

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.3318/Del/2018  
Asstt. Year: 2014-15

DCIT, Circle-27(1) New Delhi.	Vs.	Usha International Ltd. Flat No. 1005, Surya Kiran Building, New Delhi – 110 001 PAN AAAC0066A
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by:	Shri Rajesh Kumar, Sr. DR
Assessee by :	Shri V.P. Gupta, Advocate Shri Anunav Kumar, Advocate
Date of Hearing	18/08/2021
Date of pronouncement	22/09/2021

**ORDER**

**PER AMIT SHUKLA, J.M.**

The aforesaid appeal has been filed by the revenue against impugned order dated 12.01.2018, passed by Ld. CIT(Appeals)-9, New Delhi for the quantum of assessment passed u/s 143(3) of the Act for the assessment year 2014-15. In the grounds of appeal the following grounds have been raised :-

- i) *"On the facts and circumstances of the case, the Ld. CIT(A) has erred in disallowing of depreciation of Rs.4,34,13,420/-."*

- ii) *"On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.55,53,884/- u/s 14A read with rule 8D of the Act."*
- iii) *"On the facts and circumstances of the case, the Ld. CIT(A) has erred in disallowing the addition of Rs. 6,94,236/- on account of club services and facilities."*
- iv) *"On the facts and circumstances of the case, the Ld. CIT(A) has erred in disallowing the addition of Rs. 16,717/- u/s 36(l)(va) on account of late payment of employees' provident fund."*

2. At the outset Ld. Counsel for the assessee submitted that all the issues involved are squarely covered by the decision of Tribunal in assessee's own case for the assessment year 2011-12, wherein similar finding given by the AO has been dealt with and decided in favour of the assessee. Even Ld. CIT (A) has followed his predecessor's order for the assessment year 2011-12 and 2012-13.

3. Ld. DR admitted that all the grounds raised by the revenue are covered by the decision of Tribunal. However, he strongly relied upon the order of the AO.

4. After considering the aforesaid submissions and on perusal of the findings of the impugned order as well as Tribunal's orders for the earlier years we find that in so far as ground No. 1 is concerned, i.e., disallowance of depreciation, we find that AO has noted that assessee in AY 2012-13 had capitalised an amount of Rs. 103,63,25,665/- towards acquisition of the intellectual property asset and claimed depreciation @ 25% treating it as intangible capital asset. AO had observed that during the assessment for AY 2012-13, it was found that the assessee has made payments to the trusts MF is more than 42% of what was paid to CT, it was determined that the payment of Rs.30,87,17,650/- made by the assessee to the Mansarover Trust (MT)

cannot be termed as wholly and exclusively incurred for business purposes. The depreciation claimed by the assessee @ 25% on the total amount spent on the MT (i.e 7,71,79,413/-) was disallowed and added to the returned income of the assessee.

5. Assessing Officer noted that during the assessment proceedings for AY 2013-14 also, the assessee has claimed depreciation on the intellectual property asset and accordingly disallowance of Rs.5,78,84,559/- was made. Considering the facts and circumstances and following the assessment order for AY 2013-14, a 25% depreciation on Rs.17,36,35,678/- (i.e difference of Rs.23,15,38,237/- (-) Rs.5,78,84,559/-) is disallowed. Hence, the disallowance of Rs.4,34,13,420/- has been made and returned income of the assessee.

6. In the first appeal, Ld. CIT(A) had followed the order for assessment year 2012-13, wherein this issue was examined in detail which is as under :-

*'After carefully considering all the above facts and circumstances, it is held that the disallowance of depreciation on acquiring proprietary commercial information from MT, while allowing the claim of depreciation on accruing the trade marks in question from CIT, is without logic. The said intangible assets were acquired by the appellant from MT under a tripartite comprise agreement. The consideration of Rs. 17.32 crores was paid to MT as part of the overall settlement consideration of Rs. 103.63 crores. There is no basis for holding that the payment was not incurred wholly and exclusively for the purpose of business of the appellant, as it acquired the rights which enabled it to effectively carry on its business, and in fact without this payment, the appellant would not have been able to carry on the business of manufacture and sale of home appliances under the Usha brand name. Accordingly*

*the AO is directed to delete the disallowance of depreciation of Rs. 7,71,79,413/-.”*

7. It has been informed that the revenue did not file any appeal against the order of Ld. CIT (A) in the first year i.e., in AY 2012-13. However, looking to the fact that since in this year the assessee is allowed for depreciation on WDV brought over, then an earlier position has been accepted and attained finality, then depreciation cannot be disallowed in the subsequent year. Once the depreciation has been allowed in the first year of capitalisation of expenditure, thereafter there is no basis for disallowing the consequential benefit on WDV. Accordingly, this ground raised by the revenue is dismissed.

8. So far as disallowance of 14A of Rs. 55,53,844/-, we find that the AO has made disallowance of Rs. 62,65,891/- made by the AO without recording any satisfaction as to what was the exempt income and the computation of disallowance made by the assessee at Rs. 3,44,109/- is not correct. Ld. CIT(A) had restricted the disallowance to the amount of exempt income following the decision of earlier years and the judgment of Hon'ble Delhi High Court. The relevant observation and the finding of the Ld. CIT(A) in this regard reads as under :-

*“5.2 During the course of assessment proceedings the appellant company vide its letter dated 22.11.2016, a copy of which has been given in the Paper Book had submitted before the Assessing Officer that no disallowance in the facts and circumstances of the case of the appellant company is called for on account of interest as well as on account of administrative expenses. The company, however, has made addition of Rs. 3,44,109/- with a view to avoid any controversy in this regard and the amount of disallowance as the amount of disallowance is representing salary of one executive who is attending the activities in relation to*

*investments apart from other office activities. The company had also submitted that during the year dividend income was only of Rs. 7,12,047/-, which was claimed as exempt in computation of taxable income. The Assessing Officer had not accepted the contention of the appellant company and vide the order of assessment has made further disallowance of Rs. 62,65,891/-, which has been calculated as per Rule 8D of Income Tax Rules without much discussion in the order. During the course of hearing of appeal the representative of the appellant company has relied upon the contentions raised before the Assessing Officer. He has, however, vide the Chart submitted, has pointed out that in earlier years CIT(A) in appeals of the company for A.Yrs. 2011-12 and 2012-13 had restricted the disallowance to the extent of dividend income.*

*5.3 In view of decision of my predecessors in the case of the appellant company in appeals for AYs 2011-12 and 2012-13 and following the judgments of Hon'ble Delhi High Court in the cases of Joint Investment Pvt. Ltd. v. CIT (2015) 372 ITR 694 (Del.), CIT v. Holcim India P. Ltd., (2014) 272 CTR (Del.) 282 and Cheminvest Ltd. v. CIT (2015) 378 ITR 33 (Del.) the disallowance under section 14A read with Rule 8D of Income Tax Rules is restricted to Rs. 7,12,047/- i.e. the amount of dividend income. Since the assessee company has already made disallowance of Rs. 3,44,109/-. Further disallowance on this basis is to be made of Rs. 3,67,938/- as against disallowance of Rs, 62,65,891/- made by the Assessing Officer. Hence the assessee gets relief of Rs. 58,97,953/- (Rs. 62,65,891-Rs. 3,44,109/-). Thus. This ground of appeal is partly allowed.”*

9. Since the aforesaid decision is based on the principle laid down by the Hon'ble Jurisdictional High Court, therefore, we do not find any infirmity in the finding of the Ld. CIT(A) and the same is confirmed.

10. As regards disallowance of Rs. 6,94,236/- on account of club expenditure, we find that AO has disallowed the club services and these expenses holding that it is not related to the business activities of the assessee. Ld. CIT (A) relied upon the judgment of Hon'ble Supreme Court in the case of CIT vs. United Glass Mfg. Co. Ltd. and the earlier year Ld. CIT(A) order has deleted the said disallowance. We find that this issue is decided in favour of the assessee company by the order of the Tribunal in the appeal for the assessment year 2011-12. Accordingly this ground raised by the revenue is dismissed.

11. Lastly, on account of disallowance of Rs. 16,717/- on account of late payment of ESI and PF, we find that this issue is also covered in favour of the assessee company by the order of the Tribunal in the appeal for the assessment year 2011-12 vide para 13 employees contribution towards provident fund has been paid by the company during the year and Ld. CIT(A) has given following findings in this regard :-

*"5.5. The appellant submits that the aforesaid amount represents employees contribution to provident fund. Same has been paid by the company during the year. He has also pointed out that Assessing Officer while giving details of amount in the assessment order has wrongly mentioned year 2016 against 2 items instead of the year 2013. In this connection, he has referred to details given in Tax Audit Report on page 73 of the Paper Book.*

*5.6 I have perused the Tax Audit Report for the AY 2014-15 and find that the payments have been made on or before the due date of filing of return applicable in the case of the appellant. Therefore, the*

*impugned addition made in the ground of appeal (Rs. 16717/-) deserves to be deleted in view of various decisions of the Delhi High Court including the decision in the case of CIT v. AIMIL Ltd. (2010) 311 ITR 508 (Del.). Accordingly, disallowance made by the Assessing Officer of Rs. 16,717/- is directed to be deleted.”*

12. Once the payments have been made on or due date of return of income then we do not find any infirmity in the aforesaid finding of the Ld. CIT(A). Accordingly this ground of the revenue is dismissed.

13. In the result the appeal of the revenue is dismissed.

Order pronounced in the Open Court on 22<sup>nd</sup> September, 2021.

**sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

**sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Dated: 22/09/2021

**Veena**

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi