

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "C" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI G.S.PANNU, PRESIDENT &
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA Nos.3471 & 3472/Del/2017

[Assessment Years : 2010-11 & 2011-12]

Genesis Color Pvt. Ltd. 3A/1, Rao Tula Ram Marg, New Delhi PAN-AABCG4825H	vs	DCIT Circle 12(1) New Delhi
APPELLANT		RESPONDENT

ITA No.3731/Del/2017

[Assessment Year : 2011-12]

DCIT Circle-10(1) New Delhi	vs	Genesis Color Pvt. Ltd. 3A/1, Rao Tula Ram Marg, New Delhi PAN-AABCG4825H
APPELLANT		RESPONDENT
Appellant by	Shri Ved Jain, Adv & Sh. Ashish Geol, CA	
Respondent by	Shri Umesh Takyar, Sr. DR	
Date of Hearing	01.04.2022	
Date of Pronouncement	29.04.2022	

ORDER

PER KUL BHARAT, JM :

These three appeals filed by the assessee and the Revenue pertaining to Assessment Years 2010-11 & 2011-12 are directed against the different orders of the Ld.CIT(A)-16, New Delhi, all dated 01.03.2017. Since identical grounds have been raised, all three

appeals were taken up together for hearing and are being disposed off by way of consolidated order for the sake of brevity.

ITA No.3471/Del/2017 [Assessment Year : 2010-11]

2. First we take up the assessee's appeal in **ITA No. 3471/Del/2017** pertaining to **Assessment Year 2010-11**. The assessee has raised following grounds of appeal:

1. *That the impugned order of the Ld. Commissioner of Income Tax (Appeals) [hereinafter refer to "Ld. CIT (A)"] dated 01.03.2017 is bad in law and on facts.*
2. *That the Ld. CIT (A) has erred in law in sustaining an addition of Rs.21,630/- under section 14A read with Rule 8D of the Act, to the extent of total dividend income earned by the appellant company amounting to Rs. 21,630/- from the mutual fund investment.*
 - 2.1 *That the Ld. CIT (A) has erred in law in not considering the fact that the Ld. AO has neither recorded his satisfaction nor given any reason while disregarding the suo motu disallowance of Rs. 10,500/- made by the assessee on this count.*
3. *That the Ld. CIT (A) has erred in law in sustaining the disallowance of Rs. 1,05,69,307/- being interest expenses in proportionate to the funds outstanding with subsidiary company.*
 - 3.1 *That the Id. CIT(A) has wrongly sustained the aforesaid disallowance by not appreciating the fact that the interest free advance was given by the assessee*

company to M/s Genesis Luxury Fashion Pvt. Ltd. (a wholly owned subsidiary) out of company's own interest free funds , the balance of which far exceeds the amount of advance outstanding .

- 3.2 *That the Id. CIT(A) has erred in sustaining the aforesaid disallowance despite the fact the interest free advance was given by the parent assessee company to its sister concern as a measure of commercial expediency to support its business.*
 4. *That the Ld. CIT (A) has erred in law in sustaining the disallowance on account of advances written off amounting to Rs. 30,37,439 /- .*
 5. *That the Ld. CIT (A) has erred in law in sustaining the addition despite the fact that the said advances were paid by the appellant company for opening of show rooms which was forfeited by the party, as the appellant company could not get necessary license for opening the show rooms at different place.*
3. Ground No. 1 is general in nature hence, needs no separate adjudication.

FACTS OF THE CASE

4. Facts in brief are that in this case the assessee company filed its return of income declaring income of Rs.3,94,65,250/- on 08.10.2010. Subsequently, the case was selected for scrutiny assessment and while framing the assessment u/s 143(3) of the

Income Tax Act, 1961 (“the Act”), the Assessing Officer made various additions i.e. addition of Rs. 86,37,390/- on account of disallowance u/s 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (“the Rules”), disallowance out of miscellaneous expenses of Rs. 1,43,913/-, on account of disallowance u/s 40A(3) of the Act of Rs. 7,06,148/-, disallowance out of repairs and maintenance expenses of Rs. 36,15,871/- disallowance out of advertisement expenses of Rs. 11,34,464/-, disallowance u/s 40a(ia) of the Act for non deduction of taxes on commission of sales of Rs. 62,03,141/-, disallowance of deduction claimed u/s 80G of the Act of Rs.50,000/- and disallowance u/s 36(1)(iii) of the Act in respect of interest of Rs.1,05,69,307/-, and disallowances of advances of rent written off of Rs.30,37,439/-. Thus, the Assessing Officer assessed income at Rs.7,35,63,030/- against the income declared at Rs.3,94,65,250/-.

5. Aggrieved against this, the assessee preferred appeal before the Ld.CIT(A) who after considering the submissions of the assessee and material available on record, partly allowed the appeal. Thereby, the Ld.CIT(A) restricted the disallowance made u/s 14A of the Act to the extent of Rs. 21,630/- i.e. the exempt income earned

by the assessee. Further, the Ld.CIT(A) deleted the additions of Rs.1,03,615/- and Rs.1,43,915/- out of the miscellaneous expenses of Rs.7,06,248/- made by invoking the provisions of Section 40A(3) of the Act, Rs. 36,15,877/- which was made by the Assessing Officer treating the same as capital expenditure, the other additions in respect of Rs.11,34,464/- made on account of disallowance of advertisement expenses, Rs. 62,03,141/- made on account of non deduction of tax u/s 40(a)(ia) of the Act and also deleted the addition of Rs. 50,000/- made regarding disallowance of donation made u/s 80G of the Act. However, the Ld. CIT(A) in respect of the disallowance of interest of Rs.1,05,69,307/- affirmed the view of the Assessing Officer and also sustained the addition of the sum of Rs. 30,37,439/- in respect of the disallowance regarding advance rent that was forfeited by the owners of the premises.

6. Aggrieved against this, the assessee is in appeal before this Tribunal.

7. Ground No. 2 is against sustaining the addition of Rs.21,630/- u/s 14A of the Act read with Rule 8D of the Rules sustained to the extent of total dividend income earned by the assessee company

during the year under appeal. Ground No. 2.1 is in support of the Ground No. 2.

8. Ld. Counsel for the assessee submitted that the Assessing Officer had made disallowance by invoking the provisions of Section 14A of the Act of Rs. 86,37,390/-. However, on appeal to the Ld.CIT(A), the disallowance was restricted to the extent of the exempt income earned by the assessee.

9. Ld. Counsel for the assessee submitted that the assessee itself had disallowed expenditure of Rs. 10,500/-. The Ld.CIT(A) ought to have deleted the entire addition. He submitted that the Assessing Officer failed to record his satisfaction having regard to the accounts of the assessee. It was incumbent upon the Assessing Officer to point out that any expenditure related to earning of exempt income had been claimed by the assessee in its profit and loss account. There is no nexus between earning of the exempt income and business expenditure claimed by the assessee. Therefore, the disallowance u/s 14A of the Act, is highly unjustified and arbitrary.

10. On the contrary, Ld. Sr.DR opposed the submissions and submitted that the decision of the Ld.CIT(A) in consonance with the decision of the Hon'ble Delhi High Court in case of *Joint Investment Pvt. Ltd. Vs. CIT 372 ITR 694 (Del.)*.

11. We have heard the rival submissions and perused the material available on record and gone through the orders of the authorities below. We find that the Ld.CIT(A) had decided this issue by observing as under:-

“That the disallowance made by the AO can be maximum to the extent of dividend income earned i.e. Rs. 21,630 /-, For this the appellant has relied on following judicial pronouncements:-

- (1) *Joint Investment Private Limited Vs. CIT (2015) 372 ITR, 694 Delhi.*
- (2) *Gillette group India private limited versus ACIT 16 ITR(T) 57, Delhi ITAT.*

I have considered all the facts and circumstances of the case and also the judicial pronouncements relied upon by the appellant and I find force in the argument of the appellant that, no way the disallowance can exceed the actual exempt income. In the circumstances I direct the assessing officer to restrict the disallowance to Rs. 21,630/- only.”

12. We do not see any infirmity into the order of the Ld.CIT(A) as the Ld.CIT(A) had decided the issue by following the binding

precedent, same is hereby affirmed. Moreover, the assessee failed to demonstrate as to what is the basis of *suo motto* disallowance of Rs.10,500/-. On the contrary, it goes to prove that there was some expenditure which the assessee had incurred for earning of exempt income. Looking to the amount of investment, we are not satisfied with the explanation of the assessee. Hence, this ground of the assessee's appeal is dismissed.

13. Ground No. 3 is against the disallowance of Rs. 1,05,69,307/- being interest expenses in proportionate to the funds outstanding with the subsidiary company.

14. Ground No. 3.1 to 3.2 are in support of the Ground No. 3.

15. Ld. Counsel for the assessee reiterated the submissions and the material placed before the Ld.CIT(A). It was contended that in respect of rectification entries of Rs. 5 crore and Rs. 1 crore passed by Journal Voucher JVHO/0910/3979 & JVHO/0910/3991 respectively. These entries were passed to rectify the earlier entries passed on the date of 30/3/2010, where the amount received of Rs. 5 crore and Rs. 1 crore from M/s Genesis Luxury Fashion Pvt. Ltd. were inadvertently booked under wrong head against M/s Genesis

Luxury Fashion Pvt. Ltd. whereas these entries should have been recorded against advances given to M/s Genesis Luxury Fashion Pvt. Ltd. Considering the above facts, it became clear that the actual amount outstanding from M/s Genesis Luxury Fashion Pvt. Ltd. as on 31/3/2010 was Rs. 5 core and not Rs. 11 crore as considered by the Assessing Officer.

15.1. Further, interest free advance as given by the assessee to the M/s Genesis Luxury Fashion Pvt. Ltd. (wholly and subsidiary) was out of interest free funds. He contended that a perusal of balance sheet would demonstrate that the total share capital including reserves as on 31/3/2010 was Rs. 171,12,89,703/-. He contended that the assessee has not used its cc limit to provide loan to its subsidiary. It was further submitted that law is clear if there are reserve and share capital along with the loans, the presumption would be that the loans and advances must have been made out of reserve and share capital. In support of this, Ld. Counsel for the assessee placed reliance on the judgment of the Hon'ble Supreme Court rendered in the case of *S A Builders Vs. CIT (288) ITR 1 (SC)* and the judgment of the Hon'ble Delhi High Court in the case of *CIT Vs. Tin Box Company 260 ITR 637*. He submitted that since the

balances of reserve and share capital far exceeds the amount of advance outstanding i.e. Rs.5 crore, no disallowances of interest on the presumption that the interest bearing funds have been utilized, can be made. He submitted that under the facts and circumstances of the present case, addition made by the Assessing Officer, deserves to be deleted.

16. On the contrary, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below. He submitted that the assessee failed to prove commercial expediency for making such advances coupled with the fact, no cash flow was filed to verify the claim of assessee that the advances were given out of interest free fund available with assessee. He, therefore, placed reliance on the impugned order.

17. We have heard the rival submissions and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has decided the issue by observing as under:-

“I have considered all the facts and circumstances of the case. As far as the reification with respect to amount of loan to the subsidiary company is concerned, the contention of the Ld. AR has to be examined in right perspective. It is contended by the

Ld. AR that the amount outstanding against GLF as on 31/03/2010 was Rs.5 Crore, however in the preceding para, it was admitted by the Ld. AR that Rs.6 Crores received from M/s Genesis Luxury Fashion Pvt. Ltd. were inadvertently book to M/s Genesis Luxury Fashion Pvt. Ltd. in other words Rs.6 Crores were returned by the subsidiary company to the appellant company. Therefore the total amount advance to M/s Genesis Luxury Fashion Pvt. Ltd, was in fact 1 Crore out of which Rs.6 Crore was received on 30/03/2010. Therefore the assessing officer is directed to determine the actual amount of loan advanced by the appellant company to the subsidiary company.

The other aspect of the loan is, that it was interest free. The appellant has argued that it had enough interest free funds of its own. Therefore it was in a position to extend interest free loan to its subsidiary company M/s Genesis Luxury Fashion Pvt. Ltd.

This argument of the appellant is needed to be examined carefully. Whether, the appellant, meant that the share capital as well as the reserve, was available to it, in the liquid form so as to extend a substantial sum of loan to its subsidiary? The appellant has not submitted the cash flow statement with respect to the liquidity available with it at the time of extending the loan! The share capital and the reserve in the balance sheet, usually, remain invested in the assets form. The mere availability of share capital and reserve in itself does not enable the appellant to extend interest free loan to its subsidiary company.”

18. From the above finding of the Ld.CIT(A), it is clear that the Ld.CIT(A) ruled against the assessee for want of cash flow. It is not

clear whether the Ld.CIT(A) during the appellate proceedings had called for cash flow for verifying the veracity of claim of the assessee. The Ld.CIT(A) ought to have decided the issue by making the necessary enquiry through the Assessing Officer but proceeded to confirm the addition without verifying the correctness of the explanation of the assessee. We are of the considered view that the assessee should have filed cash flow statement in support of its claim that the advances to its subsidiary were made out of its own interest free funds.

18.1. Under these facts, we deem it proper and in the interest of justice to set aside this issue to the Assessing Officer for decision afresh. The Assessing Officer would give a definite finding with regard to the utilization of own fund for making interest free advances to its subsidiary and also ascertain the factum of business expediency qua the transaction in question. All these issues are required to be decided after carrying out the necessary enquiry by the Assessing Officer. This ground of the assessee's appeal is allowed for statistical purpose.

19. Ground No. 4 is against sustaining the disallowance on account of advances of rent written off amounting to Rs. 30,37,439/-. Ground No. 4.1 is in support of this ground.

20. Ld. Counsel for the assessee submitted that the assessee company claimed Rs. 30,37,439/- on account of advances written off. He submitted that the Company had given advance rent of Rs. 30,37,439/- in the year under consideration. These payments were made by way of account payee cheques and the money was given as an advance rent during the course of business for opening of showrooms in various places. The Company was not able to open the show rooms as it could not procure requisite license for opening the same. The amount was forfeited by the concerned party and company had to written off such advances from its accounts. The expenditure was made in ordinary course of business and same is allowable u/s 28 of the Act as a trading loss even allowable u/s 37 of the Act as business loss. Ld. Counsel for the assessee submitted that in support of the contention that the amount was forfeited; the confirmation by the owners of the shop/showroom was also filed before the Assessing Officer. Even communication accessed through e-mail was also filed before the

Assessing Officer. He submitted that the authorities below therefore, are not justified for making the disallowance and same deserves to be deleted. He submitted that expenditure was incurred during the course of business and solely for business expediency. Hence, it is allowable expenditure.

21. Ld. Sr. DR opposed the submissions and supported the orders of the authorities below. He submitted that the assessee has not placed on record any agreements between the parties. Further, no effort was made to recover the advances so paid. He submitted that merely making an averment and without substantiating the same with evidence would not be sufficient to allow the claim of the assessee.

22. In rejoinder, Ld. Counsel for the assessee submitted that the entire payment was made through banking channel. The authorities below have not doubted about the genuineness of transactions. He submitted that even such advances were in earlier years as well. He submitted that the AO has not brought any adverse material regarding these advances. Therefore, in the absence of any such evidence, the addition so made ought not to have been sustained.

23. We have heard rival contentions and perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the advances were given through banking channel. In support of the claim that the amount was given for hiring of the premises for opening showroom, the correspondence exchanged between the parties was also filed before the authorities below. The Revenue has not rebutted these evidences by placing any contrary material on records. The assessee filed sufficient evidences in support of the claim of hiring of commercial premises for opening of shop/showroom. Therefore, looking to the facts and material placed before us, we are of the considered view that the advances were given in the course of business by the assessee and for the purpose of commercial expediency. In our considered view, the assessee had rightly claimed it as business loss. Therefore, we hereby, direct the Assessing Officer to delete the addition. This ground of assessee's appeal is allowed.

24. In the result, the appeal of the assessee in ITA No.3471/Del/2017 is partly allowed for statistical purposes.

ITA No. 3472/Del/2017 [Assessment Year 2011-12]

25. Now, we take up the assessee's appeal in **ITA No. 3472/Del/2017** pertaining to the **Assessment Year 2011-12**. The assessee has raised following grounds of appeal:-

1. *That the impugned order of the Ld. Commissioner of Income Tax (Appeals) [hereinafter refer to "Ld. CIT (A)"] dated 01.03.2017 is bad in law and on facts.*
2. *That the Ld. CIT (A) has erred in law in sustaining the disallowance of Rs. 7,17,625/- made by the Ld. Assessing officer in respect of advertisement and publicity expenses amounting to Rs. 2,79,184/- and sales promotion expenses amounting to Rs. 4,38,441/- respectively.*
 - 2.1 *That the Ld. CIT (A) has sustained the disallowance of Rs. 2,79,184/- despite the fact that the assessee company has suo motu disallowed the same under section 40(a)(ia) of the Act, while computing its taxable income.*
 - 2.2 *That the Ld. CIT (A) has erred in confirming the disallowance of Rs. 4,38,441/- without appreciating the fact that expenses were incurred on travelling and hotel expenses of directors of the assessee company for making business trips in relation to the promotion of sales and in support of its claim, related vouchers and credit card statements were filed by the assessee company.*
 - 2.3 *That the CIT(A) wrongly confirmed the aforesaid disallowance without considering the fact that there is no applicability of TDS provisions on hotel and travelling expenses incurred for business purpose and thus these expenses are allowable in nature under section 37 of the I. T.*

Act, 1961.

3. *That the Ld. CIT (A) has erred in law in sustaining the disallowance on account of advances written off amounting to Rs. 50,84,244/- made by the Ld. Assessing Officer.*

3.1 *That the Ld. CIT (A) has erred in law in sustaining the addition despite the fact that the said advances were paid by the appellant company for opening of show rooms which was forfeited by the party, as the appellant company could not get necessary license for opening the show rooms at different place.*

4. *That the Ld. CIT(A) has erred in law in sustaining the ad-hoc disallowance of Rs. 15,72,656/- being 20% of 78,63,281/- on account of expenses incurred through credit card holding that these expenses are not wholly and exclusively for the purpose of business of the appellant company.*

4.1 *That the Ld. CIT (A) has erred in law in sustaining the addition despite the fact that appellant has provided supported voucher and credit card bills in respect of each and every item of credit card expenses.”*

26. Ground No. 1 is general in nature. Ground No. 5 is a prayer clause. Therefore, these two grounds do not need separate adjudication.

27. Ground No. 2 is against sustaining the disallowance of Rs.7,17,625/- made by the Assessing Officer in respect of advertisement and publicity expenses amounting to Rs. 2,79,184/- and sale promotion expense amounting to Rs.4,38,441/-

respectively. Ground No. 2.1 to 2.3 are in support of the Ground No. 2 and are argumentative hence, being decided together with the Ground No. 2.

28. Ld. Counsel for the assessee submitted that the authorities below failed to appreciate the facts in right perspective. He contended that in support of the expenses, the assessee had filed bills and vouchers. The Assessing Officer had not pointed any defect and discrepancy in the vouchers so filed. The accounts of the assessee are duly audited. The Auditors have not pointed out any defect in the accounts of the assessee. He submitted that the adhoc approach of the authorities below is not permitted under the law. He submitted that the disallowance so made deserves to be deleted under the facts and circumstances of the present case.

29. Per contra, Ld.Sr.DR opposed these submissions and supported the orders of the authorities below. He submitted that Ld. CIT(A) has given a finding on fact that the contention of the assessee that it had itself disallowed expenses to the extent of Rs.2,79,184/- was found incorrect. Therefore, the Ld.CIT(A) was justified in sustaining the disallowance. He further submitted that

the assessee grossly failed to substantiate its claim. Ld. Sr. DR supported the order of Ld. CIT(A).

30. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has given a finding on fact in respect of Rs.2,79,184/- by observing as under:-

“I have considered all the facts and circumstances of the case and the evidence on record. With regard to disallowance of Rs.2,79,184/- the contention of the assessee company that it has already disallowed the said expenditure u/s 40(a)(ia) of I.T.Act while computing its taxable income (Refer computation at page No.2 of Paper Book and Annexure V of Tax Audit Report at page No.17 of PB) was not found to be correct as no such evidence on the referred page was found. Therefore, the contention of the Ld.AR, bereft of any evidence is rejected and I do not find any infirmity in the order of the Assessing Officer.”

31. In respect of sales promotion expenses of Rs.4,19,522/- and Rs.18,919/-, it is recorded that the assessee has not given any detail regarding the activity undertaken by the Directors Mr.Sanjay Kapoor and Mr. Jyoti Mohan Narula. The contention of the assessee is that the visit was with regard to business. The assessee had provided relevant evidences. He submitted that the auditor has

duly verified the expenditure therefore, the Ld. CIT(A) was not justified in sustaining this addition.

32. There is no dispute with regard to the fact that the expenditure was incurred in travelling and stay of the Directors of the company. The AO had disallowed this expenditure on the basis that the assessee failed to deduct tax. Hence, there is contradictory stand of the authorities below for making and sustaining the disallowance. Therefore, the AO is directed to delete the disallowance of Rs.4,38,441/-. However, the disallowance of Rs.2,79,184/- is sustained as the assessee failed to rebut the finding on fact recorded by the Ld.CIT(A). This ground of assessee's appeal is partly allowed.

33. Ground No.3 raised by the assessee is against the advances written off amounting to Rs.50,84,244/-.

34. The facts and issues are identical as were decided in Ground No.4 in ITA No.3471/Del/2017. We have deleted the disallowance by observing as under:-

23. "We have heard rival contentions and perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact

that the advances were given through banking channel. In support of the claim that the amount was given for hiring of the premises for opening show room, the correspondence exchanged between the parties was also filed before the authorities below. The Revenue has not rebutted these evidences by placing any contrary material on records. The assessee filed sufficient evidences in support of the claim of hiring of commercial premises for opening of shop/showroom. Therefore, looking to the facts and material placed before us, we are of the considered view that the advances were given in the course of business by the assessee and for the purpose of commercial expediency. In our considered view, the assessee had rightly claimed it as business loss. Therefore, we hereby, direct the Assessing Officer to delete the addition. This ground of assessee's appeal is allowed."

35. Therefore, taking the consistent view, this addition of Rs.50,84,244/- is deleted. Thus, Ground No.4 raised by the assessee is allowed.

36. Ground Nos.4 & 4.1 are against the sustaining the adhoc disallowance of Rs.15,72,656/- being 20% of Rs.78,63,281/- on account of expenditure incurred through credit card.

37. Ld. Counsel for the assessee reiterated the submissions as made before Ld.CIT(A). He submitted that the disallowance was

made purely on adhoc basis without citing any specific instances. He contended such adhoc and casual approach is not permissible under law.

38. Per contra, Ld.Sr.DR opposed these submissions and supported the orders of the authorities below. He submitted that the assessee failed to substantiate its expenditure by giving plausible explanation. He contended that in the absence of plausible explanation, the Assessing Officer was justified for making disallowance on estimate basis.

39. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. We find that the Ld.CIT(A) has decided the issue by observing as under:-

“During the assessment proceedings, the appellant was asked by the AO to submit the details of claim of Rs.78,63,281/- under the head credit card expenses. On perusal of the same the AO found that part of expenses on credit card are personal in nature. The AO asked the appellant to submit the full details to which the appellant submitted as under.-

"Please further note in the desired format your honors has sought the details of members, the addresses, names, the

person transacted through them, name of hotel and restaurant and person to whom the gifts were given and whether they were for business purpose etc. Sir, there may be 100 of such persons incurred. If each voucher is picked up it contains the amount, weight, month, information etc."

The appellant, therefore, did not quite comply with the requirement of the Assessing Officer. Further, mere incurring of expenditure in whatever head is not material. It is the nature of expenditure or the purpose of expenditure which shall decide the allowability of a particular expenditure. On perusal of the expenditure incurred I agree with the observation of the Assessing Officer that there are expenses like purchase of apparels, stay at resorts, payment with regard to snow house, etc. are not for the purpose of business.

Therefore, he asked the appellant why part of the expenses should not be disallowed for being personal in nature? In the absence of any satisfactory reply from the appellant side the Assessing Officer disallowed 20% of total expenses. It is pertinent to mention here that the appellant had not furnished the requisite details of credit card expenses which prompted the Assessing Officer to disallow 20% of the expenses. I do not find any infirmity in the order of the Assessing Officer although the addition is being confirmed, for the expenditure been incurred, not for the purpose of business. The ground is therefore, dismissed."

40. We find that the authorities below have made disallowance purely on adhoc and conjecture basis without citing the specific instance of expenditure incurred for personal use. In our considered view merely stating that the expenditure incurred for personal use could not be ruled out, would not be sufficient to make disallowance @ 20% of total expenditure. There has to be some basis regarding adoption of rate at 20% for disallowance. Therefore, in the absence of specific instances regarding expenditure incurred was found to be personal in nature hence, such disallowance on adhoc basis cannot be sustained. We, therefore, direct the Assessing Officer to delete the disallowance. This ground of assessee's appeal is allowed.

41. In the result, the appeal of the assessee is partly allowed.

ITA No. 3731/Del/2017 [Assessment Year 2011-12]

42. Now, we take up the Revenue's appeal in **ITA No. 3731/Del/2017** pertaining to the **Assessment Year 2011-12**. The Revenue has raised following grounds of appeal:-

1. *“Whether on the facts and circumstances of the case in law Ld. CIT (A) has erred in deleting the addition of Rs. 1,17,43,995/- made by the AO ignoring the provision of section*

14A r.w.r. 8D and also the CBDT Circular No. 5/2014 dated 11.02.2014.

2. Whether on the facts and circumstances of the case in law Ld. CIT (A) has erred in deleting the addition of Rs. 1,59,106/- made by the AO ignoring the provision of section 40A(3) of the IT Act. 1961.

3. Whether on the facts and circumstances of the case in law Ld. CIT(A) has erred in deleting the addition of Rs. 19,03,536/- made by the AO ignoring the finding of AO that the same is being capital in nature.

4. Whether on the facts and circumstances of the case in law Ld. CIT (A) has erred in deleting the addition of Rs.3,71,112/- made by the AO towards foreign exchange notional loss after considering the instruction no. 3 of 2010 dated 23.03.2010 issued by the CBDT.

5. Whether on the facts and circumstances of the case in law Ld. CIT(A) has erred in deleting the addition of Rs. 14,76,782/- made by the AO u/s 40(a)(i) for non deduction of TDS in respect of payment made to foreign parties reflecting in AIR Information.

6. Whether on the facts and circumstances of the case in law Ld. CIT (A) has erred in deleting the addition of Rs. 1,54,332/- being 20% of Rs. 8,57,402/- made by the AO in respect of expenditure incurred on tours & travelling Ignoring the finding that the said expenses have not been incurred wholly and exclusively for business purposes.

7. *The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.”*

43. Ground No.1 raised by the Revenue in this appeal is against the deleting the addition of Rs.1,17,43,995/- made by the Assessing Officer by invoking the provision of section 14A r.w.Rule 8D of the Income Tax Rules, 1962.

44. Ld. Sr. DR supported the assessment order and submitted that Ld.CIT(A) was not justified in deleting the addition.

45. On the contrary, Ld. Counsel for the assessee submitted that the issue is squarely covered in favour of the assessee by the judgement of Jurisdictional High Court in the case of *M/s Cheminvest Ltd vs CIT (2015) 378 ITR 33 Delhi* has held that in the case where no exempt income is earned, no disallowance u/s 14A of the Act, is called for.

46. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has decided this issue by observing as under:-

“The Assessing Officer made a disallowance of Rs.1,17,43,995/- U/S 14A r.w.r. 8D. During the appellate proceedings the Ld AR

Ms. Megha Mittal & Bharati Sharma CAs submitted that since the appellant company had no exempt income during the impugned assessment year, the rule 8D was not applicable. The Ld AR relied on the following case laws:-

- i) M/s Cheminvest Ltd vs CIT (2015) 378 ITR 33 Delhi*
- ii) CIT vs Willson Textile Industries Ltd (2009) 319 ITR 204*
- iii) CIT vs M/s Lakhani Marketing Inc. 272 CTR 265 (2008) (P&H)*

Considering the submission of the appellant and judicial consensus in favour of the appellant that if there is no exempt income, disallowance u/s 14A cannot be made. I am of the opinion that the disallowance u/s 14A r.w. Rule 8D by the Assessing Officer was not warranted. The same is, therefore, deleted.”

47. From the above finding of Ld. CIT(A), it is clear that he followed the binding precedents of Hon'ble Jurisdictional High Court rendered in the case of *M/s Cheminvest Ltd vs CIT (2015) 378 ITR 33 Delhi*. Therefore, we do not see any infirmity in the order of Ld.CIT(A), the same is hereby affirmed.

48. Ground No.2 is against the deleting the addition of Rs.1,59,106/- made by the Assessing Officer by invoking the provision of section 40A(3) of the Act.

49. Ld.Sr.DR supported the order of AO and submitted that Ld.CIT(A) was not justified in deleting the addition. However, Ld. Counsel for the assessee submitted that there was no occasion of invoking of section 40A(3) of the Act which has been rightly deleted by Ld.CIT(A).

50. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. We find that Ld. CIT(A) has given finding on fact that there is no violation of provision of section 40A(3) of the Act. Ld. Sr. DR could not point out any violation by the assessee. Therefore, the decision of Ld.CIT(A) is affirmed.

51. Ground No.3 is against the deleting the addition of Rs.19,03,536/- made by the AO on the basis that the expenditure was capital in nature.

52. Ld. Sr. DR supported the assessment order.

53. On the contrary, Ld. Counsel for the assessee submitted that there was no capital expenditure. The AO has made disallowance purely on adhoc basis without pointing out at what expenditure was capital in nature.

54. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has given finding on fact by observing as under:-

“The addition was made by the Assessing Officer on the basis that certain items of expenses were not covered under repairs, as either they are capital expenditure or the assessee has obtained new advantage/benefit which would give him enduring benefit in subsequent year also. However, the Assessing Officer has not specified any of such items of expenditure. The Assessing officer went on to make disallowance of 20% out of total expenditure under the head office repairs and maintenance but allowed the depreciation @10% on such expenditure.

During the appellate proceedings the Ld AR argued that the Assessing Officer has not specified the reason which do not meet the condition of current repairs/ revenue expenses. The Ld AR also assailed the ad hoc disallowance of 20% by the Assessing Officer which had no basis.

I have considered all the facts and circumstances of the case and the evidence on record and I agree with the Ld AR that the contention of the AO, that certain items of expenses are not directly covered under current repairs, has no basis. Similarly, the ad hoc disallowance of 20% also has no basis. I do not find any expenditure of capital nature in the evidence filed before

me. Therefore, I do not see any reason to sustain the ad hoc addition made by the Assessing Officer, the same is therefore, deleted.”

55. The finding on fact recorded by Ld.CIT(A) is not controverted by the Revenue by placing any contrary material on record. Therefore, we do not see any infirmity in the order of Ld.CIT(A), the same is hereby affirmed.

56. Ground No.4 is against deleting the addition of Rs.3,71,112/- made by the AO towards foreign exchange notional loss.

57. Ld.Sr.DR supported the assessment order.

58. On the contrary, Ld. Counsel for the assessee submitted that the issue is squarely covered in favour of the assessee. Moreover, the Assessing Officer misdirected himself in deciding this issue. He relied on the finding of Ld.CIT(A).

59. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has given finding on fact by observing as under:-

“I have considered all the facts and circumstances of the case. The Assessing Officer has moved with the presumption that the

appellant has transacted in foreign exchange derivatives whereas the appellant has denied categorically, having entered into any such transaction. As per the appellant it had indulged into normal business transactions for which the payment was received from the parties or payment made to parties. The appellant further stated that it has been following the same method with respect to notional foreign exchange loss in the earlier years too which has not been disputed by the Assessing Officer. It was further argued that the foreign exchange loss has been computed as per AS-II notified by the Companies (Accounting Standard) Rules, 2006. I find merit in the contention of the Ld AR. The appellant has not dealt in any foreign exchange derivatives. The notional loss has occurred during the course of normal business transaction. And lastly, the department has not objected to such method been followed by the appellant in the earlier years. Therefore, the addition made by the AO of Rs.3,71,112/- on a/c of marked to market losses, is deleted.”

The above finding of fact is not rebutted by the Revenue by placing any contrary material on record. Therefore, we do not see any reason to interfere in the finding of Ld.CIT(A), the same is hereby affirmed.

60. Ground No.5 is against deleting the addition of Rs.14,76,782/- made by the Assessing Officer u/s 40(a)(i) of the Act for non deduction of TDS.

61. Ld.Sr.DR supported the assessment order and submitted that Ld.CIT(A) was not justified in deleting the addition.

62. On the contrary, Ld. Counsel for the assessee supported the order of Ld.CIT(A) and submitted that the AO has not appreciated the fact in right perspective but Ld.CIT(A) has given finding on fact by observing as under:-

"I have considered all the facts and circumstances of the case. The Assessing Officer received the information from the Annual Information report (AIR). With regard to certain payments to the parties based in Mauritius, UAE, France, Turkey, Hongkong and China. The same was confronted to the appellant and he was asked whether the transactions were reflected in its books of accounts. To this the appellant, before the Assessing Officer, replied as under:-

"The AIR information sought by your goodself relates to the payment made to foreign parties. The payments are alleged to have been made to Mauritius, UAE, France, Turkey, Hongkong and China etc. May we request your honour to please give us more information namely vendor name, amount in foreign currency and date of transaction to enable us to locate the same in our records and give a definite reply. Meanwhile, we are enclosing al the ledger account in respect of the expenses at annexure -3 and

request you to identify what information your honour would like us to furnish."

The appellant before the Assessing Officer has submitted the complete details of payments made to foreign parties alongwith their names, addresses, details of TDS, wherever applicable and the reason wherever tax was not deducted. From the facts perused so far it appeared that the Assessing Officer did not have the specific information in his possession. On the other hand the appellant has submitted the full information available with him. To my mind the appellant had no reason or rather specific reason to disallow the expenditure on the basis of vague AIR information. Therefore, the addition made by the Assessing Officer of Rs.14,76,782/- is deleted."

63. The Revenue has not placed any material before this Tribunal to controvert the finding of Ld.CIT(A). Therefore, We do not see any reason in the finding of Ld.CIT(A), the same is hereby affirmed. This Ground No.5 raised by the Revenue is dismissed.

64. Ground No.6 is against the deleting of addition of Rs.1,54,332/- made by the AO on account of disallowance of expenditure related to tours and travelling.

65. Ld.Sr.DR supported the assessment order.

66. Per contra, Ld. Counsel for the assessee submitted that the AO has not pointed out any specific instance and proceeded to make adhoc disallowance which is not permissible under law.

67. We have heard the rival contentions and perused the material available on record and gone through the orders of the authorities below. We find that the disallowance was made purely on adhoc basis. The AO has not pointed out any specific instance. Therefore, we do not see any reason to interfere in the order of Ld.CIT(A), the same is hereby affirmed. Ground No.6 raised by the Revenue is thus, dismissed.

68. In the result, the appeal of the Revenue is dismissed.

69. In the final result, both appeals of the assessee in ITA No. 3471 and 3472/Del/2017 are partly allowed and appeal of the Revenue in ITA No. 3731/Del/2017 is dismissed.

Order was pronounced in the open Court on 29th April, 2022.

Sd/-

(G.S.PANNU)
PRESIDENT

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

R. N/Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI