

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER

ITA No.4970/Del/2017
Assessment Year: 2012-13

Ratna Commercial Enterprises P. Vs DCIT,
Ltd., Circle-20(1),
4th Floor, Punjabi Bhawan, New Delhi.
10, Rouse Avenue,
New Delhi.

PAN: AAACR0354B

(Appellant)

(Respondent)

Assessee by	:	Shri M.P. Rastogi, Advocate
Revenue by	:	Shri T. Kipgen, CIT, DR
Date of Hearing	:	31.01.2022
Date of Pronouncement	:	.04.2022

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 12th May, 2017 of the CIT(A)-36, New Delhi, for the assessment year 2012-13.

2. Ground of appeal No.1 raised by the assessee reads as under:-

“1.. That both the Ld CIT(A) and Ld AO erred in disallowing the deduction of irrecoverable advances which turned bad and written off in the books of accounts of Rs 15.75 lakhs paid to M/s Bhayana Interiors & Furniture’s Pvt Ltd and Rs 1.10 Crores without appreciating the facts of the case.”

3. Facts of the case, in brief, are that the assessee is an NBFC and is in the business of financing, investment and in real-estate development. It filed its return of income on 28th September, 2012 declaring the income under the normal provisions amounting to Rs.10,64,38,586/- and long-term loss for carry forward amounting to Rs.8,49,05,424/-. The assessee had declared income u/s 115JB at Rs.4,04,46,404/-. During the course of assessment proceedings, the AO noted that the assessee has claimed a deduction of Rs.1,63,62,782/- in the Profit & Loss Account being the amount written off. On being asked by the AO to explain as to why the amount of Rs.1.63 crore written off in the books of account should not be disallowed and added back to the total income of the assessee, the assessee submitted as under:-

"Assessee is a Non Banking Financial Company and engaged in financial activities. Copy of certificate of registration with RBI is enclosed for your kind consideration. Detail of amount written off of Rs. 1,63,00,000/- is enclosed. These advances have been advanced to various parties in due course of business. Since the advance being very old and unrecoverable the assessee has decided to write off these advances. Ledger accounts depicting the age of loans and advances are enclosed to confirm that these advances are very old and the assessee is not in position to recover these advances. Since all the advances of Rs. 1.63 crores are business advances and given a long back during the due course of business, since it is not recoverable the assessee has written off these advances."

4. However, the AO was not satisfied with the arguments advanced by the assessee. He noted that in the assessment year 2010-11, the claim of bad debt on account of loans written off was not allowed after examining the nature of the loans given. He, therefore, rejecting the various explanations given by the assessee, held that the assessee is not entitled to deduction u/s 36(1)(vii) in respect

of amount of Rs.1,63,62,782/-. Accordingly, he made addition of the same to the total income.

5. In appeal, the Id.CIT(A) upheld the action of the AO by observing as under:-

“6.1. Regarding disallowances of Rs. 1.63 crore, the AO has added the amount considering it of the same nature as that of Rs. 54.08 crores in AY 2010-11.

(i) After carefully going through the assessment order, it is noticed that for the AY 2010-11, the claim of write off u/s. 36(1)(vii) was on write off loans to one company M/s. VTL. This disallowance was made as described in para 4.1. on the basis that the assessee falls in the category of "investment company" and not a "loan company" and that the amount advanced to M/s. VTL was recoverable. The AO has not gone into the details of amount written off as bad debts/advance written off of Rs. 1.63 crore in AY 2012-13, The assessee has during the assessment proceedings, in its submission, mentioned that the advances were made to various parties in due course of business. These advances were old, prior to 2009 and were given during the course of business and were not recoverable.

(ii). During the appeal proceedings also the details of the 6 parties of which the outstanding business advance was said to be Rs. 1,63 crore was provided. It is seen that out of 6 parties, 4 parties namely Devdas Y Nayak, Pradip Kumar Jajodia, Prem Kumar Thandani & Rahul Jajodia are individuals to whom advances in total of Rs. 37.44 lac has been shown. The other two parties are Bhayana Interiors & Furniture's Pvt. Ltd. (Rs. 15.75 iac) and WIG Brothers Projects Pvt. Ltd. (Rs. 1.1 crore). The purpose for which the advance was given is shown as advance given for consultancy and construction of business ascertain in Goa.

iii) It is in the fitness of things to see whether advances given were revenue or capital in nature in which case the allowability may change u/s. 37(1). However, the AO has out rightly disallowed the full amount u/s. 36(1)(vii) whereas the assessee has claimed the write off u/s. 37(1). It is noted that the assessee has itself submitted that the advances were made for creation of business assets and deducted TDS of 2% from M/s. WIG brothers Projects Pvt. Ltd. which also reflects that the payment was made to a contractor. Further, the assessee has mentioned a number of case laws in its support. However, it is seen that the facts

of all cases are different. Though the decisions have consistently held that even if a deduction is not allowable as bad debts, the claim can be seen in the light of section 37(1). The Hon'ble Delhi High Court has in the case of Mohan Meakin Ltd. vs CIT vide its order dated 11.05.2011 discussed this issue. The relevant portion from the order is as under:

"Section 37(1) lays down as follows:

"Any expenditure (not being expenditure of the nature described in Sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head 'Profits and gains of business or profession.'"

The essential ingredients of the section are, therefore: "(i) that it should be an expenditure of the nature not described in Sections 30 to 36; (ii) it should not be in the nature of capital expenditure or personal expenses of the assessee; (iii) that it should be laid out or expended wholly and exclusively for the purposes of the business, etc,"

Section 37 clearly appears to be a residuary section extending the allowance to items of business expenditure and not of business losses which are deductible on the ordinary principles of commercial accounting."

To find out whether an expenditure is on the capital account or on revenue, one must consider the expenditure in relation to the business. Since all payments reduce capital in the ultimate analysis, one is apt to consider a loss as amounting to a loss of capital. But this is not true of all losses, because losses in the running of the business cannot be said to be of capital. The questions to consider in this connection are : for that was the money laid out ? Was it to acquire an asset of an enduring nature for the benefit of the business, or was it an outgoing in the doing of the business? If money be lost in the first circumstances, it is a loss of capital, but if lost in the second circumstances, it is a revenue loss. In the first, it bears the character of an investment, but in the second, to use a commonly understood phrase, it bears the character of current expenses."

As no portion of the said advances could be stated to be loss of capital expenditure, but it being a plain case of business loss, it would certainly

be allowable to be deducted under the provisions of Section 37 of the Act. 11.

(iii) In view of the above judgement it may be seen as to which of the advances written off were capital in nature as the assessee has itself admitted that the advances were given for consultancy and construction of business assets in Goa. It is evident that the advances given to Bhayana Interiors & Furniture's Pvt. Ltd. of Rs, 15.75 lac and to WIG Brothers Projects Pvt. Ltd. of Rs.1.1 crore are capital in nature as it was given for the construction of business assets in Goa. TDS was also deducted at 2%, the rate applicable to contractor. These amounts written off are therefore clearly not allowable u/s. 37(1) either, as the essential ingredient of not being in the nature of capital expenditure is not fulfilled. The disallowance to this extent (Rs. 15.75 lakh + Rs. 1.1 cr) is therefore confirmed but for the reasons described above.

(iv) The advances given to the other 4 parties are for consultancy against which the assessee has claimed that all its endeavours to recover these business advances have failed and they have not even executed the work given to them. It is seen from the account submitted by the assessee that the amounts have been actually written off and were pending since 2009 before. These business advances written off of Rs. 37.84 lac is allowed u/s. 37(1). The disallowance to this extent may be deleted. This ground is partly allowed.”

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. The Id. Counsel for the assessee strongly challenged the order of the CIT(A) in sustaining an amount of Rs.1,25,75,000/- in respect of two parties, namely, Bhayana Interiors & Furniture Pvt. Ltd.- Rs.15,75,000/- and Wig Brothers Projects Pvt. Ltd. – Rs.1,10,00,000/-. He submitted that the assessee, during the course of commencement of its real-estate business had made the advances to various persons, namely,

(i)	Bhayana Interiors & Furniture Pvt. Ltd.	Rs.15,75,000/-
(ii)	Devadas Y Naik	Rs. 3,20,000/-
(iii)	Pradip Kumar Jajodia	Rs. 8,20,000/-
(iv)	Prem Kumar Thandani	Rs.20,00,000/-
(v)	Rahul Jajodia	Rs. 6,44,500/-
(vi)	Wig Brothers Projects Pvt. Ltd.	<u>Rs.1,10,00,000/-</u>
	TOTAL =	<u>Rs. 1,63,59,500/-</u>

8. Due to unforeseen market situation, the assessee suspended the development of properties, but, the amounts so advanced to various vendors could not be recovered for which these advances were written off in its books of account and claimed as bad debts/business loss. He submitted that the Id.CIT(A), while allowing the claim of bad debt written off in the name of four individuals, however, sustained the addition of Rs.15,75,000/- in case of Bhayana Interiors & Furniture Pvt. Ltd. and Rs.1,10,00,000/- in respect of Wig Brothers Projects Pvt. Ltd. He submitted that there is no dispute to the fact that the advances made by the assessee to the above two parties were in relation to the development of Goa properties which is in trading account forming part of its business. Referring to the following decisions, he submitted that the advances made during the course of its business to the vendors for the purpose of business which is not recoverable, should be allowed either as business loss u/s 28 of the IT Act or bad debt u/s 36(1)(vii) of the Act:-

- i) 46 ITR 649 (SC) CIT vs. Mysore Sugar Co. Ltd.;
- ii) 345 ITR 1 (Del) CIT vs. New Delhi Hotels Ltd.; &
- iii) 348 ITR 109 (Del) Mohan Meakin Ltd. vs. CIT

9. He accordingly submitted that since the advances so made by the assessee were in the course of real-estate business, therefore, the addition sustained by the CIT(A) is not in accordance with law and, therefore, the same should be deleted.

10. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

11. We have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, following his order for AYs 2010-11, disallowed the claim of bad debt on account of loss written off amounting to Rs.1,63,62,782/-. While doing so, he held that the assessee is not entitled to deduction u/s 36(1)(vii) of the IT Act. We find, the ld.CIT(A) sustained an amount of Rs.1,25,75,000/-, the details of which have already been reproduced in the preceding paragraph. It is the submission of the ld. Counsel for the assessee that the assessee had given the advances to the above two parties in relation to the development of Goa properties which is in trading account forming part of business. Since these business advances could not be recovered, therefore, the same should be allowed as bad debt or business loss during the impugned assessment year. A perusal of the

assessment order shows that the AO, while making the addition has followed his order for AY 2010-11. However, nothing has been brought before us to substantiate as to what has happened to the additions made by the AO in AY 2010-11. We find, while the assessee is stating that the advances made by the assessee to Bhayana Interiors & Furniture Pvt. Ltd. and Wig Brothers Projects Pvt. Ltd. were in relation to the development of Goa property which is in trading account forming part of its business, the Id.CIT(A) has given a finding that these advances given to the above two parties were capital in nature as they were given for the construction of business assets in Goa. Thus, there is a contradiction between the statement made by the assessee that it is on account of trading account forming part of its business whereas the CIT(A) has given a finding that it is capital in nature being given for construction of business assets in Goa. Under these circumstances, we deem it proper to restore the issue to the file of the AO with a direction to verify the past records and decide the issue as per fact and law including the claim of the assessee to allow the same as business loss after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The ground of appeal No.1 raised by the assessee is accordingly allowed for statistical purposes.

12. Ground of appeal No.2 raised by the assessee reads as under:-

“2. That both the Ld CIT(A) and Ld AO erred in law and in facts in not allowing long term capital loss of Rs 8.49 crores which arose from permanent write off share capital.”

13. Facts of the case, in brief, are that the AO, during the course of assessment proceedings, noted that the assessee has claimed an amount of Rs.8,49,05,423/- as long-term capital loss on account of investments written off in the P&L Account and claiming indexation on the same. On being raised a specific query by the AO to explain as to why the amount of Rs.8.49 crore claimed as long-term capital loss be not disallowed, the assessee filed the following submissions:-

"3. & 4. During the period under consideration assessee has written off some of its investments amounting to Rs. 6.20 crores which has no value in the market. These investments were purchased by the assessee during the period from F.Y. 2005-06 to F.Y. 2008-09. Detail of the same has already been placed on record, further we are enclosing herewith the detail it. Since the investments were held more than one year assessee has claimed indexation benefit on it, which resulted into long term capital loss of Rs. 8,49,05,423/-. This loss is claimed as carried forward by the assessee company in its return of income. The assessee has written off these investment and treatment of this writ off as creation of provision and adding it back in book profit is not at all correct and unjustified. Once an investment is written off, it cannot be treated as provision in diminution in value of investments and added back in book profit."

The following details were furnished:

Detail of Long term capital loss for the A.Y. 2012-13

Date	Particulars	No. of shs	Cost	Year of Pur	Indexed Cost	Sale value	LTCL
31.03.12	Kavya Pvt. Ltd.	20,000	20,00,000	2005-06	3158954	0	-3158954
31.03.12	Kavya Pvt. Ltd.	50,000	50,00,000	2008-09	6743986	0	-6743986
31.03.12	LFS services	1,00,000	1,00,00,000	2008-09	13487973	0	-13487973
31.03.12	N Bam infocom	1,50,000	1,50,00,000	2008-09	20231959	0	-20231959
31.03.12	N Bsam const	1,50,000	1,50,00,000	2008-09	20231959	0	-20231959
31.03.12	Narang Distillery	1,00,000	50,00,000	2006-07	7562620	0	-7562620
31.03.12	Sanskar Housing	31250	1,00,00,000	2008-09	13487973	0	-13487973
		Total	6,20,00,000		84905422	0	-84905423

14. However, the AO was not satisfied with the arguments advanced by the assessee on the ground that written off amounts of investments so made in the books of account are not a transfer in the eye of law u/s 2(47) of the IT Act and it is a notional loss as the shares remained with the assessee.

15. In appeal, the Id.CIT(A) upheld the action of the AO by observing as under:-

“6.2. The next ground of appeal is regarding disallowance of long term capital loss of Rs. 8.49 crore on Investment write off of Rs. 6,20 crore. The assessee has submitted that these write off were related to investment made In FY 2008-09 and earlier in these companies which were found to be doing no active business in the AY 2012-33. The companies have become un-operational and were not earning any income. Therefore, the investment were written off as permanent loss of investment. The AO has disallowed the amount as there was no transfer of the shares and therefore no long term capital loss or benefit of indexation can be claimed, There are two limbs to this ground, first is carry forward of long term capital loss and second is calculation of LTCG after indexing the cost.

(i) During appeal proceedings, the assessee was asked specifically as to how and under what provision there would be capital loss and the indexation can be allowed in case of long term capital loss when there is no transfer of assets at all. At the time of assessment also, there was no discussion on this particular issue. The AO has rightly pointed out that no person can make profit from himself or incur loss by transactions with himself. The computation made by the assessee cannot in any way be covered by the term "transfer". The AO has also mentioned that even if there is diminution in the value of asset/investment, it has to be consistently shown on the book value and the assessee cannot claimed a loss on account of diminution even if it has been reduced to very negligible value.

(ii) Thus it is clear that firstly there can be no claim of long term capital loss where there is no transfer of assets under the provision of I.T Act and secondly, indexation benefit cannot be allowable by any stretch of Imagination when there is no transfer. Like there is no provision to charge tax on increased value of investment, similarly no loss can be claimed on diminished value of investment. At the most the assessed can claim reduction in the net worth of its investment.

(iii). I am therefore inclined to accept the discussion of the AO that the amount of Rs. 6.20 cr (or Rs. 8.49 cr after indexation) is not allowable as long term capital loss & cannot be carried forward. The assessee appeal on this ground is Dismissed.”

16. He, however, allowed the deduction while computing the profit u/s 115JB of the Act.

17. Aggrieved with such order of the CIT(A), the assessee is before the Tribunal.

18. The Id. Counsel for the assessee submitted that as per the assessee, the net worth of the companies had become almost nil and it was impossible to recover the amount, for which it was treated as business loss as the investment so made in the shares had totally extinguished. On such facts, it amounts to extinguishment of property and is a transfer. Therefore, the assessee is entitled to claim the capital loss so incurred by the assessee along with its indexation. Alternatively, he argued that in case the same is not allowed under the head "Capital Loss", then it should be allowed as business loss u/s 28 of IT Act because the investment so made was in the course of business of financing. He submitted that in the subsequent year, i.e. Financial Year 2020-21 relevant for the Assessment Year 2021-22, the assessee was able to recover the amount invested in Sanskar Homes Pvt. Ltd. by way of transfer of shares by others for a consideration of Rs.2,30,00,000/- against the amount invested of Rs. 1,00,00,000/- and the proceeds thereof amounting to Rs.2,30,00,000/- was duly credited in their miscellaneous income and would be taxable in that very year. He accordingly submitted that the amount of Rs.6,20,00,000/- being the investment made by the assessee during the course of its financing business deserves to be allowed as a capital loss along with its indexation under the head "Capital Gain" as it amounts to extinguishment of the

investment. Alternatively, the amount of Rs.6,20,00,000/- should be allowed as a business loss u/s 28 of IT Act.

19. The Id. DR, on the other hand, heavily relied on the order of the AO and the CIT(A).

20. We have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We find, the AO, in the instant case, made disallowance of long-term capital loss of Rs.8,49,05,423/- on the ground that the written off amounts of investment so made in the books of account are not transfer in the eyes of law u/s 2(47) and is a notional loss since the shares remained with the assessee. We find, the Id.CIT(A) upheld the action of the AO the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Id. Counsel for the assessee that since the value of investment in the shares had extinguished, therefore, it amounts to transfer and, accordingly, the capital loss so incurred by the assessee deserves to be allowed along with its indexation. It is also his argument that in the alternative, it should be allowed as business loss. Further, it is also the contention of the Id. Counsel that in the FY 2020-21, relevant to AY 2021-22, the assessee had recovered a part of the amount invested in Sanskar Homes Pvt. Ltd. by way of transfer of shares for a consideration of Rs.2,30,00,000/- against the amount invested of Rs. 1,00,00,000/- and such recovered amount has been credited in the miscellaneous income of the assessee and has been offered for

taxation purpose. In our opinion, the issue needs re-adjudication at the level of the AO in view of the fact that has emerged subsequent to the assessment and appeal proceedings that assessee had offered such sale proceeds to taxation in the year of sale. We, therefore, deem it proper to restore the issue to the file of the AO with a direction to adjudicate the issue afresh and in accordance with the law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. Ground No.2 raised by the assessee is accordingly allowed for statistical purposes.

21. Grounds of appeal No.3 and 3.1 read as under:-

“ 3. That both the Ld CIT(A) and Ld AO erred in law and in facts in disallowance of Rs 58.75 lakhs u/s 14A in a theoretical way without appreciating the fact the assessee himself has disallowed Rs 5.28 lakhs and that there cannot be any further disallowance without a cogent reason.

3.1 That both the Ld CIT(A) and Ld AO erred in law and in facts in appreciating that strategic investments in Dabur India Limited as the promoter shareholder, would not form part of disallowance u/s 14A.”

22. Facts of the case, in brief, are that the AO, during the course of assessment proceedings, noted that the assessee has received dividend income on investment of Rs.20.13 crore. He, therefore, asked the assessee to explain as to why disallowance u/s 14A of the Act r.w. Rule 8D should not be made. The assessee computed the disallowance u/s 14A at Rs.5,28,901/-. However, the AO was not satisfied with the arguments advanced by the assessee on the ground that the disallowance u/s 14A of the Act r.w.r 8D comes to Rs.69,32,415/- and the majority of the expenses incurred by the assessee pertains to earning of interest free income.

In view of the above, the AO computed the disallowance u/s 14A of the Act r.w.r. 8D at Rs.64,03,615/-. After deducting the disallowance of Rs.5,28,901/-, the AO made an addition of Rs.58,75,714/- to the total income of the assessee.

23. In appeal, the Id.CIT(A) upheld the action of the AO by observing as under:-

“The third issue of appeal is disallowance u/s. 14A r.w.r. 8D. The assessee had disallowed Rs. 5,28,901/- by reducing 92% of the investment being made in group companies as strategic investments. The AO did not find this acceptable and justified the disallowance by the reasoning that the expense claimed by the assessee are also going towards earning the tax free dividend income. The assessee has itself admitted that out of the total income of Rs. 22.58 crore, tax has been paid on income of Rs. 10.64 crore. Thus the income being taxed is less than that of tax free income so the AO has rightly mentioned that the major income is tax free and expenses are obviously incurred for earning the same.

(i) It is observed from the details of previous AYs that the assessee had offered the whole of the amount as disallowance. It could not be explained as to how the same Investment with group companies became strategic this year and was not so in the earlier year.

(ii) It is also seen that the AO has in the assessment for AY 2014-15 also disallowed the amount on the same grounds stating that "In view of the above, the assessee is not justified in reducing the proportionate disallowance of common administrative expenditure on account of dividend received from Group Company." The assessee has made investments, resulting income from which is exempt under the provisions of the I.T Act. Thus the provisions of section 14A are applicable in the case of the assessee.

(iii) I am therefore inclined to uphold the disallowance made by the AO as per computation procedure given in rule 8D as the assessee had been following the same in earlier also & the AO has given valid reason to not accept the suo moto calculation of the assessee. This Ground of Appeal is therefore dismissed.”

24. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

25. The Id. Counsel for the assessee strongly challenged the order of the CIT(A) in sustaining the disallowance made by the AO u/s 14A of the IT Act r.w.r. 8D. Referring to the decision of the Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. Vs. CIT, reported in 347 ITR 272, he submitted that the Hon'ble High Court in the said decision has held that only the actual expenditure incurred to earn the exempt income has to be disallowed and no disallowance can be made on notional basis irrespective of whether the expenditure has been incurred or not. He submitted that the assessee's major investment was in Dabur India Ltd. and has received the total dividend of Rs.18.59 crore from Dabur India Ltd., which constitutes 92% of the total dividend of Rs.20.13 crores and there was no change in the investment for which the assessee has not incurred any expenditure to earn the dividend income from Dabur India Ltd. Further, the AO, in the instant case, has not pointed out any item of expenditure incurred by the assessee to earn the dividend received from Dabur India Ltd., and Ayurved Ltd. Referring to various decisions, he submitted that where the AO has not recorded any satisfaction in clear terms about the nature of expenses incurred by the assessee to earn the dividend, then, in absence of any satisfaction note with reference to the accounting entries made in the books of account, no disallowance can be made.

25.1 Alternatively, the Id. Counsel for the assessee submitted that no disallowance can be made under Rule 8D(2)(iii) of the IT Rules in respect of the shares on which no dividend has been received. For the above proposition, he

relied on the decision of the Special Bench of the Tribunal in the case of Vireet Investment Pvt. Ltd., reported in 165 ITD 27 and the decision of the Hon'ble Madras High Court in the case of CIT vs. Shriram Ownership Trust, reported in 318 CTR 233.

26. The ld. DR, on the other hand, heavily relied on the orders of the AO and the CIT(A).

27. We have heard the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, made disallowance of Rs.58,74,714/- u/s 14A of the Act r.w.r. 8D on the ground that the assessee has earned dividend income of Rs.20.13 crore and the assessee has not made disallowance u/s 14A of the IT Act r.w.r.8D. We find, the ld.CIT(A) upheld the action of the AO, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the ld. Counsel that the major portion of the dividend received by the assessee is from the group companies, namely, Dabur India Ltd., and Ayurvet Ltd. and the assessee has not incurred any expenditure for earning such tax free dividend income. It is also his submission that the AO has not recorded any satisfaction with respect to the entries in the books of account while computing the disallowance u/s 14A of the IT Act r.w.r.8D. It is the alternate contention of the ld. Counsel for the assessee that no disallowance can be made under Rule 8D(2)(iii) of

the IT Rules in respect of the shares on which no dividend income has been received.

27.1 We find, identical issue had come up before the coordinate Bench of the Tribunal in assessee's own case for AY 2014-15. We find, the Tribunal, vide ITA No.2086/Del/2018, order dated 27.01.2022, has decided the issue and restored the issue to the file of the AO by observing as under:-

“12. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the assessee, in the instant case, has received dividend income of Rs.27,02,35,558/- from investments made by it in the equity shares, which was claimed as exempt income. The assessee, while computing the disallowance u/s 14A has suo moto disallowed an amount of Rs.2,41,164/-, the details of which are as per para 5 above. We find, the AO, without recording any satisfaction as to how and why the computation filed by the assessee making suo moto disallowance of Rs.2,41,164/- is incorrect, computed the disallowance at Rs.1,11,10,711/-. After deducting the suo moto disallowance made by the assessee at Rs.2,41,164/-, the AO made an addition of Rs.1,08,69,547/- to the total income of the assessee which has been upheld by the CIT(A) and the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the Id. Counsel for the assessee that it is a condition precedent that before making any disallowance u/s 14A of the Act, the Assessing Officer has to record his satisfaction in clear terms about the nature of expenses incurred by the assessee to earn the dividend and that satisfaction note has to be recorded with reference to the accounting entries made in the books of account. We find merit in the above argument of the Id. Counsel for the assessee. A perusal of the assessment order nowhere shows that there is any satisfaction recorded by the AO as to why the computation filed by the assessee, in the instant case, is incorrect. Admittedly, the assessee has not incurred any expenditure directly relating to any exempt income. We find, the Id.CIT(A), following the order for AY 2010-11 in assessee's own case, has confirmed the disallowance made by the AO u/s 14A of r.w. Rule 8D of IT(AT) Rules. However, a perusal of the order of the Tribunal in assessee's own case for AY 2010-11, vide ITA Nos.3796/Del/2015 and 4574/Del/2015, order dated 13.11.2019, shows that the Tribunal at para 29 of the order has set aside the order of the CIT(A) and directed the AO to delete the addition by observing as under:-

“29. We have considered the rival arguments made by both the sides; perused the orders of the Assessing Officer and the CIT(A); and the paper book filed on behalf of the assessee. As held by the Assessing Officer himself, the assessee has received a dividend income of Rs.39,97,165/- on shares held as stock-in-trade which has been claimed as exempt. It is also held by the Assessing Officer that the assessee has made *suo motu* disallowance of Rs.55,32,603/- u/s 14A of the Act. Therefore, we find merit in the argument advanced by the ld. counsel that when the assessee has himself disallowed an amount of Rs.55,32,603/- and no satisfaction has been recorded by the Assessing Officer, therefore, the disallowance made by the Assessing Officer and sustained by the CIT(A) is not correct. We, therefore, set aside the order of the CIT(A) on this issue and direct the Assessing Officer to delete the addition.”

13. Since the AO in the instant case has not recorded his satisfaction before making the disallowance, therefore, respectfully following the decision of the Tribunal in assessee’s own case for AY 2010-11 where it is held that in absence of any satisfaction recorded by the AO, the disallowance made by him and sustained by the CIT(A) is not correct, we set aside the order of the CIT(A) and direct the AO to delete the addition. The grounds of appeal Nos. 1 and 2 raised by the Revenue are accordingly dismissed.”

28. Since the AO, in the instant case has also not recorded any satisfaction before making the disallowance, therefore, respectfully following the order of the Tribunal in assessee’s own case for AY 2014-15, we set aside the order of CIT(A) and direct the AO to delete the addition. The ground raised by the assessee is accordingly allowed.

29. Ground of appeal No.4 being general in nature is dismissed.

30. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 25.04.2022.

Sd/-

(N.K.CHOUDHRY)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 25th April, 2022.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi