

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
&
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

I.T.A. No.4019/DEL/2018
Assessment Year 2014-15

DCIT, Circle-10(1), Faridabad.	v.	Genesis Color Pvt. Ltd., 3A/1, Rao Tula Ram Marg, New Delhi.
TAN/PAN: AABCG4825H		
(Appellant)		(Respondent)

Appellant by:	Ms. Anima Barnwal, Sr.D.R.		
Respondent by:	Shri Ved Jain, CA and Shri Ashish Goel, CA		
Date of hearing:	25	08	2021
Date of pronouncement:	25	08	2021

ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the Revenue is directed against the order dated 19th March, 2018 by Commissioner of Income Tax (Appeals)-XXXV, New Delhi for the Assessment Year 2014-15. The Revenue has raised following grounds of appeal as under:

“1. Whether on the facts and circumstances of the case in law, Ld. CIT (A) has erred in deleting the addition of Rs. 1,96,81,853/- made by the AO ignoring the provision of section 14A r.w.r. 8D of the Act.

2. Whether for application of section 14A(1) of the Income Tax Act, 1961 (the Act) the purpose for making investment and earning tax exempt income thereon is an essential legal requirement?

3. *Whether the term “in relation to” as used in section 14A of the Act contemplates a direct and proximate nexus between “expenditure incurred” and “earning of exempt income”?*

4. *Whether on the facts and circumstances of the case in law, Ld. CIT (A) has erred in not upholding disallowance u/s 14A of the Act without considering legislative intent of introducing section 14A by the Finance Act, 2001 as clarified by CBDT Circular No. 5/2014 dated 10.02.2014?*

5. *Whether on the facts and circumstances of the case in law, Ld. CIT (A) has erred in deleting the addition of Rs. 1,99,920/- made by the Assessing Officer holding the same as capital in nature?*

6. *Whether on the facts and circumstances of the case in law, Ld. CIT (A) has erred in deleting the addition of Rs.80,850/- made by the Assessing Officer u/s 40(a)(ia) for non-deduction of TDS in respect of job work charges?*

7. *The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.”*

2. Grounds No. 1 to 4 are regarding disallowance made by the Assessing Officer u/s.14A of Income Tax Act r.w.s. 8D of the Income Tax Rules, which was deleted by the ld. CIT(A).

3. We have heard the Ld. DR as well as ld. AR and considered the relevant material on record. The Assessing Officer has admitted the fact that during the year under

consideration, the assessee has not earned any dividend income. This fact is recorded by the Assessing Officer in paragraph 3.4 of the assessment order as under:

“3.4 Although the assessee has not earned any dividend income during the year under consideration, disallowance ought to be made u/s.14A. In this regard, reliance is also placed on the Circular No.5/2014 dated 11.02.2014 issued by Central Board of Direct Taxes.”

4. Ld. CIT(A) has deleted the addition made by the Assessing Officer by following the decision of Hon'ble Delhi High Court in paragraph 4.3.3 of the appellate order as under:

*“4.3.3. In view of submission of appellant and judicial pronouncement it is observed that the decision by the Hon'ble ITAT Delhi has been reversed by the Hon'ble Delhi High Court in the same case i.e. **Chemninvest Ltd. vs. CIT-IV 61 Taxmann.com 118 (Delhi)** vide order dated 02.09.2015 holding that "the the expression 'does not form part of the total income' in section 14A envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, section 14A will not apply if no exempt income is received or receivable during the relevant previous year. [Para 23]." In the said judgment the Hon'ble Delhi High Court followed the case of **CIT vs. Holcim India P. Ltd. 57 Taxmann.com 28 (2015) Delhi** and distinguished the decision of **Maxopp Investment Ltd.***

347 ITR 272. *Appellant has also relied upon various judgments in his favour on the same lines. Since, there is no claim of exempt income during the year, the ratio laid down by Hon'ble Delhi High Court is squarely applicable in the case of appellant and accordingly, no additions are called for. Hence, Ground nos. 2 & 3 are allowed.”*

5. Thus, it is clear that when assessee has not earned any dividend income in the year under consideration, then the issue of disallowance u/s.14A is covered by the binding precedents. No contrary decision has been brought to our notice. Accordingly, we do not find any error or illegality in the impugned order of the Id. CIT(A) qua this issue. Grounds No.1 to 4 of the Revenue's Appeal stands dismissed.

6. Ground No.5 is regarding the addition of Rs.1,99,920/- made by the Assessing Officer by treating certain expenses as capital in nature.

7. Ld. DR has submitted that the Assessing Officer has given the details of the expenditure incurred by the assessee which were claimed by the assessee under the head 'Repair and Maintenance'. However by the nature of these expenses, it falls in the capital field and not in the revenue field. Ld. DR has pointed out that some of the expenses are not even in the category of 'Repair and Maintenance' but these are the accessories, purchased by the assessee, therefore, these expenses cannot be allowed as revenue expenditure. The Assessing Officer has rightly allowed depreciation on these

expenses after treating the same as capital in nature. She has relied upon the order of the Assessing Officer.

8. On the other hand, ld. AR of the assessee has submitted that an identical nature of expenditure were disallowed by the Assessing Officer for the Assessment Years 2010-11 to 2012-13 but the Ld. CIT(A) has deleted the disallowance made by the Assessing Officer in those assessment years. He has also pointed out that all the expenditure is either the repair and maintenance or the consumable items, and therefore, the same are revenue in nature and allowable in full. The printing cartridge etc. of the computer and printer are consumable items, and therefore, the same cannot be treated as capital in nature. Some of the expenditure is in respect of replacement of the computer components, and therefore, the same cannot be treated as capital in nature but it falls within the ambit of repair and maintenance. He has supported the impugned order of the ld. CIT(A).

9. We have considered the rival submissions as well as material on record. From the details of the expenditure as reproduced by the Assessing Officer, we noted that the majority of the expenditure is incurred either in consumable items or the functioning of the computer and printers or some repair/replacement of the components of the computers, therefore, to that extent, the expenditure cannot be treated as capital in nature but the same would fall in the revenue field. Only if an expenditure is incurred for purchase of new computer or printer, the same will fall in the field of capital

expenditure. The Ld. CIT(A) has decided this issue in paragraph 4.4.3 of appellate order as under:

“4.4.3 In the present case, during the instant assessment year, the Appellant has claimed repair and maintenance expenses of Rs.4,36,71,352/-. The Appellant has stated that the appeal of Appellant was allowed by Ld. CIT’s(A) in respect of same issue of disallowance in Appellant’s own case for A.Y. 2010-11, 2011-12, 2012-13 and 2013-14. Therefore, maintaining judicial discipline and respectfully following the decisions of Ld. CIT(A), the appeal on this ground is allowed.”

10. Thus, it is clear that the ld. CIT(A) has allowed the claim of the assessee by following the earlier order of the ld. CIT(A) for the Assessment Years 2010-11 to 2013-14. The Revenue has not brought any material or fact on record to show that the earlier years of the ld. CIT(A) either have been reversed or set aside by this Tribunal or any Higher Court. Accordingly, in the facts and circumstances of the case, we do not find any reason to interfere with the order of the ld. CIT(A). Hence, the same is upheld.

11. Ground no.6 is regarding disallowance made by the Assessing Officer u/s.40a(ia) of the Income Tax for want of TDS. The Assessing Officer has noted that the assessee has incurred expenditure on job work charges to the tune of Rs.12,21,68,693/- out of which, payment of Rs.80,850/- was made without deducting tax at source. Accordingly, the Assessing Officer has held that when job charges are liable for

TDS u/s.194C of the Act and assessee has failed to deduct the tax at source, then the said claim of the assessee is not allowable as per provision of Section 40a(ia). The assessee has challenged the action of the Assessing Officer before the Id. CIT(A) and contended that the amount of Rs.80850/- was not paid towards job charges but the same is paid towards the purchase of the garments from MASQUE. The Id. CIT(A) accepted the contention of the assessee and consequently deleted the disallowance made by the Assessing Officer by holding that the payment was made by the assessee for purchase of garments and hence no TDS is applicable on it.

12. Before us, the Id. DR has submitted that the Id. CIT(A) has accepted the plea of the assessee without verifying the fact that a particular expenditure was not incurred for job charges but for purchase of garments. The Assessing Officer has clearly stated in the assessment order that the assessee has made total payment of Rs.12,21,68,693/- and it is the case of the assessee who has claimed this expenditure under the head 'job work charges' therefore, the Assessing Officer were justified in disallowing the payment made by the assessee without deducting the TDS. She has relied upon the order of the Assessing Officer.

13. On the other hand, Id. AR of the assessee has submitted that in response to the query of the Assessing Officer, the assessee produced the details relating to the job charges along with reply dated 09.09.2016 and explained that out of this, total amount of Rs.12,21,68,693/-, the payment of

Rs.80850/- was made to MASQUE for purchase of garments. Therefore, the said payment is not liable for deduction of tax at source. He has also shown the invoice issued by the MASQUE for supply of garments. He has supported the impugned order of the Ld. CIT(A).

14. We have considered the rival submissions as well as relevant material on record. It appears that the entire expenditure has been shown by the assessee under the head 'job work charges' and therefore, the Assessing Officer asked the assessee to furnish the details of TDS in respect of job charges which were furnished by the assessee. The Assessing Officer noted that no TDS has been deducted on the payment of Rs.80,850/- to MASQUE. The Assessing Officer accordingly disallowed the said amount u/s.40a(ia) of the Act. The Assessing Officer treated the said payment as part of the job charges. However, the assessee has contended before the ld. CIT(A) that the said payment is not towards the job charges but it is for purchase of garments. The Ld. CIT(A) accepted this submission of the assessee and deleted the addition. Since, the fact whether the payment is made for purchase of garments or not, is neither verified by the Assessing Officer nor by the ld. CIT(A) and particularly when the assessee has shown the entire payment under the head 'job work charges' then even if the assessee has produced any invoice regarding the payment of Rs.80,850/- which reflects the purchase of garments, the same was not subjected to verification. Accordingly, in the facts and circumstances of the case, we

direct the Assessing Officer to verify the fact of purchase of the garments as shown in the invoice issued by MASQUE and then allow the claim.

15. In the result, the appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced in the open Court on 25th August, 2021.

Sd/-

[R.K. PANDA]

ACCOUNTANT MEMBER

DATED: **25th August, 2021**

Prabhat:

Sd/-

[VIJAY PAL RAO]

JUDICIAL MEMBER