

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. K. N. CHARY, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.7184/Del/2018
Assessment Year: 2015-16

DCIT Circle – 27 (1) New Delhi	Vs	Usha International Ltd. Flat No.1005, Surya Kiran Building, 19-K. G. Marg, New Delhi-110001 PAN No.AAACT0066A
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. N. K. Bansal, Sr. DR.
Respondent by	Sh. V. P. Gupta, Advocate Sh. Anunav Kumar, Advocate

Date of hearing:	25/10/2021
Date of Pronouncement:	25/10/2021

ORDER

PER N. K. BILLAIYA, AM:

This appeal filed by the revenue is preferred against the order of the CIT(A)-9, New Delhi dated 24.08.2018 for A.Y. 2015-16.

2. The grievance of the revenue read as under :-

1. "On the facts and circumstances of the case Ld. CIT (A) has erred in restricting the disallowance u/s 14A read with rule 8D of the Act to the extent of Rs. 10,00,372/- and disregarding the disallowance of Rs. 96,40,000/- determined u/s 14A of the Act."
2. " On the facts and circumstances of the case Ld. CIT(A) has erred in deleting the disallowance of Rs. 47,037/- u/s 36(1)(Va) of the Act.
3. " On the facts and circumstances of the case Ld. CIT(A) has erred in deleting the disallowance of Rs. 6,85,136/- made on account of club services and facilities.
4. " On the facts and circumstances of the case Ld. CIT(A) has erred in deleting the disallowance of depreciation of Rs. 3,18,05,564/- claimed @ 25% on opening WDV of intellectual property rights.
5. "The appellant craves, leave or reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.

3. At the very outset the counsel for the assessee drew our attention to the decision of this Tribunal in assessee's own case in A.Y.2014-15 and pointed out that all the grounds of the present appeal have been decided by this Tribunal in earlier assessment year in favour of the assessee and against the revenue. The Counsel supplied the copy of the decision of this Tribunal.

4. Per contra the DR strongly supported the findings of the AO but could not bring any distinguish decision in favour of the revenue.

5. We have given a thoughtful consideration to the submissions made by the Counsel. We find force in the contention of the Counsel. All the grounds in the present appeal has been considered and decided by this Tribunal in ITA No.3318/Del/2018 order dated 22.09.2021.

6. Ground No.1 relates to the deletion of the disallowance made u/s. 14 A r.w.r 8D of the Act.

7. This issue was considered by the Tribunal (supra). The relevant findings read as under :-

“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 infirmity in the finding of the Ld.CIT(A) and the same is confirmed.”

8. Respectfully following the aforementioned findings ground No.1 is dismissed.

9. Ground No.2 relates to the deletion of the disallowance u/s.36 (1) (Va). This issue was considered by the Tribunal (supra) at para-11 of this order the relevant findings read as under :-

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.

10. Respectfully following the aforementioned findings, the findings of the CIT(A) are upheld.

11. Ground No.3 relates to the deletion of the disallowance made on account of club services and facilities. This issue was considered by the Tribunal (supra) at para-10 of its order. The relevant finding read as under :-

“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.”

12. Respectfully following the findings of the Tribunal ground No.3 is dismissed.

13. Ground No.4 relates to the deletion of disallowance of depreciation claimed @ 25% on opening WDV of intellectual property rights.

14. This issue was considered by the Tribunal (supra) at para-4 of its order. The relevant findings read as under :-

“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 Trusb(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.”

15. Respectfully following the decision of this Tribunal in A.y.2014-15 (supra) ground No. 4 is dismissed.

16. In the result, the appeal filed by the revenue is dismissed.

17. Decision announced in the open court in the presence of both representatives on 25.10.2021.

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:-25.10.2021

Copy forwarded to:

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

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	25.10.2021
Date on which the typed draft is placed before the dictating Member	25.10.2021
Date on which the typed draft is placed before the Other member	25.10.2021
Date on which the approved draft comes to the Sr.PS/PS	25.10.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	25.10.2021
Date on which the fair order comes back to the Sr. PS/ PS	25.10.2021
Date on which the final order is uploaded on the website of ITAT	25.10.2021
Date on which the file goes to the Bench Clerk	25.10.2021
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	