

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**(DELHI BENCH 'B' : NEW DELHI)****BEFORE SH. R.K.PANDA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**ITA No.5996/Del/2010
(Assessment Year : 2006-07)

M/s. Frick India Ltd. 809, Surya Kiran Building, 19, Kasturba Gandhi Marg New Delhi- 110 001 PAN – AAACF0410C	Vs.	DCIT, Circle 11(1), 312, C.R.Building, I.P.Estate New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. Tarandeep Singh, Adv.
Revenue by	Sh. Atiq Ahmad, Sr. DR

Date of hearing:	19.04.2022
Date of Pronouncement:	29 th .04.2022

ORDER**PER ANUBHAV SHARMA, JM:**

The appellant company is engaged in the manufacture and sale of air-conditioning and refrigeration equipments. The appeal has been preferred by the assessee against order dated 30.11.2010 in appeal no. 242/08-09 for the assessment year 2006-07 passed by Commissioner of Income Tax (Appeal)-XIII, New Delhi (herein after referred as Ld. First appellate authority or in short Ld.FAA) in appeal preferred against order dated 22.12.2008 u/s 143(3) of

the Income Tax Act, 1961 passed by DCIT, Circle 11(1), New Delhi (herein after referred to as 'Ld. Assessing officer or in short Ld.AO').

2. The assessee has raised following grounds of appeal :

1. *“That on the facts and circumstances of the case and in law the CIT(A) erred in confirming disallowance u/s 14A of the IT Act, 1961 to the extent of 10% of the exempted income.*

1.1 *That both the Assessing Officer and the CIT(A) erred in rejecting the sum of Rs. 1,49,036/- worked out by the assessee and offered for disallowance u/s 14A of the Act without giving the reasons that having regard to the accounts of the assessee, they were not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under the Act.*

1.2 *That without prejudice the CIT(A) having recorded that the disallowance u/s 14A ought to be based on the ratio laid down in the judgment dated 12-8-2010 of the Mumbai High Court in Godrej & Boyce Manufacturing Company vs DCIT, which had direct support of the judgment dated 6-7-2010 of the Supreme Court in M/s Walfort Share and Stock Brokers Pvt. Ltd, yet erred in properly applying the same and instead chose to confirm the disallowance by adopting an adhoc percentage i.e. 10% of the exempted income. That the order of the CIT(A) being inconsistent with the rule laid down by the Apex Court is not sustainable.*

Ground No.2

2. *That on the facts and circumstances of the case and in law the CIT(A) erred in holding the sum of Rs 15,39,793/- paid in terms of agreement dated 13-12-2002 with M/s Vilter Manufacturing Corporation, USA as capital expenditure.*

2.1 *That without prejudice, on the facts and circumstances of the case and in law, the CIT(A) erred in not allowing depreciation by written down value method on the entire amount of consideration payable under the agreement.*

Ground No.3

3. *That on the facts and circumstances of the case and in law the CIT(A) erred in restricting the depreciation on UPS to 15% instead of 60% allowable on the same.*

4. *That the order passed is bad in law and void ab initio. The Appellant prays for leave to add, alter, amend and/or vary the ground(s) of appeal at or before the time of hearing.”*

3. Heard the counsel for the assessee and Ld. Sr. DR and perused the record. The ground wise determination is as below.

Ground no. 1

4. The Appellant had declared gross income of Rs. 1,04,00,712/- and claimed exemption under Section 10(34) and (35). In the revised return sum of Rs 1,49,036/- was added back by the appellant as expenditure disallowable u/s 14A. The AO however did not accept the disallowance as worked out by the Appellant and instead invoked Rule 8D of the IT Rules, 1962. He worked disallowance of Rs.20,41,367/- and taking into consideration that the appellant had itself disallowed Rs. 1,49,037/-, the balance of Rs. 18,92,331/- (20,41,367 - 1,49,036) was accordingly disallowed. The AO has later rectified the same to Rs.14,96,211/- vide order u/s 154 dt. 12-5-2009.

4.1 Thereafter in the appeal, the Ld. CIT(A) observed "*The Tribunal in appellant's own case of A.Y. 01-02 vide order dated 14-3-2008 has held that the quantum of disallowance out of administrative expenses u/s 14A be taken as sustained to the extent of 10% of the exempt income earned by the assessee (appellant). This Miscellaneous order of Tribunal has to be read in conjunction with ITAT order dated 31-1-07 in appellant's case for AY 01-02, wherein upon consideration of facts the Tribunal had held that 10% of the expenses are reasonable expenses which can be attributed to the earning of exempt income in the facts & circumstances of the case. Respectfully, following the judgment of ITAT in appellant's own case on the issue I hold that a disallowance of 10% of the exempt income earned by the appellant would meet the ends of reasonableness and proximity for estimating the expenses incurred for earning of the exempt income under section 14A of the IT Act. Further the calculation of 10% of exempt income shall also take into account & give credit for the suo*

motu disallowance for Rs. 1,49,036/- made by the appellant in his revised return of income. Subject to the above the addition for Rs. 14,96,211/- made by the AO u/s 14A through application of Rule 8D is directed to be deleted.

4.2 It was submitted by the Id. Counsel for the assessee that in the assessee's own case for the assessment year 2004-05 and 2005-06, the Co-ordinate bench has directed the Ld. AO to re-determine the disallowance u/s 14A of the Act after considering the judgment of Hon'ble Supreme Court of India in **Maxopp Investment Ltd.** and further directing that in no way disallowance determined by the AO shall exceed 10% of the amount of dividend income. It was submitted that unlike in the earlier years in the revised return of income *suo moto* disallowance was made by the assessee but the Ld. Tax Authorities below have not taken the same into consideration. . Ld. DR could not distinguish the facts or cite any other legal proposition to contrary.

4.3 It can be observed that in the assessee's own case for the assessment year 2004-05 and 2005-06, ITA No. 2072/Del/2008 and ITA no. 330/Del/2012 respectively, by judgment dated 30.12.2021 it was held as under :

“3.6 We have heard the Ld. Authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record qua the aforesaid issue in question. Admittedly, it is a matter of fact borne from the record that the tribunal had vide its order passed in ITA No. 4106/Del/2004, dated 31.01.2007 r.w its order passed while disposing of M.A. No. 23/Del/2008, dated 14.03.2008 had directed that the disallowance u/s 14A be sustained to the extent of 10% of the amount of the dividend income earned by the assessee company. Also, we find that the aforesaid order of the tribunal had thereafter been followed by it while disposing off the assessee's appeal for A.Y. 2005-06 in ITA No. 4902/Del/2010 and 4662/D/2010, dated 03.02.2012, wherein the tribunal after taking cognizance of the fact that the CIT(A) had restricted the disallowance to 10% of the amount of dividend income, therein, restored the matter to the file of the AO for passing a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. As the facts of the issues involved qua

the issue in question remain the same, therefore, in our considered view, going by the principle of consistency the matter in all fairness requires to be restored to the file of the AO, on the same terms, with direction to redetermine the disallowance u/s 14A of the Act after considering the judgment of the Hon'ble Supreme Court in the case of Maxopp Investmnts Ltd., as per the extant law. Before parting, we may however observe that the disallowance determined by the A.O in the course of the set-aside proceedings shall in no way exceed 10% of the amount of dividend income. The Ground of appeal no. 1 is allowed for statistical purpose in terms of our aforesaid observation.”

4.4 The bench is of considered view that the present matter also deserves to be restored to the files of ld. AO to determine the disallowance in terms of aforesaid observations. Accordingly, Ground no. 1 is allowed for statistical purposes.

GROUND NO. 2

5. The facts of the case resulting in treating the amount of Rs. 15,39,793/- as capital in nature is that the appellant had entered into an Intellectual Property License and Non-Compete Agreement on 13-12- 2002 with M/s Vilter Manufacturing Corporation (‘Vilter’ hereinafter) 5555, South Packard Avenue, Cudahy, Wisconsin, USA, The said agreement was amended by the supplementary agreement dated 5-11-2003. In pursuance of said agreement, a sum of Rs. 15,39,793 was actually paid by the appellant as part consideration during the year under consideration. The amount payable under the agreement was treated as deferred revenue expenditure in the books of account and a sum of Rs. 32,32,960 was charged off to the P & L A/c. during the year under consideration. In the computation of total income, however, the amount of Rs.32,32,960/- was added back and the sum of Rs. 15,39,793/- claimed as revenue expenditure.

5.1 The Ld. AO however held the sum of Rs. 15,39,793/- as capital expenditure and disallowed the same, making the following observation:-

“All the case laws relied upon by the assessee, are delivered prior to the insertion of section 32(1)(ii) i.e., from 1.4.1998 (ought to be from 1-4-99). Hence the ratio of these case laws are not applicable to the facts of the assessee’s case. In section 32(1)(ii) it is clear that technical know how should be treated as capital and depreciation be allowed on the intangible assets. Hence the lump sum amount paid by the assessee for technical know how has to be capitalized and depreciation will be allowed accordingly as per law.”

5.2 The Ld. CIT(A) observed that *“I have considered the submissions made. Identical issue has been adjudicated upon by my predecessor CIT (A) in case of the appellant for AY 2004-05. In para 4 to 4.4.2 the said appellate order dated 17.03.2008 he has upon a consideration of the various case laws relied upon as also the terms & clauses of the agreement between VILTER & the appellant on payment of technical know-how held that the appellant company has obtained an enduring advantage and benefit as the technical knowledge is available to the appellant for its manufacturing process & therefore the said expense is capital in nature, on which depreciation is allowable in terms of section 32(1)(ii) of the Act. Respectfully following the reasoning given by my predecessor CIT(A), to which I agree, this ground of appeal is dismissed. So far as the claim of depreciation on entire amount of consideration is concerned it is observed that depreciation can only be given on the actual payment made for acquisition of technical know-how and not the amount which is payable by the appellant in the succeeding years, as only the amount' of Rs. 15,39,793/- is the cost of the intangible assets' in the nature of technical know-how acquired during this year. The AO has already granted depreciation @ 25% on Rs. 15,39,793/-. Accordingly the alternate claim of appellant is also not acceptable.*

5.3 It was submitted by the Id. Counsel for assessee that in the assessee’s own case for the assessment year 2004-05 and 2005-06 it has been held that the

payments made to M/s. Vilter Manufacturing Corporation for use of know how is revenue expenditure.

5.4 It can be observed that in assessee's own case for the assessment year 2004-05 and 2005-06 (supra) in para no. 7.7 it was observed by the Co-ordinate Bench as under :-

*“7.7 In the backdrop of our aforesaid observations, we are of the considered view, that as the payment made by the assessee company to M/s Vilter Manufacturing Corporation, USA was for the technical know-how services provided by the latter for facilitating carrying out the ongoing/existing business of manufacturing of refrigeration products by the assessee in a more technically viable and profitable manner, therefore, the same was rightly claimed by the assessee as a revenue expenditure for computing its income for the year under consideration and had wrongly been dubbed as a capital expenditure by the lower authorities. Our aforesaid view i.e. where an assessee who is engaged in the business of manufacturing and selling certain products had made a payment to a foreign company for merely acquiring a right to use technical know-how, whereas the ownership and intellectual property rights in the said know-how remained with the foreign company, then, the payment in question would be in the nature of a revenue expenditure, is supported by the judgment of the Hon'ble High Court of Delhi in the case of OT Vs. Hero Honda Motors Ltd., (2015) 372 UR 481 (Del). We, thus, in the backdrop of our aforesaid observations not finding favour with the view taken by the lower authorities wherein they had rejected the assessee's claim for deduction of the payment made for the technical know-how to M/s Vilter Manufacturing Corporation, USA as a revenue expenditure, and had dubbed the same as a capital expenditure, set- aside the order of the CIT(A) and direct the A.O to allow the assessee's claim for deduction of the aforesaid amount of payment of Rs. 82,73,814/- as a revenue expenditure. The **Grounds of appeal Nos. 2 to 2.2** are allowed in terms of our aforesaid observations.”*

5.5 Ld. DR could not distinguish the facts or cite any other legal proposition to the contrary. Thus, there is no reason to distinguish and this ground is allowed in favour of assessee.

Ground no. 3

6. Assessee had made a claim of depreciation of Rs 60% on UPS but the AO restricted the claim of depreciation @ 15% only on the UPS and disallowed the excess 45% namely, Rs.50,320/-.

6.1 The Ld FAA held that *“The Appellant referred to certain judgments to contend that the claim should have been allowed @ 60%. I have considered the submissions and agree that depreciation @ 60% is allowable on Printers in terms of the decision in. However, depreciation of 15% only is admissible on UPS in terms of the decision in. The expenditure incurred on UPS was Rs.55,120/- whereas expenditure on Printers aggregated to Rs 56,704/-. While depreciation on Printers is held to be allowable @ 60%, the depreciation on UPS is restricted at 15%. The cost of UPS being 55,120/- a disallowance of 45% thereof i.e., Rs.24,804/- is sustained as against disallowance of Rs.50,320/.”*

6.2 It was submitted on behalf of the assessee that it is settled proposition of law that in the term “Computer” includes paraphernalia and accessories are included reliance was placed on the judgment of Hon’ble Delhi high Court in **DCIT vs. Hotel Excelsior Ltd. 141 TTJ 248 (Delhi)** and **CIT vs. Oriented Ceramics and Industries Ltd. 200 Taxman 64 (Delhi)**.

7. In the light of aforesaid, it is established that the UPS is integral part of the computer and the depreciation upon same should be one given upon the computers @ 60%. Accordingly the ground is decided in favour of assessee and the Ld. AO shall reassess the depreciation @ 60%.

8. In the light of aforesaid determination of grounds no. 1 for statistical purpose in favour of assessee and ground no. 2 and 3 in favour of assessee, **the appeal of assessee is allowed.**

Order pronounced in open court on this 29th day of April, 2022.

Sd/-

**(R.K.PANDA)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 29th .04.2022

Binita, SR.P.S

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**