

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस रिफ़ौर रहमान, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI S RIFAUR RAHMAN, AM

आयकर अपील सं./ ITA No. 4088/Mum/2019

(निर्धारण वर्ष / Assessment Years 2015-16)

The DCIT Central Circle 4(2), Central Range-4 Pr. CIT (c)-2, R. No. 1918, 19 th Floor, Air India Building, Nariman Point, Mumbai-400 021	बनाम/ Vs.	M/s Chalet Hotels Pvt. Ltd. Plot No. C-30, Block -G, Bandra Kurla Complex, Bandra (East), Mumbai-400 051
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAACK0411E		

अपीलार्थी की ओर से/ Appellant by	:	Shri V. Sreekar, CIT DR
प्रत्यर्थी की ओर से/ Respondent by	:	None

सुनवाई की तारीख / Date of hearing:	22.03.2021
घोषणा की तारीख / Date of pronouncement:	22.03.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-52, Mumbai, [in short CIT(A)], in appeal No. CIT(A)-52/IT-198/DCIT-CC-4(2)/17-18 dated 26.03.2019. The assessment was framed by the Dy. Commissioner of Income Tax, Central Circle- 4(2), Mumbai (in short DCIT/ AO), for the A.Y. 2015-16 vide order dated 12.10.2017 under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. The first issue in this appeal of Revenue is against the order of CIT(A) restricting the disallowance of expenses relatable to exempt income under section 14A of the Act read with Rule 8D(2) of the Income Tax Rules, 1962 (hereinafter referred to as 'rules') to the extent of exempt income or *suo moto* disallowance of Rs. 5,86,552,973/-. For this Revenue has raised the following grounds:-

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the disallowance under section 14A of the IT Act to the extent of exempt income received by the assessee during the year under consideration without appreciating the Circular No.5 of 2014 dated 11.02.2014 of CBDT."

2. On the facts and circumstances of the case and in law, the Ld CIT(A) has erred in restricting the disallowance under section 14A of the IT Act to the extent of exempt income received by the assessee during the year under relying upon the decision of the Hon'ble P & H High Court whereas in the said decision it has been held that Rule 8D is not applicable to the stock-in-trade earning exempting income.

3. Whether, On the facts and circumstances of the case and in law, Id the CIT(A), was justified in directing the Assessing Officer to restrict the disallowance under section 14A of the IT Act to Rs.5,86,52,973 as disallowed by the assessee itself

instead of Rs.29,29,59,823/- relying upon the decision in the case of Reliance utilities and HDFC Bank even when the assessee could not submit the fund flow so as 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.

4. On the facts and under the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance under section 14A of the Income Tax Act, 1961 thereby overlooking the computational procedure laid down in Rule 8D of the IT Rule, 1962 which has to be necessarily followed whenever a disallowance under section 14A was to be made?

5. On the facts and under the circumstances of the case, and in Law, the Ld. CIT(A) erred in restricting the disallowance under section 14A of the Income Tax Act, 1961 without noticing that the decision of the Hon'ble Jurisdictional High Court relied upon was rendered in the context of the pre-amended provisions of section 14A relevant for Assessment Years 2001-02 to 2005-06?"

3. We have heard the learned Sr. DR and gone through the facts and circumstances of the case. During the course of assessment proceedings, the Assessing Officer noted that the assessee has made investment of

Rs. 399,51,20,059/- in the shares of various group concerns and also made in purchase of shares. The assessee has also earned dividend income of Rs.13,17,233/-. The Assessing Officer noted that the assessee has made *suo moto* disallowance of expenses relatable to exempt income under Rule 8D(2)(iii) of the Rules, at Rs. 5,86,52,973/-. The Assessing Officer applied Rule 8D(2)(ii) of the Rules, and made disallowance of interest expenses of Rs.27,15,12,687/- and also under Rule 8D(2)(iii) of the Rules at Rs. 2,14,47,136/- thereby, the total disallowance was made at Rs. 29,29,59,823/-. Aggrieved, assessee preferred the appeal before Commissioner of Income Tax (Appeals).

4. The CIT(A) after going through the facts of the case noted that the assessee's interest free funds in the shape of share capital and reserve and surplus are more than the investment made during the year and hence, he deleted the disallowance of interest expenses. The CIT(A) noted the interest free funds available and investment made in purchase of shares as under: -

Particulars	AY 2014-15	AY 2015-16
Share capital	1,52,14,22,530	1,52,14,22,530
Reserves and Surplus	3,30,92,54,413	2,14,98,25,539
Less: Revaluation reserve	-70,12,32,620	-70,12,32,620
Add: Depreciation Reserves	3,29,90,66,381	3,83,00,29,425
Advance from customers	27,79,29,490	21,29,66,868
Security Deposits	11,93,55,345	18,40,46,397
Income received in advance (unearned revenue)	9,05,35,14,005	8,30,53,27,973
Investments	4,57,74,10,057	3,99,52,45,059

5. We noted from the that fact and it is clear that the assessee has interest free funds available with it, which is much more than investment made hence, in view of the decision of Hon'ble Bombay High court in the

case of CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom.), the interest under rule 8D(2)(ii) of the Rules, cannot be disallowed. This issue of Revenue's appeal is dismissed.

6. Coming to the next issue of disallowance of expenses i.e. administrative expenses under Rule 8D(2)(iii) of the Rules, we noted that the assessee has earned dividend income of Rs. 13,17,233/- only but CIT(A) restricted the disallowance at Rs. 5,86,52,973/- being *suo moto* disallowed by assessee by observing in Para 5.20 and 5.21 as under:-

"5.20 In view of the aforesaid discussion, the contention of the assessee that the disallowance under section 14A should be restricted to the quantum of exempt/ dividend income earned during the year, is accepted to be the correct position of law. However, the Assessing Officer should not only consider the amount of dividend income earned of Rs. 13,17,233/- but also any other exempt income, if any, including the exempt share of profit from partnership firm(s) while restricting the quantum of disallowance u/s 14A.

5.21 In view of the above discussion, the Assessing Officer is accordingly directed to re-compute the disallowance under section 14A as explained in para 5.9 to 5.20 above. However, since, the assessee itself had computed disallowance under section 14A of Rs. 5,86,52,973/- which it had added back in the

computation of income, the disallowance under section 14A so re-computed cannot be less than the said amount of Rs.5,86,52,973/-. Accordingly, this ground of appeal is partly allowed.”

7. We find no infirmity in the order of the CIT(A) and hence, this issue of Revenue’s appeal is dismissed.

8. The next issue in this appeal of Revenue’s is against the order of CIT(A) in computing the disallowance of expenses under section 14A of the Act read with Rule 8D(2) of the Rules while computing the book profit under section 115JB of the Act. For this, Revenue has raised the following ground Nos. 6 and 7:-

“6. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing to delete the addition of disallowance under section 14A of the IT Act to the book profit of the assessee without appreciating the clause(f) of explanation 1 to section 115JB (2) of the IT Act.

7. On the facts and circumstances of the case and in law, the Ld CIT(A) has erred in directing to delete the addition of disallowance under section 14A of the IT Act to the book profit of the assessee without appreciating the decision of the Hon’ble ITAT Mumbai ‘F; Bench in the case of Deputy commissioner of Income-tax, Central Circle-18& 19, Mumbai v. Viraj Profiles Ltd. In ITA No. 4439/(Mum.) 2013 for AY 2008-09.”

9. At the outset, it is to be noticed that this issue is squarely covered in favour of the assessee and against Revenue by the decision Special Bench of this ITAT in the case of ACIT vs. Vireet Investments (P.) Ltd. [2017] 58 ITR (AT) 313 (Delhi - Trib.) (SB), wherein it is held as under: -

"6.22 In view of above discussion, we answer the question referred to us in favour of assessee by holding that the computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the computation as contemplated u/s 14A read with Rule 8D of the Income-tax Rules, 1962."

10. As the issue is squarely covered, we find no infirmity in the order of CIT(A) and the same is affirmed. This issue of Revenue's appeal is also dismissed.

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 22.03.2021.

Sd/-

(एस रिफ़ौर रहमान / S RIFAUR RAHMAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 22.03.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS



आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**