

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
and
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.6756/Del./2018
(ASSESSMENT YEAR : 2015-16)**

M/s. VLCC Health Care Ltd.,
M – 14, Commercial Complex,
Greater Kailash Part II,
New Delhi – 110 048.

vs. Addl.CIT, Spl. Range 9,
New Delhi.

(PAN : AAACC4808P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vinod Bindal, CA
Ms. Sweety Kothari, CA
REVENUE BY : Shri B.S. Ananat, Senior DR

Date of Hearing : 22.02.2022
Date of Order : 22.02.2022

ORDER

PER AMIT SHUKLA, JM :

The aforesaid appeal has been filed by the assessee against the impugned order dated 27.08.2018 passed by the CIT (Appeals)-9, New Delhi for the quantum of assessment passed under section 143 (3) of the Income-tax Act, 1961 (for short 'the Act') for the assessment year 2015-16.

2. In the grounds of appeal, the assessee has raised the following grounds :-

“1. The CIT (A) erred in law and on facts in confirming the disallowance of an amount of Rs.9,66,250/- u/s 14A ignoring the facts, submissions and evidences placed on record. Thus, the addition so made should be deleted.

2. The CIT (A) erred in law and on facts in confirming the addition of Rs.11,51,234/- being the amount received as compensation due to delay in execution of the contracts of acquisition of fixed assets by holding the same as taxable being a revenue receipt ignoring the facts, submissions and evidences placed on record. Thus the addition so made should be deleted.”

3. Insofar as the issue relating to disallowance made u/s 14A read with Rule 8D, brief facts are that the AO noted that assessee made investment in shares of its subsidiary companies of Rs.90,96,03,212/- AO has computed the disallowance under Rule 8D(2) of Rs.9,66,250/- on the average value of investment of Rs.19.325 crores which has been confirmed by the ld. CIT (A).

4. Before us, ld. counsel submitted that the assessee has received dividend income of Rs.12,25,000/- only from investment of Rs.40,00,000/- in Yap Yoga (P) Limited as on 31.03.2015 and the opening balance was Rs.25,00,000/- as on 01.04.2014 and, therefore, in view of various decisions, only those investments which relate to exempt income during the year can be taken for the purpose of disallowance under Rule 8D(2)(iii) which comes out to Rs.16,250/-. Therefore, the disallowance made by the AO of Rs.9,66,250/- cannot be sustained.

5. After hearing both the parties and on perusal of the material placed on record, we find that before the Id. CIT (A), the assessee has taken a specific plea which is reproduced as under :-

“In this regard, it is submitted that the assessee has considered the following investments for the purpose of making disallowance u/s 14A.

Particulars	As on 01/04/15 (Rs.)	As on 31/03/14 (Rs.)
Investment in subsidiaries		
VLCC Personal Care Ltd.	19,00,00,000	19,00,00,000
Yap Yoga (P) Ltd.	40,00,000	25,00,000
Total	19,40,00,000	19,25,00,000

The investments which resulted into exempt income can only be considered for the purpose of disallowance.

- **It is not a case where the average value of the all /total investments at the beginning and at end of the year is to be considered but it is the average value of investments which have given rise to the exempt income has to be considered. Thus, those investments which have not resulted into any exempt income cannot be considered for computing the disallowance u/r BO(2)(iii)'. Reliance is placed on Interglobe Enterprises Ltd. Vs DCIT (ITAT Delhi) ITA 1580/0/2013, ITA11362 &1032/0/2013 dated 4/4/14, copy enclosed.**
- **The assessee has received dividends of Rs.12,25,000/- only from investments of Rs. 40 lacs as on 31/03/15 (opening balance of Rs. 25 lacs as on 01/04/14) made in Yap Yoga (P) Ltd. and therefore, only this amount of investment can be considered for the purpose of disallowance. Thus the amount of investment made in VLCC Personal Care (P) Ltd. cannot be considered for computing the disallowance u/s 14A of the Act.**
- **If the average value of the investments which generated exempt income in the year under consideration is considered at cost, it comes to Rs. 16,250/-. Therefore the disallowance u/r 8D(2)(iii) cannot exceed this amount.**

- **In view of the above submissions and evidences placed on record, the disallowance u/s 14A should be restricted to Rs.16,250/- and the addition of Rs.9,50,000/- should be deleted.”**

6. Further, we find that the assessee had earned dividend income of Rs.12,25,000/- only on an investment made in the company, Yap Yoga (P) Ltd. and on investment in VLCC Personal Care Ltd., no exempt income has been earned during the year. Now, it is well settled law that only investment which has earned dividend income during the year can be considered for computing the disallowance under Rule 8D2(iii). Accordingly, we restrict the disallowance at Rs.16,250/- and the balance addition is deleted.

7. Insofar as ground no.2 is concerned, it has been stated that this issue stands covered in favour of the assessee by the decision of the **Tribunal in assessee's own case for AYs 2012-13 & 2013-14 in ITA Nos.1319 & 3801/Del/2017 vide order dated 25.10.2021** wherein this Tribunal has observed and held as under :-

“3. Ground No. 1 & 2 of the appeal relate to addition of Rs.14,73,079/-, which amount was received by the assessee from the contractors who delayed in execution of the work to make fit the rented premises for conducting business. It was the case of the assessee before the authorities below that the contract shows that the amount of liquidated damages was fixed at Rs.20,000/- per day irrespective of contract value and since the contract relates to bring the profit making apparatus into existence, any damage received on account of such delay amounts to capital receipt. Before the authorities below, the assessee placed reliance on the decision of Hon'ble Apex Court in CIT vs. Saurashtra Cement Ltd. 325 ITR 422(SC).

4. It is an admitted that that the assessee has been conducting their business at various places in India and in that process for carrying out their business they have taken premises on rent which require certain interior work for bringing the premises to use for the purpose of assessee's business; that the assessee

entered into an agreement with a contractor for effecting such changes to make the premises useful to start of the business with a stipulation that irrespective of the value of contract, if any delay occurred in execution of work, the contractor must pay Rs.20,000/- per day towards liquidated damages.

5. It is also not in dispute that the assessee submitted before the authorities below that such amounts received from the contractor were debited to the account of the contractor as penalty while making the final payments and thus the payments to the contractors were made short by the amounts of liquidated damages, thereby bringing down the cost of project.

6. It is, therefore, clear that the assessee reduced the cost of project by the amount of liquidated damages received and the cost of the project remained only at balance figure. It is also clear that until and unless the contractor carried out the desired modification, the premises was not fit to commence the business of the assessee and thereby related to bringing the profit making apparatus into existence. We, therefore, are of the opinion that inasmuch as the assessee credited the amounts received to the capital asset and treated it as capital receipts, the same cannot be brought to tax. Hence, this addition is directed to be deleted.”

8. Since this issue has been decided in favour of the assessee by the Tribunal, therefore, we decide the issue in favour of the assessee and hold that the amount of Rs.11,51,234/- received as compensation due to delay in execution of the contracts of acquisition of fixed assets as capital receipt and accordingly, ground no.2 is allowed.

9. In the result, the appeal filed by the assessee is partly allowed.

Order was pronounced on 22nd day of February, 2022.

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

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

Dated: 22.02.2022

TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-30, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.