

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "A", HYDERABAD  
(Through Virtual Hearing)

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No. 540/Hyd/2017		
A.Y. 2009-10		
Dolphin Hotels Limited, 'Hotel Sitara', Ramoji Film City, Hayathnagar Mandal, Ranga Reddy District- 501512. PAN: AAACD 7740 B (Appellant)	VS.	ACIT, Circle-16(2), Hyderabad. (Respondent)
Assessee by	Sri V. Siva Kumar	
Revenue by	Sri D.J. Prabhakar Anand, DR	
Date of hearing:	16/06/2021	
Date of pronouncement:	29/07/2021	

ORDER

PER A. MOHAN ALANKAMONY, A.M:

This appeal is filed by the assessee against the order of the Ld. CIT(A)-4, Hyderabad in appeal No. 0250/11/-12/ACIT, Cir-16(2)/CIT(A)-4/Hyd/16-17, dated 23/02/2017 passed U/s. 143(3) r.w.s 250(6) of the Act for the A.Y. 2009-10.

2. The assessee has raised three elaborate grounds in its appeal however, the cruxes of the issues are that:

- (i) *The Ld. CIT (A) has erred in confirming the addition made by the Ld. AO U/s. 14A r.w. Rule 8D(2)(ii) of the Act amounting to Rs. 14,60,534/-.*
- (ii) *To delete the disallowance mistakenly worked out U/s. 14A of the Act by the assessee amounting to Rs. 36,81,492/-*

3. The brief facts of the case are that the assessee is a limited company engaged in the business of hotel industry filed its return of income for the relevant assessment year on 29/09/2009. Initially the return was processed U/s. 143(1) and thereafter the case was selected for scrutiny under CASS. Finally, the assessment was completed U/s. 143(3) of the Act on 17/12/2011 wherein one of the additions made by the Ld. AO was by invoking the provisions of section 14A r.w. Rule 8D of the Act.

4. During the course of scrutiny assessment, it was observed by the Ld. AO that the assessee had computed an amount of Rs. 36,81,492/- in compliance with Section 14A(2) of the Act towards disallowance U/s.14A of the Act. However, the Ld. AO rejected the computation made by the assessee and worked out the disallowance at Rs. 51,42,026/- by invoking the provisions of

section 14A of the Act & Rule 8D of the Rules. On appeal, the Id.

CIT (A) confirmed the order of the Ld. AO by observing as under:-

*“7.2 With regard to above ground, during the course of appeal proceedings, the AR of the appellant submitted as under:*

*The appellant submits that its auditors had computed the disallowance U/s. 14A r.w. Rule 8D at Rs. 36,81,492/-. Therefore, the said amount was added back while computing appellant's taxable income. During the course of assessment proceedings, the appellant submitted that such disallowance was made by mistake since investment in mutual funds whose income was claimed as exempt, were made out of its funds but not from borrowed funds and therefore, requested to delete such disallowance while completing the assessment. But the Assessing Officer while completing the assessment did not accede to the request of the appellant but made further addition of Rs. 14,60,534/- stating that there was a mistake in computation of disallowance u/s 14A r.w. Rule 8D and therefore total disallowance u/s 14 A r.w Rule 8D worked out to Rs. 51,42,026/-.*

*The appellant submits that investment in mutual funds was made out of its own funds as could be seen from the statement enclosed herewith, but not out of any borrowed funds. In this connection, it is relevant to note, that its loan funds which were at Rs. 39,64,02,632/- (11,98,02,632 + 27,66,00,000) as at 31-03-2008 came down to Rs. 36,63,43,159/- (12,63,43,159 + 24,00,00,000) by 31-03-2009. Thus some part of loans outstanding at the beginning of the year were repaid during the year meaning that no new borrowals were made during the year. In fact the appellant's fixed deposit which were at Rs. 7,15,68,834/- as at 31/03/2008 came down to Rs. 1,15,64,224/- by 31-03-2009 resulting in encashment of fixed deposits of about Rs. 6 Crs. Besides this the appellant earned net profit of Rs. 16,75,67,129/- during the financial year ended 31-03-2009 after charging depreciation of Rs. 2,97,34,327/-. Thus, the appellant during the year earned cash profit of about Rs. 20 Crs. This fact can also be verified from Cash Flow statement. Thus, the investments during the year were made out of its own money available on account of maturity of fixed deposits and also out of profit earned during the year. Hence, the appellant submits that the Assessing Officer is not justified in not accepting the request of the appellant for deletion of the disallowance made by it U/s. 14A r.w.r 8D without stating anything on this issue in the assessment order and further making addition of Rs. 14,60,534/-. The appellant relied on several judicial decision like CIT vs. Reliance Industries Limited 339 ITR 632 (Bom), CIT vs. Deepak Mittal, 361 ITR 132 (P & H), CIT vs. Om Prakash Khaitan 376 ITR 390 (Delhi) etc., wherein it is held that when own funds are utilised for making investment no disallowance is required to be made U/s. 14A r.w.r 8D.*

*It is also relevant to note that the Assessing Officer did not establish any nexus between the borrowed funds and the investments made calling for disallowance U/s 14A. Further the appellant also submits that agents of mutual funds came to it and appraised as to mutual funds in which investments can be made by it since they earn commission from mutual funds. Thus the appellant did not incur any expenditure in making the said investments requiring disallowing u/s 14A r.w.r 8D(2)(iii).*

*The appellant further submits to consider in appeal the claim made before the Assessing Officer but not accepted by him on the ground that the appellant itself made the addition and did not file any revised return withdrawing such addition.*

*Hence, the appellant requested the Ld. CIT to direct the Assessing Officer to delete the disallowance of Rs. 14,60,534/- made by him besides directing him to delete the disallowance of Rs. 36,81,492/- made by mistake by the appellant (totaling to Rs. 51,42,026/-) while computing appellant's income.*

*7.3 After carefully considering the assessment order and submissions of the appellant, the submissions of the appellant are not accepted since the appellant itself has disallowed Rs. 36,81,492/- as admissible U/s. 14A and the same to be treated as disallowance only. Therefore, section 14A is applicable and the balance amount of Rs. 14,60,534/- added by the Assessing Officer, also confirmed."*

5. Before us, the Ld. AR vehemently argued stating that the assessee had invested in Mutual Funds out of its non-interest-bearing fund and therefore, there cannot be any disallowance towards interest. The ld. AR further submitted that the assessee had wrongly worked out the disallowance at Rs. 36,81,492/- U/s.14A of the Act. It was therefore pleaded that the matter may be remitted back to the file of the Ld. AO with specific directions. Though the Ld. DR argued in support of the orders of the Ld. Revenue Authorities, he could not successfully controvert to the submissions of the Ld. AR.

6. We have heard the rival submissions and carefully perused the materials on record. On verify the statement of accounts submitted by the assessee in page 2 and 6 of the paper book, we find that the assessee's shareholder's-fund during the end of the relevant assessment year stands at Rs. 29,52,22,811/- and the opening balance stands at Rs. 15,03,61,791/-. It is also apparent from the orders of the

ld. Revenue Authorities that the assessee had made investments in Mutual Funds only to the extent of Rs. 12,30,09,719/- which is much below the assessee's own non-interest-bearing fund i.e., paid up equity shares (Shareholder's funds). Therefore, the element of interest expenditure cannot be included in the case of the assessee while computing disallowance U/s. 14A of the Act. However, it is eminent that for making investment in mutual funds to the tune of Rs. 12,30,09,719/- assessee would have certainly incurred some expenditure such as administrative expenses, stationary expenses, decision making expense etc. It is also an undisputed fact that any expenditure incurred by the assessee which is not for the purpose of the business of the assessee, cannot be claimed as deduction while computing the business income of the assessee as per the provisions of the Act. On a similar occasions, the Division Bench of Hyderabad Bench of the Tribunal in the case DCIT vs. M/s. Shalivahana Green Energy Limited (ITA No. 1990/Hyd/2018) vide its orders dated 15/02/2021 had remitted back the matter to the file of the ld. AO with certain directions. The relevant portion of the order is extracted herein below for reference:

*"6. We have heard the rival submissions and carefully perused the materials on record. Factually for making any investment in equity shares by any entity only the following categories of expenditure will be attributable: -*

- (i) Interest on interest bearing funds that is utilised for the purpose of making such investment.*

- (ii) *Direct and indirect expenses attributable to the process of making such investment such as expenditure incurred for due diligence, managerial expenditure, clerical expense, stationary expenditure and portfolio management expenditure.*

7. *There cannot be any other expenditure other than the expenditure mentioned herein above that can be incurred by an entity which will be attributable towards investments made in equity shares of other companies. In the case of the assessee, the assessee has invested in its own subsidiary companies out of its non-interest-bearing funds such as own share capital and reserves and this is not in dispute. Since in the case of the assessee the assessee company has utilised only its non-interest-bearing funds for making investment in its own subsidiary company, no interest cost can be attributable to the same because, there is no interest cost to the assessee, as it can be treated that the assessee has withdrawn from its capital and reserves which are assessee's interest free funds for making such investment. Further, for making investment in its own company there cannot be any cost attributable with respect to direct and indirect expenses towards the process of decision making, due diligence, managerial expenditure and portfolio management expenditure because no such cost can arise for making investment in one's own entity. Further, only meagre expenses can be attributable with respect to clerical and stationary expenses which is negligible and that is deserved to be ignored. Therefore, factually there cannot be any expenditure attributable to the investment made in sister company when the investment is out of its own interest free fund. When the above facts were pointed out to the Ld. DR, he could not controvert to the same however, he relied on the order of the Ld. AO. Considering these factual aspects of the issue, We are of the view that the order of the ld. CIT (A) deleting the disallowance of expenditure made by the Ld. AO invoking the provisions of section 14A of the Act read with Rule 8D of the Rules does not call for interference. Hence, we hereby confirm the order of the Ld. CIT (A) on this issue."*

7. Considering the facts and circumstances of the case and the decisions cited herein above, we hereby set aside the order of the ld. Revenue Authorities and remit the entire matter back to the file of the Ld. AO in order to consider the issue in the light of the order of the Tribunal cited herein above as well as the observations made by us supra. At the same breath we also hereby direct the Ld. AO to verify the disallowance computed by the assessee for Rs. 36,81,492/- as per section 14(2) of the Act and if there are errors, provide one more

opportunity to the assessee to compute the disallowance as per the provisions of the Act.

8. In the result, appeal of the assessee is allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on the 29<sup>th</sup> July, 2021.

Sd/-  
(P. MADHAVI DEVI)  
JUDICIAL MEMBER

Sd/-  
(A. MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Hyderabad, Dated: 29<sup>th</sup> July, 2021.

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Copy to:-

- 1) Dolphin Hotels Limited, Hotel Sitara, Ramoji Film City, Hayatnagar Mandal, Ranga Reddy District – 501 512.
- 2) Asst. Commissioner of Income Tax, Circle-16(2), Hyderabad.
- 3) The CIT(A)-4, Hyderabad.
- 4) The Pr. CIT-4, Hyderabad.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File