

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.7358/MUM/2019
(Assessment Year: 2012-13)**

ACIT - 3(1)(1),
Room No.607, 6th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai – 400 020

M/s Bajaj Eco-Tech Products
Vs. Limited, 2nd Floor, Bajaj
Bhavan, Jamnalal Bajaj Marg,
Nariman Point,
Mumbai - 400021

PAN No. AACCB8572B

(Revenue)

(Assessee)

Assessee by : Shri Kirit Kamdar, A.R
Revenue by : Shri Tharian Oommen, D.R

Date of Hearing : 22/07/2021
Date of pronouncement : 27/07/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-8, Mumbai, dated 07.09.2019, which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 25.03.2015 for A.Y 2012-13. The revenue has assailed the impugned order on the following grounds before us:

- "1. Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition made by the A.O of Rs.2,28,26,405/-being depreciation claimed by the assessee on civil work of factory building without appreciating the fact that assessee could not prove the genuineness of the transaction?
2. Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition made by the A.O. of Rs. 23,79,327/- being expenditure incurred on earning the exempt income by invoking provision of section 14A of the I.T. Act read with rule 8D?

3. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of Assessing Officer be restored.
4. The appellant craves leave to amend, tiller, delete or add grounds which may be necessary.”

2. Briefly stated, the assessee company which is engaged in the business of manufacturing of MDF and particle boards from sugarcane bagasse had filed its return of income for A.Y 2012-13 on 26.09.2012, declaring a total loss of (-) Rs.61,80,15,120/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. Original assessment was framed by the A.O vide his order passed u/s 143(3), dated 25.03.2015 and the loss of the assessee company was scaled down to an amount of (-) Rs. 59,28,12,390/- after making the following disallowances:

Sr. No.	Particulars	Amount
1.	Disallowance of the assessee’s claim for depreciation	Rs.2,28,26,405/-
2.	Disallowance u/s 14A	Rs. 23,79,327/-

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). It was observed by the CIT(A) that the disallowance of the assessee’s claim for depreciation pertained to the opening written down value (W.D.V) of its ‘fixed assets’. Referring to the observations that were recorded by his predecessor while disposing off the assessee’s appeal for A.Y 2009-10, vide his order No. IT-390/14-15, dated 14.11.2014 for A.Y 2009-10, it was observed by the CIT(A), as under :

- (i). that the assessee company had awarded to M/s Teracon Construction (I) Pvt. Ltd civil works contract for construction of its three units, viz. (i). Unit at Kinauni for particle board; (ii) Unit at Palia for MDF Board; and (iii). Unit at Kunderki for MDF Board; and had capitalized a sum aggregating to Rs. 30,43,62,085/- in A.Y 2009-10. Although, the assessee

company in the course of the assessment proceedings for A.Y 2009-10 had furnished supporting documentary evidence to substantiate the genuineness of its transactions with the aforesaid company, viz. M/s Teracon Construction (I) Pvt. Ltd, however, the same did not inspire much of confidence with the A.O, inter alia, for the reason that the notices issued to the said party were returned back by the postal authorities with the remarks 'left' or 'this house is always found locked'. It was observed by the CIT(A) that the A.O while framing the assessment for A.Y 2009-10 had disallowed the assessee's claim for depreciation of Rs. 3,04,36,209/- pertaining to the civil work of factory buildings that was executed by M/s Teracon Construction (I) Pvt. Ltd., for the reason, that the genuineness of the said transactions was not proved. However, it was observed by the CIT(A) that his predecessor while disposing off the assessee's appeal for A.Y 2009-10 had vacated the disallowance of the assessee's claim for depreciation of Rs.3,04,36,209/-. It was further observed by the CIT(A) that the revenue being aggrieved with the order that was passed by his predecessor while disposing off the assessee's appeal for A.Y. 2009-10 had carried the matter in appeal before the Tribunal. It was noticed by the CIT(A) that the Tribunal had thereafter disposed off the revenue's appeal and had restored the issue to the file of the A.O for fresh adjudication, which on date was pending adjudication.

(ii). that the assessee's claim for depreciation of Rs. 10,39,543/- on plant and machinery purchased from a concern, viz. M/s Ruchak Trading Pvt. Ltd. was disallowed by the A.O while framing the assessment for A.Y 2009-10, for the reason, that the assessee had failed to substantiate the authenticity of the said purchase transactions. On appeal, the CIT(A) finding no infirmity in the view taken by the A.O upheld the disallowance of the assessee's claim for depreciation of Rs. 10,39,543/- on plant and

machinery which was stated to have been purchased from the aforementioned concern.

