

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

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| ITA No.1406/Bang/2016    |
| Assessment Year: 2012-13 |

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| ACIT Circle-4(1)(1)<br>Bangalore | <b>Vs.</b> | M/s. Jupiter Capital Pvt. Ltd.<br>#54, Richmond Road<br>Bangalore 560 025<br><br><b>PAN NO : AABCJ5666R</b> |
| <b>APPELLANT</b>                 |            | <b>RESPONDENT</b>   |

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|-------------------------------------|
| ITA Nos.800 & 801/Bang/2018         |
| Assessment Years: 2013-14 & 2014-15 |

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|---|------------|---|
| JCIT (OSD)<br>Circle-4(1)(1)<br>Bangalore | <b>Vs.</b> | M/s. Jupiter Capital Pvt. Ltd.<br>#54, Richmond Road<br>Bangalore 560 025 |
| <b>APPELLANT</b>                          |            | <b>RESPONDENT</b>   |

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|----------------------|---|--------------------------------|
| <b>Appellant by</b>  | : | Dr. Manjunath Karkihalli, D.R. |
| <b>Respondent by</b> | : | N O N E                        |

|                       |   |            |
|-----------------------|---|------------|
| Date of Hearing       | : | 01.11.2021 |
| Date of Pronouncement | : | 10.11.2021 |

**ORDER**

**PERB.R. BASKARAN, ACCOUNTANT MEMBER:**

All the three appeals filed by the revenue are directed against the orders passed by Ld. CIT(A)-4, Bengaluru and they relate to the assessment years 2012-13 to 2014-15.

2. None appeared on behalf of the assessee even though the notice of hearing was sent to the assessee by registered post by the registry. Further, the counsel Shri Parathasarathy has withdrawn his vakalath. Hence, we proceed to dispose of the appeal ex-parte, without presence of the assessee.

3. The assessee is a Non-banking financial company, i.e., an investment company.

4. We shall first take up the appeal filed by the revenue for assessment year 2012-13. The grounds of appeal urged by the revenue give rise to the following issues:-

- a) Disallowance made u/s 14A of the Income-tax Act,1961 ['the Act' for short].
- b) Disallowance of Aircraft expenses.
- c) Disallowance made u/s 36(1)(iii) of the Act.
- d) Disallowance made u/s 40A(2) of the Act.
- e) Disallowance of foreign exchange loss.

5. The first issue relates to disallowance made u/s 14A of the Act. During the year under consideration, the assessee had earned dividend income of Rs.92.37 lakhs and claimed the same as exempt. The assessee made disallowance of Rs.20.49 lakhs u/s 14A of the Act. When questioned, the assessee furnished a working in support of the disallowance made by it. However, the A.O. took the view that the assessee should have made disallowance as per Rule 8D of I.T. Rules. He accordingly, computed disallowance at Rs.5,43,39,968/-, which consisted of interest disallowance of Rs.2.42 crores under Rule 8D(2)(ii) and expenditure disallowance of Rs.3.01 crores under Rule 8D(2)(iii) of the I.T. Rules.

6. The Ld. CIT(A) noticed that the assessee held interest free funds in excess of the value of investments. Accordingly, he deleted interest disallowance of Rs.2.42 crores. With regard to the expenditure disallowance, the Ld. CIT(A) held that a portion of expenditure is required to be disallowed. However, following the decision rendered by the Bengaluru bench of Tribunal in the case of John Distilleries Ltd. Vs. Deputy Commissioner of Income-tax (ITA No.1429/Bang/2014), he took the view that the disallowance should not exceed exempt income. Accordingly, he directed the A.O. to restrict the disallowance to the extent of exempt income. The Ld. CIT(A) has observed that the exempt income earned by the assessee during the year is Rs.49.07 lakhs and accordingly, directed the A.O. to restrict the disallowance of Rs.49.07 lakhs.

7. We heard Ld. D.R. and perused the record. We noticed that the exempt income was noted as Rs.92.37 lakhs by assessing officer, while the Ld. CIT(A) has mentioned the exempt income as Rs.49.07 lakhs. Thus, there is obscurity on this factual aspect. Further, the availability of own funds, even though noted down by Ld. CIT(A), was not confronted with the A.O., i.e., the AO has not examined the same. Under these set of facts, we are of the view that this issue requires fresh examination at the end of A.O. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and restore the same to the file of A.O. with the direction to examine this issue afresh.

8. The next issue relates to disallowance of aircraft expenses. During the year under consideration, the assessee claimed aircraft expenses of Rs.26.04 crores which consisted of depreciation of Rs.20.16 crores and operating expenses of Rs.5.88 crores. However, the assessee had earned income on hiring of aircraft to

the extent of Rs.11.39 crores only. On a perusal of the breakup of hiring income, the A.O. noticed that the assessee has earned hiring income to the extent of Rs.2.75 crores from unrelated parties and the balance amount was earned from related parties. Hence, the A.O. took the view that the assessee has incurred huge expenditure on non-business purposes. Accordingly, he disallowed proportionate expenditure to the extent of Rs.4.45 crores holding the same as non-business personal expenditure. Similarly, he disallowed a sum of Rs.15.24 crores out of depreciation claimed on aircraft. The Ld. CIT(A) restricted the disallowance to Rs.45 lakhs, out of expenditure disallowance. With regard to depreciation disallowance, the Ld. CIT(A) held that the assessee has satisfied the condition of owning the asset and using it for the purpose of business and hence no disallowance out of depreciation is called for. Accordingly, he deleted the depreciation disallowance of Rs.15.24 crores.

9. We heard Ld. D.R. on this issue and perused the record. We notice that the A.O. had made expenditure disallowance only for want of details. However, the Ld. CIT(A) has granted relief to the assessee without examining the relevant details. Further, the Ld. CIT(A) did not consider applicability of provisions of section 38(2) of the Act, which provide for proportionate disallowance out of depreciation amount also, if an asset is not used for the purposes of business. Under these set of facts, we are unable to sustain the relief granted by the Ld. CIT(A). However, in the interest of natural justice, we are of the view that the assessee may be provided with an opportunity in order to show that the aircraft was used only for the purpose of business. Accordingly, we set aside the order passed by the Ld. CIT(A) on this issue and restore the same to the file of the A.O. for examining it afresh.

10. The next issue relates to disallowance made out of interest expenses. The A.O. noticed that the assessee has given money to various sister concerns and subsidiaries in the form of share application money. The AO also noticed that the assessee has claimed interest expenditure of Rs.7.05 crores. The A.O. took the view that the expenditure incurred on purchase of shares is a capital expenditure and hence interest expenditure incurred on such purchases is not eligible for deduction u/s 36(1)(iii) of the Act. In this regard, he placed reliance on the decision rendered by Hon'ble Karnataka High Court in the case of CIT Vs. Mythreyi Pai 152 ITR 247 and in the case of United Breweries 321 ITR 546. The A.O. took the view that interest expenditure should be worked by applying the rate of 12% on the value of investment and the said interest expenditure should be disallowed. The interest at the above said rate worked out to Rs.13.40 crores. However, the assessee had claimed interest expenditure of Rs.7.05 crores only. Hence, the A.O. proposed to disallow the entire interest expenditure. However, since the A.O. had disallowed interest expenditure of Rs.2.42 crores u/s 14A of the Act, the A.O. disallowed the balance expenditure of Rs.4.63 crores u/s 36(1)(iii) of the Act. He also held that the amount of Rs.2.42 crores disallowed u/s 14A of the Act is also disallowed protectively u/s 36(1)(iii) of the Act.

11. Before Ld. CIT(A), the assessee contended that the own funds available with it is more than the value of investments, hence, no interest disallowance should be made. It was also contended that the assessee being non-banking financial company, investment activity is part of its routine business activity. Accordingly, Ld. CIT(A) deleted the impugned disallowance.

12. We heard Ld. D.R. on this issue and perused the record. We notice that the Ld. CIT(A) has mainly granted relief holding that the funds available with the assessee are in excess of the value of investments. However, the Ld CIT(A) has not confronted these facts with the A.O. Hence, we are of the view that this issue requires fresh examination at the end of the A.O. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and restore the same to the file of the A.O. for examining it afresh.

13. The next issue relates to disallowance made u/s 40A(2) of the Act. The A.O. noticed that the assessee has paid Rs.1.98 crores to its holding company M/s. Vectra Holding Pvt. Ltd (VHPL) as legal and professional fee. It was submitted that the above said amount was paid for providing management related services to the assessee. The above said payment consisted of following items:-

|  |                           |
|--|---------------------------|
| a) Payment made for the assessee -   | Rs. 60,00,000/-           |
| b) Payment made as per agreement entered by M/s. Asianet TV Holdings Pvt. Ltd. | - <u>Rs.1,38,00,000/-</u> |
| <b>Total</b>   | - <u>Rs.1,98,00,000/-</u> |

It was submitted that the assessee had entered into management agreement with VHPL on 1<sup>st</sup> April, 2009 and accordingly the sum of Rs.60 lakhs was paid by it during the year under consideration. Another company named M/s. Asianet TV Holdings Pvt. Ltd had also entered into similar kind of agreement on 1.4.2009 with VHPL as per which it has to pay Rs.11 lakhs per month to VHPL. Subsequently, M/s. Asianet TV Holdings Pvt. Ltd. was merged with the assessee company and hence the liability to make both the payments has fallen on the assessee. Accordingly the above said payment has been made by the assessee during the year under consideration.

14. The A.O. took the view that the assessee has not proved the benefit accrued to it from Vectra Holdings Pvt. Ltd. Accordingly, he disallowed Rs.1.98 crores u/s 40A(2) of the Act. In the alternative he disallowed the claim u/s 37 of the Act holding that the above said expenditure was not incurred wholly and exclusively for the purpose of business. The Ld. CIT(A) confirmed the disallowance of Rs.1.32 crores paid as per the agreement entered by M/s. Asianet TV Holdings Pvt. Ltd, accepting that the payment made to the holding company VHPL is excessive. The Ld. CIT(A) held that the A.O. was not right in invoking the provisions of section 37 of the Act after invoking the provisions of section 40A(2) of the Act. In effect, the Ld. CIT(A) allowed Rs.66 lakhs and confirmed the disallowance to the extent of Rs.1.32 crores.

15. We heard Ld. D.R. and perused the record. From the foregoing discussions, we notice that the revenue is aggrieved by the decision of Ld. CIT(A) in granting relief to the extent of Rs.66 lakhs. However, the Ld. CIT(A) has not given the reason for accepting payments to the extent of Rs.66 lakhs. Under the provisions of sec. 40A(2)(a), the payment made to the related parties has to be examined having regard to the fair market value, legitimate needs of the business or benefit derived etc. The case of the A.O. was that the assessee has not shown the benefits accrued to it from VHPL. We notice that the Ld. CIT(A) has also did not deal with the conditions prescribed by sec.40A(2)(a). Hence, we are of the view that the Ld CIT(A) was not right in granting relief without examining the payment in terms of requirement of sec.40A(2)(a) of the Act. Accordingly, we are of the view that this issue also requires examination at the end of the A.O. Accordingly, we modify the order passed by the Ld. CIT(A) and restore the issue relating to

Rs.66 lakhs to the file of the A.O. for examining it afresh. The assessee is also directed to furnish information and explanations to justify the payment in terms of Section 40A(2)(a) of the Act.

16. The next issue relates to disallowance of foreign exchange loss. The A.O. noticed from financial statement of the assessee that it has debited an amount of Rs.23,20,700/- under the head "Loss of foreign exchange transaction" (Note No.24) and Rs.44,86,605/- under the head "Foreign exchange loss" (Note No.25). The A.O. noticed that the above loss is in the nature of mark to market loss on account of revaluation of outstandings and hence notional in nature. Accordingly, by placing reliance on the instruction No.17/2018 dated 26.11.2008 issued by CBDT, the A.O. disallowed the aggregate amount of Rs.68,07,305/-. Alternatively, he also held that, if it is assumed that the assessee has incurred these losses in the current year, then it should be treated as speculation loss u/s 43(5) of the Act.

17. Before Ld.CIT(A), the assessee submitted detailed working relating to foreign exchange loss. It was submitted that the amount of Rs.23,30,700/- is gain and not a loss. From the workings furnished by the assessee, we notice that the losses occurred and restatement of loans and reversal of opening M2M. provisions. Considering the details furnished by the assessee, the Ld. CIT(A) deleted this disallowance.

18. We heard Ld. D.R. on this issue and perused the record. Admittedly, the various explanations furnished by the assessee before Ld. CIT(A) was not confronted with the A.O. It is also not clear whether the loan transactions are related to revenue/trading account or capital account, which may require different kind of

treatments. Hence, we are of the view that this issue also requires fresh examination at the end of the A.O. Accordingly, we set aside the order passed by Ld. CIT(A) and restore this issue to the file of the A.O. for examining it afresh.

19. We shall now take up the appeal filed by the revenue for assessment year 2013-14, wherein following issues are contested:-

- a) Disallowance made u/s 14A of the Act.
- b) Disallowance made out of aircraft expenses.
- c) Disallowance of interest expenditure u/s 36(1)(3) of the Act.
- d) Disallowance made u/s 40A(2) of the Act.

20. We notice that identical issues have been examined by us in assessment year 2012-13 and all these issues have been restored back to the file of AO for examining them afresh. Consistent with the view taken by us in assessment year 2012-13, we restore all these issues to the file of A.O. with identical directions.

21. Now we shall take up the appeal filed for assessment year 2014-15. The only issue urged in this appeal relates to disallowance made u/s 14A of the Act. We notice that an identical issue has been examined by us in assessment year 2012-13 and the matter was restored to the file of A.O. for examining this issue afresh. Consistent with the view taken in assessment year 2012-13, we restore this issue to the file of the A.O. for examining it afresh.

22. Needless to mention, the assessee should be provided adequate opportunity of being heard.

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23. In the result, all the appeals of the revenue are treated as allowed for statistical purposes.

Order pronounced in the open court on 10<sup>th</sup> Nov, 2021.

**Sd/-**  
**(N.V. Vasudevan)**  
**Vice President**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 10<sup>th</sup> Nov, 2021.  
VG/SPS

**Copy to:**

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.