



ITA No.459/Mum/2019
Tata Projects Limited
Assessment Year :2011-12

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.459/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2011-12)

Tata Projects Limited 2 nd to 4 th Floors, Transocean House Lake Boulevard Road Hiranandani Business Park Hiranandani Gardens, MHADA Colony Powai, Mumbai-400 076.	बनाम/ Vs.	ACIT-2(3)(1) Aaykar Bhavan Maharshi Karve Road Mumbai-400 020.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACT-4119-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Rajan Vora -Ld.AR
Revenue by	:	Shri Amit Pratap Singh -Ld.DR

सुनवाई की तारीख/ Date of Hearing	:	07/10/2020
घोषणा की तारीख / Date of Pronouncement	:	22/10/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2011-12 contest the order of Ld. Commissioner of Income-Tax (Appeals)-6, Mumbai, [in short referred to as ‘CIT(A)’], Appeal No. CIT(A)-6/IT-76/2017-18 dated 10/10/2018 on following grounds: -



ITA No.459/Mum/2019
Tata Projects Limited
Assessment Year :2011-12

Disallowance under section 14A of the Income-tax Act ('Act') read with Rule 8D(iii) of Rs 1,09,16,151/-

1. On the facts and in the circumstances of the case and in law, the Commissioner of Income-tax (Appeals) erred in not following the directions of the Hon'ble ITAT to restrict the disallowance under section 14A to the extent of actual claim of administrative expenses apportioned to the exempt income amounting to Rs. 24.5 lakhs.

Non-granting of interest under section 244A of the Act

2. On the facts and in the circumstances of the case and in the law, the Commissioner of Income-tax (Appeals) erred in not adjudicating the ground pertaining to non-granting of interest under section 244A of the Act from the first day of assessment year to the date on which refund is granted.

It is evident that the assessee is primarily aggrieved by indirect expenditure disallowance u/s 14A which has been computed as per Rule 8D(2)(iii). The issue of interest disallowance made by Ld. AO u/r 8D(2)(ii) has already attained finality and the same is not under dispute and not a subject matter of present appeal.

2. This is the second round of litigation since the matter in the first round was remanded back to the file of Assessing Officer [AO] by coordinate bench of this Tribunal vide ITA No.1018/Mum/2015 order dated 17/10/2016 with the following directions:-

5. We have heard the rival contentions and perused the record. We noticed that an identical issue has been restored to the file of the Assessing Officer in assessee's own case by the Coordinate Bench in A. Y. 2008-09 to 2010-11 (referred above) with following directions:

It is to be noted that Rule 8D is applicable for the year under consideration therefore, the disallowance of administrative expenses has to be computed as per the formula provided in Rule 8D. However, the disallowance worked out under Rule 8D cannot exceed the total expenditure claimed by the assessee which can be apportioned to the exempt income. Thus we set aside this issue to the record of AO for the limited purpose of computing the total expenditure incurred by the assessee for the composite/indivisible activities in which taxable and non-taxable income is received and if the disallowance work out under Rule 8D on account of administrative expenses exceeds the total claim of expenditure incurred for the composite activities resulting taxable or non-taxable income then the disallowance should be restricted to the said actual total claim of expenditure.

6. Consistent with the view taken by the coordinate bench, we set aside the order passed by the learned CIT(A) on this issue and restore the same to the file of the Assessing Officer for considering the issue afresh by duly considering all the types



ITA No.459/Mum/2019
Tata Projects Limited
Assessment Year :2011-12

of contentions that may be raised and all the materials that may be produced by the assessee.”

From the perusal of aforesaid directions, it is clear that the issue has been restored back to the file of Ld. AO for fresh adjudication after considering various submissions raised by the assessee.

3.1 Accordingly, an assessment was framed u/s 143(3) r.w.s. 254 on 15/12/2017. During assessment proceedings the assessee submitted tabular break-up of investments held by it as on 31/03/2011 & as on 31/03/2010. It was submitted that out of total investments as on 31/03/2011, Rs.978.56 Lacs were made in the past for business purposes and not with an intention to make gains and earn dividend and no monitoring was required to maintain such investments. The remaining investments were mainly mutual fund investments. Against the same, the assessee apportioned as well as suo-moto disallowed aggregate expenditure of Rs.16,51,524/- while computing its income.

The details of the same were as follows: -

- (i) Telephone Expenses Rs.35,000/-
- (ii) Stationery Expenses Rs.2,04,000/-
- (iii) Salaries Rs.14,12,524/-
(based on proportionate time spent by certain employees)

The disallowance of salary was arrived at as under:

Sr. No.	Name of Employee	Cost to Company (Rs)	Proportion of time spent	Amount (Rs)
1.	K S Krishnan	3,998,964	10 Percent	399,896
2.	R Balasubramaniam	1,342,904	25 percent	335,726
3.	N Sivalai Senthilnathan	1,827,304	25 Percent	454,826
4.	KVS Pravakar	880,304	25 Percent	220,076
Total				14,12,524

The rationale for the same was that investments were made in Mutual Funds out of advances received from customers and were invested



within a span of 3-4 days from receipt. Once investments were made, nothing further was required as dividend was reinvested or directly credited to assessee's bank account. The General Manager and Head of Finance would take a final call after the Senior Accounts Officer had identified investment to be made. Hence, the same would justify the disallowance of proportionate salary and small amount of overheads. It was submitted that no other expenditure was incurred to maintain the investments and hence, the suo-moto disallowance was to be accepted. The perusal of computation of income would show that the assessee has earned exempt dividend income of Rs.1146.37 Lacs during the year.

3.2 However, Ld.AO opined that the apportionment of expenditure could not be established by the assessee and hence, the disallowance was to be computed as per Rule 8D only. For maintaining investment systemic monitoring was inevitable which would entail incurrence of common expenses such as motor vehicle, travelling, legal-professional charges etc. Therefore, the disallowance was computed at Rs.125.67 Lacs, being 0.5% of average investments of Rs.251.35 Crores held by the assessee during the year. After adjusting suo-moto disallowance of Rs.16.51 Lacs as offered by the assessee in its computation of income, the differential amount of Rs.109.16 Lacs was further added to the income of the assessee.

4. Upon further appeal, following the decision of Hon'ble Bombay High Court in **Pr.CIT V/s Ballarpur industries Ltd. (ITA No.51 of 2016 dated 13/10/2016)**, Ld. AO was directed to exclude those investments which did not yield any exempt income during the year. The aforesaid



directions reduced the overall disallowance from Rs.125.67 Lacs to Rs.123.02 Lacs. Still aggrieved, the assessee is under further appeal before us.

5. The Learned Authorized Representative for Assessee (AR), Shri Rajan Vora, drawing attention to assessee's financial statements, submitted that the apportionment made by the assessee was fair & reasonable and therefore, the differential disallowance was not sustainable. The Ld. Departmental Representative (DR), Shri Amit Pratap Singh, on the other hand, submitted that the disallowance was mandatorily to be computed in terms of Rule 8D(2)(iii) only.

6. We have carefully considered the rival submissions and perused relevant material on record. The issue before us is in narrow compass i.e. quantum of indirect / administrative expenditure disallowance u/r 8D(2)(iii). We find that the assessee has made adhoc disallowance of Rs.16.51 Lacs out of Telephone expenses, stationery expenses and salary expenses. The salaries component is based on estimated proportionate time spent by certain employees who could be said to have devoted time towards investment activity. The disallowance is in the range of 10% to 25% of salary cost of these personnel. However, the Ld. AO was not satisfied with the aforesaid disallowance since the assessee would have incurred expenditure under other heads as well.

7. From assessee's submissions to Ld. CIT(A) on 08/10/2018, we find that the assessee has identified expenses related to its business operations as well as expenses related to composite activity under each



ITA No.459/Mum/2019
Tata Projects Limited
Assessment Year :2011-12

of the head and as an alternative, proposed disallowance of Rs.24.50 Lacs in the following manner: -

Revenue	Amount (in crores)
Total Taxable receipts (a)	3,044.58
Total exempt income (b)	10.02
Total receipts: (c)= (a)+(b)	3,054.60
Nature of Expense	Amount in crores)
Total expenses related to operations (d)	2,756.58
<u>Expenses related to composite activities</u>	
Rent	12.18
Postage, telephone, telegram & telex	3.83
Printing & Stationery	2.00
Amortization for diminution in investment value of ₹0.76 crores**	
Miscellaneous expenses	13.62
Total expenses related to composite activities (e)	31.63
Total expenses debited to profit and loss account (f) =(d)+(e)	2,788.20
Disallowance Under section 14A	
Composite expenses apportioned to exempt income: (g) = (e) * (b)/ (c') [₹31.63x ₹10.02/ ₹3054.60]	0.1037
Employee cost apportioned to exempt income as per return of income: (h)	0.1413
Total expenses apportionable to exempt income: (i) = (g) + (h) [₹0.1037 + ₹0.1413]	0.2450

Revenue	Amount (in crores)
<u>Taxable receipts</u>	
Contract Revenue	3025.01
Other Income	19.56
Total taxable receipts (a)	3044.58
<u>Exempt Income</u>	
Dividend from current investment	10.02
Total exempt income (b)	10.02
Total receipts: (c) = (a) + (b)	3054.60

Nature of expense	Amount (in crores)
<u>Expenses related to operations</u>	
Project execution expense	2388.14
Raw materials consumed	92.22
Changes in inventory	1.02
Interest	14.72
Depreciation	23.07
Employee cost	170.43
Repairs & maintenance – P&M	1.61
Repairs & maintenance –Building	0.03



ITA No.459/Mum/2019
Tata Projects Limited
Assessment Year :2011-12

Repairs & maintenance –others	2.85
Processing charges	3.14
Power & fuel	4.55
Stores & Spares consumed	1.58
Rates & taxes	1.22
Insurance	0.94
Motor vehicle expenses	12.41
Travelling expenses	14.97
Professional & Legal charges	7.43
Staff recruitment/ training expenses	0.46
Business development expenditure	1.17
Bad debts/ Provision for doubtful debts	3.54
Provision for doubtful advances reversed	1.74
Exchange loss	1.79
Brand equity contribution	7.56
Total expenses related to operations (d)	2756.58
<u>Expenses related to composite activities</u>	
Rent	12.18
Postage, telephone, telegram & telex	3.83
Printing & stationery	2.00
Amortization for diminution in investment value of ₹0.76 crores**	0.76
Miscellaneous expenses	13.62
Total expenses related to composite activities (e)	32.38
Total expenses debited to profit and loss account (f)	2788.96

From the perusal of above computations, it is quite evident that the assessee has identified the composite expenditure under each head and apportioned the composite expenditure in the ratio of exempt income vis-à-vis total receipts during the year. The employee cost has separately been apportioned on the basis of time devoted by certain employees which could be said to have been engaged in investment activities. Upon perusal of the same, we find that this method of computing the disallowance was very fair, reasonable and scientific and therefore, was to be accepted. As per the provisions of Sec.14A, disallowance has to be computed having regards to the accounts of the assessee and if the said



ITA No.459/Mum/2019
Tata Projects Limited
Assessment Year :2011-12

method adopted by the assessee was found to be not satisfactory, only then the computation was to be done as per Rule 8D. Therefore, we are of the considered opinion that the computations made by assessee to identify the disallowance was quite fair and reasonable. We order so. The aggregated disallowance u/r 8D(2)(iii) is accepted at Rs.24.50 Lacs. Since the assessee has already disallowed a sum of Rs.16,51,524/- in its computation of income, the net disallowance would work out to be Rs.7,98,476/-. The Ld.AO is directed to recompute assessee's income in terms of our above order.

8. In Ground No.2, the assessee is aggrieved by non-grant of interest u/s 244A of the Act. In this regard, it would suffice on our part to direct Ld. AO to grant interest in accordance with law.

9. The appeal stands partly allowed in terms of our above order.

Order pronounced on 22nd October, 2020.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / Vice President

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 22/10/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File



ITA No.459/Mum/2019
Tata Projects Limited
Assessment Year :2011-12

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**