Backed by the aforesaid facts, the CIT(A) was of the view that as the disallowance of the assessee's claim for depreciation on the fixed assets, viz. civil work of factory building that was made by the A.O while framing the assessment for A.Y 2009-10 had been restored by the Tribunal to his file for fresh adjudication, and the same was pending as on date, therefore, the very basis for making the disallowance did no more survive. Accordingly, he followed the view that was taken by his predecessor while disposing off the assessee's appeal for A.Y. 2009-10, and directed the A.O to vacate the disallowance of the assessee's claim for depreciation of Rs. 2,28,26,405/- on fixed assets.

5. We have heard the Ld. Authorized Representatives for both the parties qua the aforesaid issue under consideration and have perused the orders of the lower authorities as well as the material available on record. As is discernible from the record, the disallowance of the assessee's claim for depreciation during the year under consideration i.e A.Y 2012-13 was made as regards the opening W.D.V of the fixed assets, viz. civil work of factory building executed by Teracon Construction (I) Pvt. Ltd. As noticed by us hereinabove, the genesis of the controversy in hand finds its roots in A.Y 2009-10, wherein the A.O questioning the genuineness of the assessee's claim of having executed the civil work of factory building through M/s Teracon Construction (I) Pvt. Ltd. qua the construction of its three units viz. (i). Unit at Kinauni for particle board; (ii) Unit at Palia for MDF Board; and (iii). Unit at Kunderki for MDF Board, had rejected its consequential claim for depreciation of Rs.3,04,36,209/-. Accordingly, the A.O adopting a consistent approach had on the same basis disallowed the assessee's claim for depreciation of Rs. 2,54,04,399/- i.e corresponding to the W.D.V of the aforesaid fixed assets, viz. civil work of factory building during the year under consideration i.e A.Y 2012-13. However, as observed by us

hereinabove, the CIT(A) vide his order No. IT-390/14-15, dated 14.11.2014 for A.Y 2009-10 had allowed the assessee's claim for depreciation in so far the same pertained to the civil work of factory building executed by M/s Teracon Construction (I) Pvt. Ltd. was concerned. On further appeal by the revenue, the Tribunal vide its order for A.Y 2009-10 in ITA No. 948/Mum/2015, dated 08.11.2017 had restored the issue as regards the disallowance of the assessee's claim for depreciation of Rs.3,04,36,209/- to the file of the A.O, which as observed by the CIT(A) was pending on the date of passing of his order i.e 14.11.2014. Nothing has been brought to our notice by the Id. Authorized representatives for either of the party to show that the set-aside assessment consequent to the directions of the Tribunal had thereafter been framed by the A.O. Backed by the aforesaid facts, we concur with the view taken by the CIT(A) that now when the very basis for making of the disallowance by the A.O while framing the assessment for A.Y. 2009-10, as on date, does no more survive any more, therefore, the disallowance of the assessee's claim for depreciation on fixed assets, viz. civil work of factory building executed by M/s Teracon Construction (I) Pvt. Ltd. of Rs.2,28,26,405/- for the year under consideration i.e A.Y 2012-13 also cannot be sustained. In other words, when the very basis germane to the controversy in hand i.e rejection of the assessee's claim for depreciation qua the civil work of factory building executed by M/s Teracon Construction (I) Pvt. Ltd., had been restored to the file of the A.O for fresh adjudication by the Tribunal while disposing off the revenue's appeal for A.Y 2009-10 in ITA 948/Mum/2015, dated 08.11.2017, and the same as on date is pending adjudication, therefore, now when the very basis for making the impugned disallowance of the assessee's claim for depreciation during the year under consideration i.e A.Y. 2012-13 does no more survive or ceases to be in existence, no infirmity could therein be related to the order of the CIT(A) who had rightly vacated the aforesaid disallowance of Rs.2,28,26,405/- (supra).

Accordingly, finding no infirmity in the view taken by the CIT(A), we uphold the same. The **Ground of appeal No. I** raised by the revenue is dismissed.

6 . We shall now take up the claim of the revenue that the CIT(A) had erred in vacating the disallowance u/s 14A of Rs.23,79,327/- made by the A.O. As is discernible from the records, it was observed by the A.O that though the assessee held exempt income yielding shares of Rs. 5 crore on 31.03.2011 and 31.03.2012, however, it had not offered any disallowance u/s 14A of the Act. On being queried as to why the disallowance may not be worked out u/s 14A of the Act, it was submitted by the assessee that as the aforesaid investments of Rs.5 crores in shares of its subsidiary companies, viz. M/s Bajaj Aviation Pvt. Ltd. were made on 31.03.2009 out of its own funds, therefore, no part of the interest expenditure was liable to be disallowed u/s 14A of the Act. In support of its aforesaid claim, it was submitted by the assessee that it had on 17.06.2008 received an amount of Rs. 25 crores from M/s Bajaj Hindustan Ltd. (Holding company) as equity infusion, out of which an amount of Rs. 5 crore was utilized for purchase of shares of M/s Bajaj Aviation Pvt. Ltd. Apart from that, it was submitted by the assessee that as it had not earned any dividend income during the year under consideration, therefore, no disallowance was warranted u/s 14A r.w. Rule 8D. However, the A.O did not find favor with the aforesaid claim of the assessee. Observing, that though the assessee had not earned any exempt dividend income, it would have still incurred expenses for maintaining and managing the portfolio of its investments with a view to earn exempt dividend income, the A.O worked out the disallowance u/s 14A r.w. Rule 8D at an amount of Rs.23,79,327/-.

7. Aggrieved, the assessee carried the matter in appeal before the CIT(A). It was noticed by the CIT(A) that a similar issue qua the disallowance u/s 14A r.w. Rule 8D, viz. (i). U/rule 8D(2)(ii) : Rs. 12,33,162/-; and (ii). U/rule 8D(2)(iii) : Rs. 1,25,000/- had come up before his predecessor in the assessee's own case for

A.Y. 2009-10, wherein the disallowance therein made by the A.O was vacated. It was noticed by the CIT(A), that his predecessor taking cognizance of the fact that the assessee had made an investment of Rs.5 crore in the exempt income yielding shares of its subsidiary company viz. Bajaj Aviation Pvt. Ltd. out of its own funds i.e infusion of funds by way of equity received from Bajaj Hindustan Limited of Rs.25 crores, had thus vacated the addition that was made by the A.O towards disallowance of interest expenditure U/rule 8D(2)(ii) qua such investments. Also, it was observed by the CIT(A), that his predecessor had held that as the assessee had made the investments in its wholly owned subsidiary company, therefore, no administrative costs would therein be involved. Backed by his aforesaid facts, it was observed by the CIT(A) that his predecessor while disposing off the assessee's appeal for A.Y 2009-10 had vacated the entire disallowance that was made by the A.O u/s 14A. It was further observed by the CIT(A), that the order passed by his predecessor while disposing off the assessee's appeal for A.Y. 2009-10 wherein the disallowance made by the A.O u/s 14A r.w. Rule 8D was vacated in toto had thereafter been upheld by the Tribunal, vide its order passed in ITA No. 948/Mum/2015, dated 08.11.2017. Backed by his aforesaid observations, the CIT(A) was of the view that as the facts and the issue involved in the year under consideration i.e A.Y. 2012-13 remained the same, therefore, following the view that was taken by his predecessor in the assessee's case for A.Y. 2009-10, he directed the A.O to vacate the disallowance that was made by him u/s 14A r.w. Rule 8D.

8. We have deliberated at length on the aforesaid observations of the CIT(A) qua the deletion of the disallowance made by the A.O u/s 14A r.w. Rule 8D. Admittedly, as the facts and the issue pertaining to the disallowance of the interest expenditure U/rule 8D(2)(ii) during the year under consideration remains the same as were there before the Tribunal in the assessee's own case for A.Y. 2009-10, therefore, we respectfully follow the view therein taken and vacate the

disallowance of the interest expenditure. At the same time, we are of the considered view, that pursuant to the judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT (2018) 402 ITR 640 (SC), as the dominant purpose for which the investment into shares is made by an assessee may not be relevant, therefore, the claim of the assessee that no administrative expenses could be attributed qua the investments made by the assessee in its wholly owned subsidiary company cannot be accepted. But then, as it is a matter of fact borne from the record that the assessee had during the year under consideration not received any exempt dividend income, therefore, on the said count we herein conclude that no disallowance under Sec. 14A was called for in its hands. Accordingly, we in terms of our aforesaid observations modify the view taken by the CIT(A) but at the same time concur with him that no disallowance under Sec. 14A was warranted in the case of the assessee for the year under consideration. The **Ground of appeal No. II** raised by the revenue is dismissed in terms of our aforesaid observations.

9. The **Ground of appeal No. III and IV** being general are dismissed as not pressed.

10. Resultantly, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 27.07.2021

Sd/-
 (Rajesh Kumar)
 ACCOUNTANT MEMBER

Sd/-
 (Ravish Sood)
 JUDICIAL MEMBER

Mumbai;
 Dated: 27.07.2021
 PS: Rohit

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai