

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 192/DEL/2013
[A.Y 2009-10]

The Dy. C.I.T
Circle -15(1)
New Delhi

Vs.

M/s RRPR Holding Pvt. Ltd
E - 186, Greater Kailash - I
New Delhi

PAN : AADCR 1710 Q

CO No. 30/DEL/2013
(A/o ITA No. 192/DEL/2013
[A.Y 2009-10])

M/s RRPR Holding Pvt. Ltd
E - 186, Greater Kailash - I
New Delhi

Vs.

The Dy. C.I.T
Circle 15(1)
New Delhi

PAN : AADCR 1710 Q

[Appellant]

[Respondent]

Date of Hearing : 18.08.2021

Date of Pronouncement : 18.08.2021

Assessee by : Shri Sachit Jolly, Adv
Shri Rohit Garg, Adv

Revenue by : Smt. Sushma Singh, CIT- DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue and cross objection by the assessee are preferred against the order of the Commissioner of Income Tax [Appeals] - XXVIII, New Delhi dated 12.10.2012 pertaining to Assessment Year 2009-10.

2. The solitary grievance of the Revenue reads as under:

"Whether on the facts & in the circumstances of the case, the Ld. CIT(A) has erred in directing the AO to allocate the expenditure on proportionate basis towards shares that have been sold off and shares that have been retained by the appellant, while computing the disallowance u/s 14A where as there is no such provision under rule 8D of the Income Tax Rules."

3. The cross objections of the assessee read as under:

1. "That the authorities below ought not to have considered:

- (1) Professional and consultancy charges to the extent of Rs. 12,245,875;
- (2) Audit fees of Rs.50,000/-;
- (3) Interest on TDS of Rs. 10,64,258/-; and
- (4) Interest on loan to Indiabulls of Rs. 17,09,21,558/-.

which are already subject matter of disallowance in the computation of the assessee company, for the purpose of computing the disallowance under section 14A of the Income Tax Act, 1961.

2. That the interest/financial charges incurred by the appellant company for acquiring the shares in NTDV Limited as sustained by the Id CIT(Appeals) for the purpose of computing the disallowance under Section 14A of the Income Tax Act, 1961 is unjust and not in accordance with law.
3. That the application of 10% rate of profit as applied by Id. Assessing Officer / CIT (Appeals) on the interest received on Bank FDRs is not in accordance with law and the interest received on Bank FDRs has to be adjusted against the interest paid on borrowed funds having a direct nexus and the remaining, if any only can be taxed.
4. That the disallowance of interest under Section 14A of Income Tax Act, 1961 on the funds borrowed for purpose of acquisition of shares for controlling the stake, as sustained by the Id CIT(Appeals) is not in accordance with law and purpose for which Section 14A was enacted.
5. Without prejudice to all other grounds the disallowance of interest for the purpose of Section 14A ought to have been considered on net basis."

4. The representatives of both the sides were heard at length, the case records carefully perused. The relevant documentary evidences brought on record considered in light of Rule 18(6) of ITAT Rules.

5. Briefly stated, the facts of the case are that the assessee company's activity is to hold the shares of promoters of NDTV Group. It can be seen from record that the assessee company is a special purpose vehicle to create a corporate entity that holds the shares of NDTV Ltd. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has incurred finance charges in the form of interest, loan processing fees and other bank charges. The cumulative interest amounted to Rs. 68,28,78,089/-. The Assessing Officer noticed that the assessee company has disallowed certain interest payments on account of non-deduction of tax at source and, accordingly, returned loss of Rs. 49,01,73,918/-.

6. As the company had only one motive of investment in shares during the year under consideration, the Assessing Officer was of the firm belief that all the expenses incurred by the assessee has to be disallowed u/s 14A of the Act r.w.r. 8D of the Rules as the assessee has earned exempt income of Rs. 37,93,374/- and there is direct nexus of

all the expenditure incurred towards the investment in shares. Invoking the provisions of section 14A r.w.r 8D of the Rules, the Assessing Officer quantified the disallowance u/s 14A r.w.r 8D of the Rules at Rs. 66,51,45,652/-.

7. The Assessing Officer also noticed that the assessee has received interest income of Rs. 1,12,72,374/-. The Assessing Officer was of the opinion that this interest income has a source with the interest expenditure of the company and accordingly, computed net profit of 10% at Rs. 11,27,234/- treating the balance interest for computation of disallowance for earning exempt income.

8. The assessee assailed the assessment before the ld. CIT(A).

9. After considering the facts and submissions, the ld. CIT(A) held as under:

"4.4 Considering the above, the Assessing Officer's decision of applying rule 8D read with section 14A of the Act on exempt income earned by the appellant is upheld. However, the appellant's claim that part of the expenditure has been incurred towards shares which were acquired during the year but has been sold off is correct. The Assessing Officer is, therefore, directed to

allocate the expenditure on proportionate basis towards shares that have been sold off and shares that have been retained by the appellant. The proportionate expenses to the extent of retained shares are to be disallowed under section 14A. The Assessing Officer is directed to accordingly re-compute the disallowance under section 14A. The Assessing Officer's decision of taxing interest income at 10% is confirmed. The grounds of appeal are accordingly disposed off."

10. At the very outset, we are of the considered view that the ratio laid down by the Hon'ble High Court of Delhi in the case of Joint Investments [P] Ltd 59 Taxmann.com 295 squarely applies to the facts of the case and the same read as under:

"The third, and in the opinion of this Court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is Rs. 48,90,000/-. The disallowance ultimately directed works out to nearly 110 per cent of that sum, i.e., Rs. 52,56,197. By no stretch of imagination can s. 14A or r. 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in s. 14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case. "

11. The ld. DR has relied upon the decision of the Amritsar Bench of the Tribunal in 93 Taxmann.com 39 but we are of the opinion that the same is not relevant considering the ratio laid down by the Hon'ble Jurisdiction High Court Delhi [supra].

12. Respectfully following the ratio laid down by the Hon'ble High Court of Delhi [supra] we direct the Assessing Officer to restrict the disallowance to the extent of exempt income which is Rs. 37,93,374/-.

13. Ground of appeal of the Revenue and the cross objection by the assessee is partly allowed on this issue.

14. It is an undisputed fact that the assessee has parked its surplus funds in fixed deposits of the bank from which it earned interest income of Rs. 1,12,72,374/-. At the same time, we find that the assessee has also paid interest to the bank. In our considered opinion, interest earned has to be netted off with interest expenditure. We, accordingly, direct the Assessing Officer to net off interest income of Rs. 1,12,72,374/- with interest expenditure.

15. In the result, the appeal filed by the Revenue in ITA No. 192/DEL/2013 as well as the cross objection of the assessee in CO No. 30/DEL/2013 are partly allowed.

The order is pronounced in the open court on .08.2021 in the presence of both the rival representatives.

Sd/-

[PAWAN SINGH]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 18th August, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	