

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

Before Sh. Amit Shukla, Judicial Member

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

ITA No. 4553/Del/2017 : Asstt. Year: 2013-14

ACIT, Circle-3(1), New Delhi-110002	Vs	APL Apollo Tubes Ltd., D-28, South Extension, Part-I, New Delhi-110049
(APPELLANTT)		(RESPONDENT)
PAN No. AAACB0960D		

With

CO No. 223/Del/2017 : Asstt. Year: 2013-14

APL Apollo Tubes Ltd., D-28, South Extension, Part-I, New Delhi-110049	Vs	ACIT, Circle-3(1), New Delhi-110002
(APPELLANTT)		(RESPONDENT)
PAN No. AAACB0960D		

ITA No. 9395/Del/2019 : Asstt. Year: 2014-15

APL Apollo Tubes Ltd., D-28, South Extension, Part-I, New Delhi-110049	Vs	ACIT, Circle-3(1), New Delhi-110002
(APPELLANTT)		(RESPONDENT)
PAN No. AAACB0960D		

**Assessee by : Sh. Rakesh Gupta, Adv.
Revenue by : Sh. Satpal Gulati, CIT DR**

Date of Hearing: 30.06.2021

Date of Pronouncement: 30.07.2021

ORDER

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

The present appeals have been filed by the assessee and the revenue against the orders of Id. CIT (A)-I, New Delhi dated 11.11.2019 & 20.04.2017.

2. In ITA no. 4553/Del/2017, following grounds have been raised by the revenue:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in restricting the addition to Rs. 20,48,705/- as against Rs. 4,13,42,756/- made by the AO on account of the "Brand Image" expenses.

2. The Ld. CIT(A) erred in law and on facts in deleting addition of Rs.1,04,34,368/- made by the A.O. on account of the disallowance of expenses u/s 14A Income Tax Act, 1961 read with Rule 8D.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting addition of Rs. 2,32,976/- made by the A.O. on account of provision towards commission."

3. In ITA No. 9395/Del/2017, following grounds have been raised by the assessee:

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.8,73,86,301/- on account of 'Brand Image Expenses' claimed by the assessee in the computation of income by treating it as unjustified and unreasonable and that too without any basis and by recording incorrect facts and findings and without appreciating the facts and circumstances of the case and in violation of principles of natural justice and without considering the submissions filed by the assessee.

2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance of Rs.8,73,86,301/- on account of 'Brand Image Expenses', is bad in law and against the facts and circumstances of the case.*

3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in sustaining the action of Ld. AO in making disallowance Rs. 2,65,74,425/- and that too by recording incorrect facts and findings and with< appreciating the facts and circumstances of the case and in violation of principle.' natural justice.*

4. *That in any case and in any view of the matter, action of Ld. CIT(A) in sustaining the action of Ld. AO in making disallowance of Rs.2,65,74,425/- u/s 14A r.w.r. 8D, is bad in law and against the facts and circumstances of the case.*

5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred law and on facts in confirming the action of Ld. AO in not allowing the benefit of additional depreciation of Rs. 1,70,00,485/- claimed by the assessee under the head 'Plant and Machinery' and that too by recording incorrect facts and findings and in violation of principles of natural justice and in not considering the latest law in his regard.*

6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in not allowing the benefit of deduction of Rs. 21,00,000/- as claimed by the assessee u/s 35AC and that too by recording incorrect facts and findings and in violation of principles of natural justice and in not considering the latest law in this regard.*

7. *Without prejudice to above ground, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in not allowing the benefit of deduction of Rs. 10,50,000/- as claimed by the assessee u/s 80G and that too by recording incorrect facts and findings and in violation of principles of natural justice and in considering the latest law in this regard."*

ITA No. 4553/Del/2017 A.Y. 2013-14:

4. Heard the arguments of both the parties and perused the material available on record.

5. Culling the relevant facts, we find that:

The assessee company is engaged in the business of manufacturing of steel tubes having distributors throughout India. During the year, the assessee achieved a sales of Rs. 1753.17 crore as compared to Rs. 1165.8 crore in the A.Y. 2012-13. To achieve the target, the assessee floated different schemes to incentivize the dealers. As per the scheme, any dealer achieving sales target of 150 metric tonne, will be entitled for 1 air ticket to and fro to Malaysia and if achieves a sales target of 500 metric tonne of steel tubes, such dealer would be entitled for one ticket to Paris. In case, a dealer achieves target of 750 metric tonne such dealer is entitled for one ticket to Australia and two tickets in case of 1500 M.T. of the steel tubes. . As per the scheme, three groups consisting of 272 persons, 251 persons and 157 persons were taken to Malaysia and 20 persons who have been taken to Australia. The assessee has incurred an expenditure of Rs.6,54,32,452/-.

6. The Id. CIT (A) examined the bills raised by the assessee of Dewan Travels Pvt. Ltd. which are as under:

Sl. No.	Date	Amount
1.	17.09.2011	Rs.20,48,705/-
2.	04.04.2012	Rs.2,53,17,202/-
3.	26.05.2012	Rs.1,46,54,700/-
4.	19.07.2012	Rs.2,34,11,845/-

7. The Id. CIT (A) found that the bill dated 17.09.2011 for an amount of Rs.20,48,705/- pertain to the assessment year 2012-13, hence, disallowed the expenditure to that extent and allowed the remaining expenditure being the amount spent during the year. The disallowance of Rs.20,48,705/- has not been contested by the assessee. The Id. CIT (A) has also verified the list of dealers and their persons who were taken for the foreign junkets in support of the claim of the expenditure while deleting the addition.

8. Since, the facts could not be rebutted by any cogent material by the revenue before us, we hereby decline to interfere with the order of the Id. CIT (A).

Disallowance u/s 14A of Rs.1,04,34,368 :

9. During the year, as per the records, the assessee has not earned any dividend income. However, the Assessing Officer chose to disallow an amount of Rs.1,04,34,368/- based on the investment shown in the balance sheet of Rs.77.9 Crores.

10. Since, no disallowance is called for in the absence of any exempt income earned and claimed by the assessee, we hereby decline to interfere with the order of the Id. CIT (A).

Commission payment of Rs.2,32,976 :

11. The Assessing Officer disallowed the amount holding that it was the "provision towards commission" and therefore not an "ascertained liability". The Id. CIT (A) found that the commission payment was not a "provision" but paid on the basis

of bills dated 02.04.2013 received from one M/s Parikh Steel Pvt. Ltd. The Id. CIT (A) has also gave a categorical finding that the payment has been made on 18.04.2013 for the services rendered of the sales pertaining to the invoice no. 163 & 177 dated 24.01.2013 and 07.02.2013. Since, the commission amount was an "ascertained liability" and paid for the services rendered. TDS was also deducted on the commission payment and hence the Id. CIT (A) taking into consideration, the entire facts allowed the deduction. Since, no contrary material has been brought before us, we decline to interfere with order of the Id. CIT (A).

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

CO No. 223/Del/2017:

13. In view of the above adjudication, the CO of the assessee is treated as superfluous and hence dismissed.

ITA No. 9395/Del/2017 A.Y. 2014-15:

Disallowance u/s 14A:

14. The assessee received dividend of Rs.2,69,77,700/- which was claimed exempt u/s 10(34) of the Income Tax Act, 1961. The assessee made disallowance of Rs. 4,03,275/- u/s 14A r.w.r. 8D. The Assessing Officer made disallowance of Rs.4,93,31,099/- under Rule 8D(ii) and 8D(iii). The Id. CIT (A) restricted the amount to Rs.2,65,74,425/- taking into consideration, the amount of Rs.4,03,275/- disallowed *suo moto*

by the assessee thus restricting the total disallowance to the exempt income earned.

15. The relevant facts:

Assessment Year: 2014-15
Date of Assessment Order: 31.12.2017
Date of amendment in Rule 8D(2) w.e.f.: 02.06.2016

16. The Hon'ble Supreme Court in the case of Maxopp Investments Ltd. Vs CIT 91 Taxman 154 has obliterated the distinction between investment in the subsidiaries or otherwise.

17. Hence, the matter is referred back to the Assessing Officer for re-computation of the disallowance u/s 14A, keeping in view the judgment of Hon'ble Apex Court and the amended provisions of the Act existing at the time of completion of assessment.

Brand Image Expenses:

18. The AO has computed the breakup of Brand Image expenses as under:-

S. No.	Expenditure Incurred (Nature)	Amount (Rs.)
1.	Singapore Star Cruise Trips (Dealers & Distributors) of 100 Persons	8,81,98,856.00
2.	Tour and Travel Package for Dealers and Distributors under various Schemes	80,18,675.00
3.	Sales Promotion Scheme for Dealers Meet Expenses	51,87,439.00
4.	Marketing Tour & Travel, Salary of Marketing Department (Branding), Printing and Designing of Flex Boards, Wall Painting, T-Shirts and other Gifts	3,86,52,965.00
	Total	14,00,57,935/-

19. Out of the amount of Rs.14,00,57,935/-, an amount of Rs.5,21,71,634/- was debited to Brand Image expenses in the P&L account and Rs.8,73,86,300/- in the computation of income.

20. The AO disallowed an amount of Rs.8,73,86,301/- claimed in the computation of income on the grounds that the assessee failed to prove the following points:

(i) to whom the freebies gifts had been distributed?

(ii) what advantage that person had given to the company objectively?

(iii) whether without distribution of gifts, foreign junkets the sale of the appellant company would have dipped?

(iv) who had travelled, what is the relationship of the person travelled to the appellant company, whether the employee of the company, or the distributors of the company or their family members had travelled?

(v) whether the benefit value had been affected to income by that person who had been given the freebies/s, free tour?

(vi) whether there is substantial increase in net profit of company?

(vii) for which purpose the Jewellery of Rs. 1,34,85,975/- was purchased, to whom distributed, their names and receipts.

21. The Id. CIT (A) confirmed the addition holding that the assessee company claimed expenses of Rs. 8,73,86,301/- is unreasonable and excessive and has been claimed in order to reduce its taxable income for the assessment year 2014-15. The Id. CIT(A) held that the APL gold khazana scheme do not relate to the current assessment year 2014-15.

22. From the facts on record, we find that gold of 5000 gm worth Rs.1,34,85,900/- has been purchased on 01.04.2013, 22.04.2013, 21.12.2013 pertaining to the assessment year 2014-15. The gold has been purchased from GR Tangamaligai Jewellers Pvt. Ltd. which has not been disputed by the revenue. The list of gold distribution has been given at page no. 15 of the order of the Id. CIT (A) mentioning the sales volume in metric tonnes and the quantity of gold in grams given as incentive. The revenue ought to have enquired whether the incentive of gold varying from 1073 to 1500 gms has indeed been bestowed as incentive, if so, what is the treatment given in the hands of recipient's books of accounts. The assessee has provided details of all the dealers who have been given tickets to cruise trips which were not inquired by the revenue to prove any deformation in the information provided. Instead of doing so, the revenue held that the expenses of Rs.8.73 crores are unreasonable and excessive which is beyond the purview of the revenue. Since, the fact of incurring of expenses and its genuineness has not been in dispute, we hereby decline to accept the reasoning of the Id. CIT (A).

Additional Depreciation of Rs.1,70,00,485:**Claim u/s 35AC & 80G:**

23. With regard to above grounds, both the parties agreed to refer the matter to the file of the AO. Hence, the AO is directed to examine the matter on factual and legal aspects and take a decision in accordance with the provisions of the Act.

24. In the result,

- The appeal of the revenue A.Y. 2013-14 is dismissed
- The CO of the assessee A.Y. 2013-14 is dismissed.
- The appeal of the assessee for the A.Y. 2014-15 is allowed.

Order Pronounced in the Open Court on 30/07/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 30/07/2021

Subodh

Copy forwarded to:

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

Sd/-

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

ASSISTANT REGISTRAR