

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.4344/Del./2017
(ASSESSMENT YEAR : 2012-13)**

ITO, Ward 16 (3), vs. M/s. MVL Credit Holdings & Leasing Ltd.,
New Delhi. F – 79/18, Saink Farm,
New Delhi – 110 062.

(PAN : AAACM9072H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Arun Kishore, CA
REVENUE BY : Shri Manu Chaurasiya, Senior DR

**Date of Hearing : 03.11.2021
Date of Order : 18.11.2021**

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, ITO, Ward 16 (3), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 18.04.2017 passed by the Commissioner of Income-tax (Appeals)-6, Delhi qua the assessment year 2012-13 on the grounds inter alia that :-

“1. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in reducing disallowance of Rs.1,85,95,109/- to Rs.9,45,651/- u/s 14A of the Income Tax Act, 1961 without considering the legislative intent to

introducing section 14A by the Finance Act, 2001 as clarified by the CBDT Circular No.5/2014 dated 10.02.2014?

2. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in holding a principal that quantum of expenditure cannot be exceed the income of the assessee?

3. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of Rs.98,430/- u/s 37(1) of the Act on account of 'interest on delayed payment of TDS' on the basis of the AIR information by holding that interest paid on default occurred by the assessee in payment of Govt. Dues was a revenue expenses and by ignoring the explanation-1 to section 37(1) of the Act?

4. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of Rs.3,41,848/- u/s 37(1) of the Act on the account of 'repair and maintenance charges' by ignoring the facts that the assessee failed to discharge its onus to prove that the expenses were incurred for the purpose of its business?

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee company is into the business of real estate development, marketing and allied activities. During the scrutiny proceedings, Assessing Officer (AO) noticed that the assessee has earned dividend income of Rs.9,45,651/-. Being not satisfied with the contention of the assessee that no expenditure has been incurred by the assessee to earn the dividend income, AO proceeded to invoke the provisions contained u/s 14A of the Income-tax Act, 1961 (for short 'the Act') read with Rule 8D of Income-tax Rules, 1962 (for short 'the Rules') and thereby computed the disallowance as under :-

S.No	Particulars	Amount (Rs.)	Amount (Rs.)
(i)	Expenditure Directly relating to income which does not form part of total income		NIL
(ii)	Expenditure incurred by way of interest (A*B/C)		1,74,25,912
	A = Amount of interest	3,08,77,136	
	B = Average value of investments		
	Investment as on 01.04.2011	12,86,32,549	
	Investment as on 31.03.2012	33,90,46,382	
		46,76,78,931	
	Average value of investments (467678931/2)	23,38,39,465	
	C = Average of Total Assets		
	Total Assets as on 01.04.2011	40,54,70,851	
	Total Assets as on 31.03.2012	42,32,13,915	
		82,86,84,666	
	Average value of assets (828684666 / 2)	41,43,42,333	
	A*B/C subject to maximum of A		
(iii)	One half % of Average value of investment income from which does not form part of total income		
	Investment as on 01.04.2011	12,86,32,549	
	Investment as on 31.03.2012	33,90,46,382	
		46,76,78,931	
	Average value of investments	23,38,39,465	
	One half % of average value of investment(233839465X0.5%)		11,69,197
	Subject to Maximum of exp.		
	TOTAL DISALLOWANCE AS PER RULE 8D		1,85,95,109

3. AO also made disallowance of Rs.98,430/- u/s 37(1) of the Act on account of interest on account of delayed payment of Tax Deducted at Source (TDS) on the basis of AIR information. AO also made disallowance of Rs.3,41,848/- u/s 37(1) of the Act on account of repair and maintenance charges and thereby assessed the total income at Rs.1,36,66,910/-.

4. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has partly allowed the same. Feeling aggrieved by the order passed by the Id. CIT(A), the Revenue has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1 & 2

6. Assessee company has earned dividend income of Rs.9,45,651/- without making any suo motu disallowance. AO by invoking the provisions contained u/s 14A read with Rule 8D proceeded to make disallowance at Rs.1,85,95,109/-.

7. Ld. CIT (A) following the decision rendered by **Hon'ble Delhi High Court in case of Joint Investments (P.) Ltd. vs. CIT 372 ITR 694** restricted the disallowance to the extent of dividend income i.e. Rs.9,45,651/- earned by the assessee company during the year under consideration by returning following findings :-

“3.2.3 The contentions of the AO and submissions of the appellant have been duly considered. Respectfully following the judgment of jurisdictional High Court of Delhi in the case of Joint Investment (Pvt.) limited, ITA No. 117/2015 of 25/02/2015, the disallowance made under section 14A, read with rule 8D is restricted to Rs.9,45,651/- i.e. upto extent of exempt income. Relief of Rs.1,76,49,458/- is allowed to the appellant (1,85,95,109 -9,45,651).”

8. By now, it is settled principle of law that disallowance u/s 14A read with Rule 8D cannot be more than the dividend income earned and in this view of the matter, we find no illegality or infirmity in the findings returned by ld. CIT (A), hence grounds no.1 & 2 are determined against the Revenue.

GROUND NO.3

9. AO after noticing from the AIR report showing total TAN defaults of Rs.98,430/- as late payment interest made disallowance of the same amount i.e. Rs.98,430/- by adding the same back to the total income of the assessee on the ground that no supporting document/evidence has been brought on record by the assessee.

However, ld. CIT (A) by accepting the contention made by the assessee company that interest on delayed payment of TDS is not a penalty but it is compensatory in nature, so cannot be classified as part of the Income-tax liability of the assessee and relied upon the decision of **Hon'ble Karnataka High Court in case of Oriental Insurance Co. Ltd. vs. CIT (2009) 183 taxman 186.**

10. Following the decision rendered by **Hon'ble Karnataka High Court in case of Oriental Insurance Co. Ltd. vs. CIT** (supra) wherein it is held that, "*similar deduction towards payment of interest on delayed payment of TDS was allowed*". Since this payment made by the assessee cannot be treated as a tax but compensatory in nature, hence allowable expenses u/s 37 of the Act. So, finding no infirmity or perversity in the impugned findings, ground no.3 is determined against the Revenue.

GROUND NO.4

11. AO made a disallowance of Rs.3,41,848/- @ 10% of the total expenses on ad hoc basis claimed by the assessee company towards repair and maintenance expenses. Since AO has not disputed audited financials of the assessee company rather proceeded to make an ad hoc disallowance merely on the basis of surmises which is not sustainable in the eyes of law. Ld. CIT (A) after thrashing the facts proceeded to delete the disallowance of the

expenses in question claimed by the assessee by treating the same having been incurred for the purpose of business. So, finding no illegality or perversity in the impugned findings, ground no.4 raised by the Revenue is hereby dismissed.

12. Resultantly, the appeal filed by the Revenue is dismissed.

Order pronounced in open court on this 18th day of November, 2021.

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 12th day of November, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-6, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**