the assessee to M/s Hero Global Design Ltd just matches the employee cost of M/s Hero Global Design Ltd, which would have been incurred even if those persons had been employed by the assessee. Consequently, the Id. CIT (A) held that the expenditure incurred is allowable u/s 37(1).

11. Heard the arguments of both the parties and perused the material available on record. The copies of the invoices submitted by the HGD Ltd. have been examined. It is an undeniable fact that HGD Ltd. has provided services to the assessee, the design engineers of HGD Ltd. are regularly available within in the shop floor of the assessee company, they have been working for the last ten years with the assessee and getting paid regularly against their services. In view of this, we decline to interfere with the order of the Id. CIT (A) in deleting the addition.

12. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 26/02/2020.

Sd/-

(H. S. Sidhu)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 26/02/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR