

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 3356/DEL/2017 (A.Y 2012-13)

(THROUGH VIDEO CONFERENCING)

TV Today Network Ltd. F-26, First Floor, Connaught Circus, New Delhi AABCT0424B (APPELLANT)	Vs	Addl. CIT(A) Special Range-9 New Delhi (RESPONDENT)
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Appellant by	Sh. Salil Agarwal, Sr., Adv, Sh. Shailesh Gupta, Adv & Sh. M. Aggarwal, Adv
Respondent by	Sh. Prakash Dubey, Sr. DR

Date of Hearing	16.09.2021
Date of Pronouncement	05.10.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 08/02/2017 passed by CIT (A)-39, New Delhi for assessment year 2012-13.

2. The grounds of appeal are as under:

“1. That the Learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining a disallowance of a sum of Rs. 1, 03, 15, 922/- under section 40(a)(ia) of the Act on account of non deduction of TDS on interest payable to Prasar Bharti.

1.1 That in doing so, the learned Commissioner of Income Tax (Appeals) has overlooked the basic fact that as per the provisions of section 196 of the

Act, no tax is required to be deducted on the payments being made to a "Corporation" and M/s Prasar Bharti is a corporation created under a statute enacted by Central Government and as such, the said disallowance so made is wholly unwarranted in law and ought to be deleted.

1.2 That further, the Learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that exactly an identical issue has been decided in favour of the assessee by learned CIT (A) for the Assessment Year 2008 - 09 and as such, the same should have been allowed following the principles of consistency.

2. That the Learned Commissioner of Income Tax (Appeals) erred in law and on facts in sustaining a disallowance of a sum of Rs. 54, 38, 500/- towards leave encashment in view of provisions of section 43B (f) of the IT Act 1961;

2.1 That in doing so, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that the provision for leave encashment was based upon the actuarial valuation which is again based on scientific calculations and is not based on any estimate basis and as such, the same should have been allowed.

2.2 That the learned Commissioner of Income Tax (Appeals) has further erred in recording adverse findings which are perverse and have been recorded without considering the factual substratum of the case and hence such findings so recorded are vitiated and deserves to be deleted.

2.3 That further, the issue involved here is a debatable issue, as various courts after considering the judgment of Hon'ble Apex Court relied on by learned AO and CIT (A) have taken views in favor of assessee's and as such, the said disallowance should have been deleted, considering the judgment favorable to assessee.

3. That the learned Commissioner of Income Tax (Appeals) has further erred in law and on facts by only giving relief of a sum of Rs. 9, 90, 264/- under section 14A read with Rule 8D of the Act, as was the disallowance made by AO over and above the disallowance so made by assessee of a sum of Rs. 29, 04, 491/- in its return of income. The learned CIT (A) ought to have deleted

the entire disallowance including the disallowance so made by assessee - appellant suo moto, as the judicial pronouncements of jurisdictional high court which came subsequent to the filing of Return of Income by assessee - appellant have laid down the law that "if no exempt income is earned by assessee, then there is no need to make any disallowance under section 14A of the Act", thus, entire disallowance (even the disallowance made by assessee suo moto) made under section 14A read with section Rule 8D should have been deleted, as such.

3. During the year under consideration, the assessee company is engaged in the business of broadcasting, telecasting, relaying, transmission or distributing audio and video or other programmes of software for television, radio and other media. The assessee company e-filed its return of income declaring income of Rs. 25,54,27,410/- on 29/09/2012 for the Assessment Year 2012-13. The Assessing Officer made addition of Rs. 1,03,15,922/- in respect of provision for interest payable to Prasar Bharti, addition of Rs. 3,34,81,847/- relating to consumption debtors, addition of Rs. 54,38,500/- relating to unpaid leave encashment as well as made disallowance of Rs. 9,90,264/- u/s 14A read with Rule 8D. The Assessing Officer also made disallowance of Rs 43,14,198/- in respect of late deposit of employee contribution to provident fund.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT (A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that as regards Ground No. 1, 1.1 and 1.2 is concerned. The same is covered against the assessee. With respect to Ground nos. 2 to 2.3, which deals with the disallowance under section 43B(f) of a sum of Rs. 54, 38, 500/-, the Ld. AR the aforesaid claim on "accrual basis" was made by the assessee in its return of income by following the judgment of Hon'ble High Court of Calcutta in case of Exide Industries vs. UOI reported in

292 ITR 470. However, the said judgment has been reversed by Hon'ble Apex Court vide judgment dated 24.04.2020 in the case of UOI vs Exide Industries Ltd. 116 taxmann.com 378, wherein, it has been held that the claim with regards to "leave encashment" has to be allowed on cash basis i.e. actual payment basis and not on accrual basis. Thus, in principal, the issue at hand has been decided against the assessee by Hon'ble Apex Court, however, at this juncture, the assessee seeks to place reliance on the interim order so passed by Hon'ble Apex Court, wherein, it has been held as follows:

"We further make it clear that the assessee would, during the pendency of this Civil Appeal, pay tax if section 43B(f) is on the statute book but as the same time it would be entitles to make a claim in its returns "

Thus, in view of the above, the Ld. AR submitted that the assessee had made a claim on accrual basis as per the aforesaid order passed by the Hon'ble Apex Court, and thus, the deduction since has been denied on accrual basis as per the judgment of Hon'ble Apex Court supra, then the same needs to be allowed on actual payment basis. The Ld. AR further submitted that the payments with regards to the leave encashment have been made in subsequent assessment year i.e. 2013-14 and the Ld. AR prayed that a suitable direction may be given by the Bench for the Assessing Officer to verify and allow the deduction u/s 43B on actual payment basis. With respect to Ground No. 3 which deals with the disallowance under section 14A of the Act, the Ld. AR submitted that the assessee has erroneously made a disallowance of a sum of Rs. 29,04,491/- under section 14A of the Act, whereas, the exempt income earned during the year was only Rs. 2,34,585/-, which is evident from computation of income at page 2 and schedule 24 to the balance sheet at pages 4 of the paper book. The Ld AR submitted that subsequent to filing of return of income, the judgment of Hon'ble High Court of Delhi in case of Joint Investment v& CIT reported in 372 ITR 694 and PC1T vs. Caraf Builders & Construction (R) Ltd (2019)(101 taxmann.com 167 were rendered, wherein, it has been held that disallowance under section 14A cannot exceed the exempt income. In such a scenario and in view of the subsequent judgments of Hon'ble jurisdictional High Court, the Ld.

AR prayed that disallowance under Section 14A cannot exceed the exempt income and as such, disallowance so made by assessee and also sustained by the CIT (A) cannot exceed the exempt income. Without prejudice to the above, the Ld. AR further submitted that, there was no need to make any disallowance under Section 14A read with Rule 8D(2)(ii), as the assessee had sufficient surplus funds for making investments in the preceding assessment years, since no investment was made in the impugned assessment year, rather the investments with regards to mutual funds were liquidated during the impugned assessment year. The Ld. AR further relied upon the judgment of South Bank Ltd. vs. UOI (SC) reported in 130 taxmann.com 178 on the aforesaid proposition. Thus, the Ld. AR prayed that disallowance so made by assessee suo moto under Rule 8D(2)(ii) be deleted. The Ld. AR further submitted that with regard to disallowance under Rule 8D(2)(iii), only those investments could have been considered on which exempt income was earned by assessee. Since dividend was only earned on mutual funds, thus, average of (Rs. 1, 79, 67, 948 + Nil/2)* 0.5% would work out to be Rs. 44, 920/-. Thus, in any case disallowance under Section 14A could not have been made beyond Rs.44,920/-.

6. The Ld. DR submitted that as regards Ground No. 2, the same is against the assessee. As regards Ground No. 3, the Ld. DR submitted that the Assessing Officer has rightly made disallowance u/s 14A read with Rule 8D. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. As regards Ground No. 1, 1.1 & 1.2, the same is covered against the assessee, hence, dismissed. As regards Ground No.2, 2.1, 2.2 & 2.3 relating to disallowance towards leave encashment in lieu of provisions of Section 43B (f) of the Income Tax Act, 1961, the Hon'ble Apex Court in case of Exide Industries (Supra) held that the claim with regard to leave encashment has to be allowed on cash basis i.e. actual payment basis and not on accrual basis. It

is pertinent to note that the payments with regards to the leave encashment have been made in subsequent assessment year i.e. 2013-14 and thus, we direct the Assessing Officer to verify and allow the deduction u/s 43B on actual payment basis as held in the decision of the Hon'ble Apex Court. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Hence, Ground No. 2, 2.1 2.2 & 2.3 are partly allowed.

8. As regards Ground No. 3, it is a matter of fact that the assessee has earned only Rs. 2,34,585/- as exempt income. The assessee also disallowed a sum of Rs. 29,04,491/- u/s 14A. The Ld. AR at the time of hearing contended that the said disallowance was erroneously made by the assessee. This issue needs to be verified. Therefore, we are remanding back this issue to the file of the Assessing Officer and decide the same afresh as per the records available. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Hence, Ground No. 3 is partly allowed for statistical purpose.

9. In result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on this 05th Day of October, 2021

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 05/10/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

