

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

BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT)
AND
SHRI SAKTIJIT DEY (JUDICIAL MEMBER)

I.T.A. No.1138/Mum/2017 - Assessment Year 2011-12
I.T.A. No.5073/Mum/2019 - Assessment Year 2014-15

DCIT-2(1)(1), Mumbai	vs	M/s Bombay Stock Exchange Ltd 25 th Floor, Dalal Street, Fort, Mumbai-400 001 PAN : AACCB6672L
APPELLANT		RESPONDENT

I.T.A. No.4693/Mum/2019
(Assessment year : 2014-15)

M/s Bombay Stock Exchange Ltd Mumbai	vs	ACIT, Circle-2(1)(1), Mumbai
APPELLANT		RESPONDENT

Revenue by	Shri Tharien Oommen, DR
Respondent by	Shri Niraj Sheth, AR

Date of hearing	01-04-2021
Date of pronouncement	04-05-2021

ORDER

Per Saktijit Dey (JM):

Captioned appeals relate to the same assessee and arise out of two separate orders of learned Commissioner of Income Tax (Appeals), Mumbai. The

appeal for assessment year 2011-12 is by the revenue, whereas, there are cross appeals for assessment year 2014-15.

ITA No.1138/Mum/2017 – Assessment Year 2011-12 (Revenue’s appeal)

2. The only issue arising for consideration in this appeal relates to deletion of disallowance made under section 14A of the Income Tax Act, 1961 r.w.r. 8D.

3. Briefly the facts are, the assessee is a resident company registered under the Companies Act, 1956 as well as under the Securities Contract (Regulations) Act, 1962. The object of the assessee, as noted by the assessing officer, are as under:-

"a) To support and protect the public interest the character and the status of the brokers and dealers and to further the interests both of brokers and of the public interested in securities, to assist, regulate and control in the public interest for dealings in securities, to ensure fair dealing, to maintain high standard of commercial honour and integrity, and to promote and inculcate honourable practices and just and equitable principles of trade and business, to discourage and to suppress malpractices, and to settle disputes and to decide all questions of usage, custom or courtesy in the conduct of trade and business,

b) To promote industrial development in the country through efficient resource mobilization by way of investment in corporate securities."

4. For the assessment year under dispute, assessee had filed its return of income in regular course under section 139(1) of the Act. In course of assessment proceedings, the assessing officer noticed that assessee had earned substantial exempt income by way of dividend as well as tax free interest on bonds. Whereas, the assessee disallowed an amount of Rs.43,88,000/- comprising of direct expenses of Rs.21,52,635/- under rule 8D(2)(i) and indirect expenses of Rs.22,34,720/- under rule 8D(2)(iii). On perusing the disallowance computed by the assessee, the assessing officer was of the view that the same is not in

accordance with rule 8D(2) r.w.s. 14A of the Act. Therefore, rejecting the computation of the assessee, the assessing officer proceeded to compute disallowance independently aggregating to Rs.9,58,28,870/-. The assessee, having suo motu disallowed an amount of Rs.43,80,000/-, the assessing officer made a net disallowance of Rs.9,14,40,870/-. Assessee contested the above disallowance before learned Commissioner of Income Tax (Appeals). After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner of Income Tax (Appeals) found that the assessing officer has accepted the disallowance of direct expenses made by the assessee under rule 8D(2)(i). Finally, he found, while deciding the issue in assessee's own case for Assessment Years 2007-08, 2008-09, 2009-10, the Tribunal had not only observed that the assessing officer has not recorded proper satisfaction regarding the disallowance made by the assessee, but also observed that the suo motu disallowance made by the assessee is correct. Thus, following the decision of the Tribunal in the preceding assessment years, learned Commissioner of Income Tax (Appeals) directed the assessing officer to follow the decision of the Tribunal, unless, he brings materials on record to substantiate the disallowance made by him.

4. At the outset, Shri Niraj Sheth, the learned counsel appearing for the assessee submitted, the issue is squarely covered by the decisions of the Tribunal and Hon'ble jurisdictional High Court in assessee's own case in earlier assessment years. In support, he drew our attention to the orders passed by the Tribunal for Assessment Years 2007-08 to 2009-10, 2012-13 and 2013-14. He also drew our attention to the orders passed by the Hon'ble jurisdictional High Court in

Assessment Years 2007-08, 2008-09 & 2009-10 upholding the decisions of the Tribunal.

5. The learned Departmental Representative, though, fairly submitted that the issue is covered by the decisions of the Tribunal and Hon'ble jurisdictional High Court in preceding assessment years; however, he relied upon the observations of the assessing officer.

6. We have considered rival submissions and perused the materials on record. Undisputedly, from Assessment Years 2007-08 onwards the assessee has been following the same methodology for computing disallowance under section 14A the Act. As could be seen from the facts on record, out of the total expenses incurred the assessee allocates salary paid to three employees in charge of treasury department towards direct expenses under rule 8D(2)(i). As regards indirect expenses under rule 8D(2)(iii), the assessee allocates expenditure on the basis of the area occupied by the treasury division. The disallowance computed by the assessee under section 14A r.w.r. 8D by following the same methodology has been accepted not only by the Tribunal, but, by the Hon'ble jurisdictional High Court in the preceding assessment years. This is evident from the orders passed by the Tribunal in Assessment Years 2007-08, 2008-09, 2009-10 in ITA Nos 895/Mum/2010, 4408/Mum/2012 and 2836/Mum/2013. The Tribunal has expressed identical view while deciding assessee's appeal for Assessment Year 2012-13 vide order dated 21-08-2019 in ITA Nos 6224/Mum/2017 &Ors and for Assessment Year 2013-14 in ITA No.6504/Mum/2017 dated 28-01-2019. The Hon'ble jurisdictional High Court has also upheld the order passed by the Tribunal in Assessment Years 2007-08 to 2009-10. This being the uncontroverted factual position, respectfully following the decisions of the co-ordinate Bench and

Hon'ble jurisdictional High Court in assessee's own case for preceding assessment years, we uphold the decision of Learned Commissioner of Income tax (Appeals) on the issue. Ground raised is dismissed.

7. In the result, appeal is dismissed.

ITA No.5073/Mum/2019, Assessment Year 2014-15 (Revenue's appeal)

8. The only issue arising for consideration in this appeal is, deletion of disallowance made under section 14A r.w.r. 8D.

9. Facts relating to issue in dispute, except variation in figures, are identical to assessment year 2011-12 decided by us in the earlier part of the order. Therefore, our decision in ITA No.1138/Mum/2007 would apply mutatis mutandis to the present appeal also. Accordingly, we uphold the decision of learned Commissioner of Income Tax (Appeals) while dismissing the ground raised.

10. In the result, appeal is dismissed.

ITA No.4693/Mum/2019, Assessment Year 2014-15 (Assessee's Appeal)

11. The only effective ground raised by the assessee reads as under:-

1) The learned Commissioner of Income-tax (Appeals) erred in confirming the disallowance of depreciation of Rs. 1,14,26,646/- on assets taken on finance lease from Hewlett Packard Financial Services Pvt. Ltd. (HPFS).

a) The learned Commissioner of Income-tax (Appeals) ["the CIT(A)"] erred in confirming the action of the Assessing Officer who had disallowed the depreciation of Rs. 96,00,000/- & Rs. 18,26,646/- on the servers purchased in Assessment Years 2011-12 & 2014-15 respectively from HPFS under Finance Lease Scheme. The learned Commissioner of Income-tax (Appeals) failed to appreciate the fact that since the appellant had purchased the assets under Finance Lease Scheme, therefore are the owner of the assets. Your appellant had also paid insurance premium as the owner of the assets and therefore had rightly claimed depreciation of Rs. 1,14,26,646/- (Rs. 96,00,000/- + Rs. 18,26,646/-) u/s.32 on the said assets. The Assessing Officer therefore be directed to allow the same.

b) Without prejudice to the above, the Commissioner of Income-tax (Appeals) failed to consider the alternate ground of allowing the amount paid during the year to HPFS of Rs.48,58,108/- (Rs. 74,59,289/- less interest Rs. 26,01,181/-) as lease rent as a revenue expenditure on which

the appellant had also deducted tax at source. The Assessing Officer therefore be directed to allow the same.”

12. Briefly the facts are, in course of assessment proceedings, the assessing officer noticed that the assessee had claimed depreciation of Rs.1,14,26,646/- on a server taken on financial lease. Noticing that similar claim made by the assessee in Assessment Year 2012-13 was disallowed, the assessing officer called upon the assessee to explain why similar disallowance should not be made. Though, the assessee objected to the proposed disallowance; however, the assessing officer, relying upon the decision of Hon'ble Supreme Court in the case of ICDS Ltd, held that the assessee not being the owner of the asset, depreciation cannot be allowed. Though, the assessee contested the aforesaid disallowance before learned Commissioner of Income Tax (Appeals), however, it was unsuccessful.

13. The learned counsel for the assessee submitted, as far as the depreciation claimed on old server costing Rs.25 crores taken on financial lease, the asset had entered into the relevant block of assets in Assessment Year 2011-12. He submitted, as an owner of the asset, assessee had incurred the entire cost and put the asset to use. The assessee had also insured the asset. Therefore, the assessee is eligible to claim depreciation on the asset. Further, he submitted, the assessing officer himself has allowed depreciation in Assessment Years 2013-14, 2016-17 and 2017-18. Further, he submitted, though in Assessment Year 2015-16 the assessing officer did not allow depreciation, but, learned Commissioner of Income Tax (Appeals) has allowed assessee's claim.

14. As regards depreciation on server, storage and accessories procured during the year through an agreement with Hewlett Packard Services Ltd, the learned Counsel submitted, the assessee had incurred the cost and had also paid the

insurance premium on the asset. Therefore, assessee is the owner of the asset and eligible to claim depreciation. Further, he submitted, the interest paid on lease has been allowed as business expenditure by the assessing officer. Further, he submitted though in Assessment Year 2015-16 assessing officer did not allow depreciation on this asset, but earned Commissioner of Income Tax (Appeals) allowed it. Whereas, the assessing officer himself has allowed depreciation in Assessment Years 2016-17 and 2017-18.

15. The learned Departmental Representative strongly relied upon the observations of the assessing officer and earned Commissioner of Income Tax (Appeals).

16. We have considered rival submissions and perused materials on record. As far as the depreciation claimed on the old server, it has entered the block of assets in Assessment Year 2011-12. It is observed, the Tribunal while deciding identical issue in assessee's own case in Assessment Year 2012-13 vide ITA No.6224/Mum/2017 & Ors dated 21-08-2019, has allowed assessee's claim of depreciation holding as under:-

"8. We noted that the assessee company has installed servers at a cost of ₹ 25 crores from HPFS during the financial year 2010-11 under finance lease scheme. The assessee as per AS-19 capitalized the said amount in the books of account. The assessee claimed depreciation on the cost of acquisition in earlier years which were allowed by the Assessing Officer. It was claimed that the assessee company is the owner of the server and they have to take out insurance policy and paid the insurance premium to cover various risks attach to it and assessee company is the only user of the server. In term of the above facts, the assessee claim depreciation on the WDV at the rate applicable to fixed assets. It was claimed that the assessee company has not claimed any amount of revenue expenditure except interest paid to HPFS amounting to ₹ 1,03,70,798/- and this was claimed under the head of finance cost. We noted that the AO has disallowed depreciation of ₹ 6 crores on the ground that HPFS has claimed depreciation on the said asset not only in this year but in subsequent years. The assessee before us explained that the Income Tax Department for AY 2009-10 has already disallowed the claim of depreciation in the hands of the HPFS. We noted that in the very first year i.e. AY 2011-12, the depreciation has already allowed the claim of depreciation. We noted that in the income tax code, there is a provision/ concept of block of asset and once any asset

enters into block asset and claim of depreciation in very first year is allowed, in subsequent year the depreciation cannot be disallowed in case the first year is not disturbed. We noted that even in subsequent years, the Revenue is allowing the claim of the assessee as noted in above chart. Hence, we allow the claim of depreciation on the issue of consistency. This issue of assessee's appeal is allowed."

17. Pertinently, learned Commissioner of Income Tax (Appeals), while upholding the disallowance, has relied upon the order passed by him in assessee's own case in Assessment Year 2012-13, which now stands reversed by the Tribunal. It is further observed from the material on record, assessee's claim of depreciation in respect of this particular asset has been allowed by learned Commissioner of Income Tax (Appeals) in Assessment Year 2015-16 and by the assessing officer himself in Assessment Years 2016-17 and 2017-18. Keeping in view the decision of the Tribunal in assessee's own case in Assessment Year 2012-13, as referred to above, and also the fact that the claim of depreciation has been allowed in subsequent assessment years, we direct the assessing officer to allow assessee's claim of depreciation on the old asset (server), as claimed.

18. As regards the claim of depreciation on the new server, storage and accessories procured during the year through lease agreement, it is a fact on record that the assessee has incurred the cost of such asset by making payment through instalments. The assessee is also paying interest on lease. The assessing officer, though, has disallowed the depreciation; however, he has allowed the interest paid on lease as business expenditure. On perusal of the material on record, we do not find any perceptible difference between the ownership status of the server purchased earlier and the server purchased during the year. In other words, acquisition of both the assets are more or less on a similar terms and conditions and would stand on the same footing. Moreover, as we find, claim of

depreciation on the newly acquired asset was allowed by learned Commissioner of Income Tax (Appeals) in Assessment Year 2015-16 and by the assessing officer himself in Assessment Years 2016-17 and 2017-18. This being the factual position, in our considered view, assessee is eligible to claim depreciation on the newly acquired server, storage and accessories. Therefore, we direct the assessing officer to allow assessee's claim of depreciation as per law. We may further observe, on careful reading of the Hon'ble Apex Court's decision relied upon by the assessing officer, we are of the view that the ratio laid down therein would not apply to the facts of the present appeal. More so, when the assessing officer himself has allowed depreciation in the subsequent assessment years.

19. In view of our decision above, the alternative contention made by the assessee regarding allowance of lease rental as deduction, having become redundant, is not deliberated upon.

20. In the result, appeal is allowed.

21. To sum up, revenue's appeals are dismissed and assessee's appeal is allowed.

Order pronounced on 04/05/2021.

Sd/-

sd/-

PRAMOD KUMAR	SAKTIJIT DEY
VICE PRESIDENT	JUDICIAL MEMBER

Mumbai, Dt : 04/05/2021

Pavanan

Copy to :

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

By Order

Asstt. Registrar, ITAT, Mumbai