

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

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND

SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 6549/Mum/2017 (Assessment Year 2014-15)

ITA No. 6550/Mum/2017 (Assessment Year 2013-14)

DCIT Central Circle-4(2) Room No. 1918, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021	Vs.	M/s Shoppers Stop Ltd. 5 <sup>th</sup> Floor, Umang Tower, Mindspace, Malad Link Road, Malad (West), Mumbai-64. <b>PAN: AABCS4383A</b>
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Appellant

Respondent

ITA No. 6072/Mum/2017 (Assessment Year 2013-14)

ITA No. 6073/Mum/2017 (Assessment Year 2014-15)

M/s Shoppers Stop Ltd. 5 <sup>th</sup> Floor, Umang Tower, Mindspace, Malad Link Road, Malad (West), Mumbai-64. <b>PAN: AABCS4383A</b>	Vs.	DCIT Central Circle-4(2) Room No. 1918, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021
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Appellant

Respondent

Appellant by : Shri Smiti Samant (CIT-DR)

Respondent by : Ms. Aarti Sathe Advocate

Date of Hearing : 23.01.2020

Date of Pronouncement : 14.02.2020

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This group of four appeals, out of which two cross appeal for Assessment Year 2013-14 and two cross appeal for Assessment Year 2014-15 are directed against the separate order of Id. Commissioner of Income-tax (Appeals)-52, Mumbai [for short the Id. CIT(A)] both dated 13.01.2017. In all appeals, the parties have raised certain common grounds of appeal, therefore, all the appeals were clubbed,

heard and are decided by common order. For appreciation of fact, the appeals for Assessment Year 2013-14 are treated as lead case. The revenue has raised the following grounds of appeal:

1. "On the facts and circumstances of the case and in law, the Ld CIT(A), erred in directing the AO to restrict the disallowance u/s 14A of the IT Act to Rs. 90,83,000 as against the disallowance of Rs. 11,52,51,328 made by the assessing officer."
2. "On the facts and circumstances of the case and in law, whether the Lei CIT(A), was justified in directing the AO to restrict the disallowance u/s 14A of the IT Act to f 90,83,000 instead of Rs. 11,52,51,3286 relying upon the decision in the case of Reliance utilities and HDFC Bank even though the assessee could not submit the fund flow in order to establish as to how the investments have been made from the own surplus funds because the assessee has also made investments in various assets out of its available funds?"
3. "Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A), was justified in directing the AO to delete the addition of Rs. 2,86,37,549 being income u/s 5 of the IT Act."
4. "Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A), was justified in directing the AO to delete the addition of Rs. 2,86,37,549 on the basis of resolution passed by the borrower company about non-payment of interest on loans taken by it?"
5. "Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in not taking the cognizance of the fact that the borrowing company is a 100% subsidiary of the assessee and the decision to not charge interest on ICD was not a prudent commercial decision which is not at arms length?"
6. "Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A), was justified in not following his predecessor's decision and directing the AO to delete the addition of Rs. 2,86,37,549 being income u/s 5 of the IT Act whereas the predecessor of the Id. CIT(A) had

confirmed such addition in the assessee's case on the same issue for A.Y. 2009-10 and 2010-11."

7. The appellant craves to leave, to add, to amend and/ or to alter any of the grounds of appeal, if need be.

2. The assessee in its cross appeal for A.Y. 2013-14 has raised the following grounds of appeal:

1.1. In the facts and circumstances of the case and in law, the Id. CIT(A) erred both in facts and in law in sustaining the disallowance under section 14A r.w.r. 8D(2)(iii) of the Income Tax Act, 1961.

1.2. Your appellant craves leave to add to, amend, alter, delete and/or modify the above ground of appeal on or before the final date of hearing of this appeal petition.

3. Brief facts of the case are that the assessee is in the business of retail apparels and non-apparels. In the return of income for Assessment Year 2013-14 the assessee declared income of Rs. 52.12 crore. The case was selected for scrutiny. The Assessing Officer while passing the assessment order besides the other additions/disallowances under section 14A of Rs. 8,71,03,426/-, which includes under disallowance Rule 8D(2)(ii) of Rs. 7,25,44,418/- and disallowance under Rule 8D(2)(iii) of Rs. 1,53,79,008/-. The assessing officer also made addition under section 5 of Rs. 2,86,37,549/-. On appeal before the Id. CIT(A), the disallowance under section 14A was restricted to Rs. 46,78,600/- and addition under section 5 on account of presumptive income was also deleted. Aggrieved by the order of Id. CIT(A), both the parties have filed their respective appeal by raising the grounds of appeal as mentioned above.

**ITA No. 6072/Mum/2017 by assessee for AY 2013-14**

4. The Id. AR of the assessee submits that during the relevant financial year no exempt income was earned by the assessee. Though the assessee made suo moto disallowance under section 14A of Rs. 8,20,000/-. Assessing Officer while passing the assessment order made disallowance under Rule 8D(2)(ii) of Rs. 7,25,44,418/- and under Rule 8D(2)(iii) of Rs. 1,53,79,008/-. The Id. AR of the assessee furnished the copy of financial/balance sheet and fund flow statement for A.Y. 2013-14. The Id. AR of the assessee also furnished a summary of interest free fund consisting of share capital and reserve and surplus and the investment during the relevant Financial Year. The Id. AR further submits that since no exempt income was earned by the assessee, therefore, no disallowance under section 14A r.w.r. 8D is warranted. The Id. AR submits that on similar ground of appeal in assessee's own case for A.Y. 2012-13 in ITA No. 5246/Mum/2016, the Tribunal directed to restrict the disallowance to the voluntary disallowance offered by assessee.
5. On the other hand, the Id. DR for the revenue after going through the fund flow statement/balance sheet for A.Y. 2013-14 and the order of Tribunal for A.Y. 2012-13 relied upon the order of Assessing Officer.
6. We have considered the submission of both the parties and gone through the orders of lower authorities. We have noted that the

Assessing Officer made disallowance under section 14A of Rs. 8,79,23,426/-, on appeal before the Id. CIT(A), the disallowance was restricted to Rs. 46,78,600/-. Before us, the Id. AR of the assessee vehemently submitted that during the relevant period, the assessee has not earned any exempt income. We have noted that on similar set of fact in assessee's own case, the co-ordinate bench passed the following order:

4. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have seen that the assessee has no exempt income during the period relevant to the assessment year under consideration. The assessee has not made any investment during the year under consideration. There is no dispute that all investment has been made in the subsidiaries companies as strategic investment so as to get controlling interest in such subsidiaries. The Hon'ble Delhi High Court in case of Cheminvestment Ltd. Vs. CIT reported in 378 ITR 272 (Del), held that, if there is no dividend income, then there cannot be any correspondence allowance. We have noted that the assessee has voluntarily disallowed Rs. 13.10 Lakhs as administrative expenses for investment in its associate companies/subsidiaries. The assessee has placed on record fund flow statement (Page 33 of PB), which clearly show that the assessee has sufficient own interest free fund of Rs. 1,26,289.65/- Lakhs as on 31.03.2012 . Thus, in our considered view there was no justification for making disallowance as per the provisions of section 14A r.w. Rule 8D. Further, we have noted that similar disallowance was made in AY 2008-09, the assessee carried the matter to the Tribunal and the co-ordinate bench in ITA No. 1753/M/2012 passed the following order:

*“7. We have heard the rival submissions and perused the material before us. We find that assessee had not claimed any deduction in respect of exempt income nor has it claimed any expenditure against the income which does not form part of the total income. Thus, both the*

*basic ingredients for making a disallowance u/s.14A are missing. Secondly, the fund flow statement made available to the FAA, during the appellate proceedings, clearly show that it had sufficient own funds to make investments(Pg-1 of the PB).The FAA has admitted that funds available to the assessee were more than the investments made during the year under consideration. Therefore, in our opinion there was no justification for making disallowance as per the provisions of section 14A r.w.r 8D of the Rules. Considering all these factors we are of the opinion that the FAA was not justified in upholding the order of the AO. Hence, reversing his order we decide the effective ground of appeal in favour of the assessee.”*

5. Considering the facts of the case and the decision of Tribunal in assessee’s own case, the disallowance made by AO and confirmed by Id. CIT(A) is uncalled for and therefore, we direct the AO to restrict the disallowance to Rs. 13.10 Lakhs, which was voluntary disallowed by assessee. Thus, the ground of appeal raised by assessee is allowed.”
7. Considering the aforesaid order of Tribunal on similar set of fact, wherein no variation is brought to our notice and the fact that no exempt income is earned by the assessee during this year as well, therefore, we direct the Assessing Officer to restrict the disallowance suo-moto offered by the assessee at Rs. 8,20,000/-.
8. In the result, appeal of the assessee is allowed.

**ITA No. 6073/Mum/2017 by assessee for A.Y. 2014-15**

9. The assessee has raised identical ground of appeal as raised in appeal for A.Y. 2013-14, which we have allowed. Therefore, following the rule of consistency, the appeal for A.Y. 2014-15 is allowed with similar direction. To make it more clear the Assessing Officer directed

to restrict the disallowance under section 14A to suo-moto disallowance of Rs. 7,05,027/- offered by assessee.

10. In the result, appeal of A.Y. 2014-15 by assessee is also allowed.

**ITA No. 6550/Mum/2017 by revenue for A.Y. 2013-14**

11. Ground No.1 & 2 relates to disallowance under section 14A.

Considering the fact that while deciding the similar issue in assessee's appeal for AY 2013-14, we have restricted the disallowance to the suo-moto disallowance holding that the assessee has not earned any exempt income. Therefore, these grounds of appeal have become infructuous and are dismissed as such.

12. Ground No. 3 to 6 relates to deleting the addition under section 5. The Id. DR for the revenue supported the order of Assessing Officer and prayed that the order of assessing officer may be restored by reversing the order of Id CIT(A).

13. On the other hand, the Id. AR of the assessee supported the order of Id. CIT(A) and would submit that these grounds of appeal are also covered by the decision of Tribunal in assessee's own case for earlier years.

14. We have considered the submission of both the parties and gone through the order of lower authorities. The Assessing Officer made addition on account of presumptive basis under section 5 on advances made by assessee to its subsidiaries. The Assessing Officer computed

the disallowance/addition of Rs. 2.86 crore. We have noted that the assessee advanced the money to its subsidiary, which falls under the business expediency. Therefore, in the present case that the assessee advances to its subsidiary for business requirements, which may have impact on the objectives of the assessee for earning future revenue to the assessee. When it made in relation to advances. Though, it is another fact that the business of such nature did not materialized in positive outcome and the subsidiary had to close such business operation. The Hon'ble Supreme Court in S.A. Builders (288ITR 1 SC) held that whether expenditure may not have been incurred under any legal obligation, yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency. The case of the assessee is that the assessee has made advances to its subsidiary for business expediency. Therefore, considering the decision of Hon'ble Supreme Court in SA Builder (supra), we do not find any infirmity in the order passed by Id. CIT(A). Even otherwise the Id. CIT(A) deleted the entire addition by following the decision of his predecessor in appeal for A.Y. 2010-11 & 2012-13.

15. No contrary fact or law to take other view is brought to our notice to take other view, nor any variations in facts are brought to our notice. Therefore, we do not find any merit in the grounds of appeal raised by revenue.

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

**ITA No. 6549/Mum/2017 by revenue for A.Y. 2014-15**

17. The revenue has raised identical ground of appeal as raised in appeal for A.Y. 2013-14, which we have dismissed. Therefore, following the rule of consistency, the appeal for A.Y. 2014-15 is dismissed with similar direction.

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

Order pronounced in the open court on 14/02/2020.

**Sd/-  
S.RIFAUR RAHMAN  
ACCOUNTANT MEMBER**

**Sd/-  
PAWAN SINGH  
JUDICIAL MEMBER**

Mumbai, Date: 14.02.2020

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**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "G" Bench, ITAT, Mumbai
6. Guard File

**BY ORDER,**

**Dy./Asst. Registrar  
ITAT, Mumbai**