

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI****BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER****I.T.A. No. 5921/DEL/2019 (A.Y 2016-17)**

Addl. CIT, Special Range : 3, New Delhi. (APPELLANT)	Vs.	M/s. DCM Ltd., 601, Vikrant Tower, Rajendra Place, New Delhi-110 008. PAN No. AAACD1012E (RESPONDENT)
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Assessee by :	Shri V. P. Gupta, Adv.; & Shri Anunav Kumar, Adv.;
Department by:	Shri R. S. Yadav, Sr. D. R.;

Date of Hearing	22.08.2022
Date of Pronouncement	25.08.2022

ORDER**PER YOGESH KUMAR U.S., JM**

This appeal is filed by the Revenue against the order dated 25.04.2019 of the Id. Commissioner of Income Tax (Appeals)-34, New Delhi [hereinafter referred to CIT (Appeals)] for Assessment Year 2016-17.

2. The Revenue has raised the following substantive grounds of appeal:-

"1. Whether on facts and in circumstances of the case and in law, the CIT (A) has erred in deleting the disallowance of interest on interest free advance of Rs.22,32,000/- made by the Assessing

Officer.

2. Whether on facts and in circumstances of the case and in law, the CIT (A) has erred in deleting the disallowance under section 14A read with rule 8D of Rs.1,75,92,000/- made by the Assessing Officer.

3. Whether on facts and in circumstances of the case and in law, the CIT (A) has erred in deleting the adjustment made by the Assessing Officer in book profit under section 115JB on account of disallowance under section 14A read with rule 8D amounting to Rs.1,75,92,000/-.

3. Brief facts of the case are that, the assessee Company is engaged in the business of manufacturing cotton yarn, Grey Iron Castings, IT Infrastructure Services and Development of Real Estate Projects. The assessee filed return declaring business loss of Rs. (-) 15,80,34,714/- and taxable MAT income of Rs. 18,02,651/- further revised the said return by declaring the loss of Rs. (-)15,91,99,259/- and MAT income of Rs. 18,02,651/-. The said return was selected for scrutiny and a notice u/s 143(2) of the Act and questionnaire u/s 142(1) of the Act were issued. The representative of the assessee has represented the assessee during the assessment proceedings. The assessment order came to be passed on 20/12/2018 by making an addition of interest on interest free advance of Rs. 22,32,000/-, made disallowance u/s 14A at Rs. 1,75,92,000/-, further assessed the loss at Rs. 13,93,75,260/- under normal provisions and book profit of Rs. 1,93,94,650/-. As against the said assessment order, the assessee has preferred an appeal before the CIT(A). The Ld.CIT(A) vide order dated 25/04/2019 allowed the Appeal filed by the assessee by deleting the additions/disallowance made by the A.O.

4. Aggrieved by the order dated 25/04/2019, the Revenue has preferred the present Appeal on the grounds mentioned above.

5. The Ld. DR vehemently contended that the order of the Ld.CIT(A) is erroneous in deleting the disallowance of interest free advance of Rs. 22,32,000/- made by the A.O, further committed an error deleting the disallowance u/s 14A read with Rule 8D of Rs. 1,75,92,000/- made by the A.O and also contended that the Ld.CIT(A) has erred in deleting the adjustment made by the Assessing Officer in book profit u/s 115JB on account of disallowance u/s 14A read with Rule 8D amounting to Rs. 1,75, 92,000/-. Thus, the Ld. DR has relied on the order of the A.O.

6. Per contra, the Ld. Counsel for the assessee submitted that the similar issue involved in the present Appeal have been decided by the Coordinate Bench of this Tribunal in ITA No. 183/Del/2019 for Assessment Year 2015-16 wherein the Tribunal has dismissed the Appeal filed by the Revenue which was on the very similar grounds.

7. We have heard the parties, perused the material on record and gave our thoughtful consideration. The Ground No. 1 is in respect of disallowance of Rs. 22,32,000/- made by the Assessing Officer on account of notional interest on interest free advance to DCM Employee Trust which has been deleted by the Ld.CIT(A). The similar disallowance has been made in the Assessment Year 2015-16 also and the Department has filed an Appeal in ITA No. 8137/Del/2018 before the Tribunal wherein the Co-ordinate Bench of the Tribunal vide order dated 30/09/2021 held as under:-

“At the outset, Id. counsel submitted that both the issues involved are covered by the decision of the Tribunal in assessee’s own case for the earlier years in favour of the assessee. In support, he has also filed the decision of the Tribunal for Assessment Year

2014-15 in ITA No.53'76/Del/2018. In so far as issue relating to ground no. 1 regarding disallowance of Rs.22,32,000/- being the notional interest with, reference to interest free advance given to DCM Employees Welfare Trust. Before the Id. Assessing Officer, the assessee's submission was that loan given to the compare was out own sufficient interest free funds in form of reserves and share capitals, and therefore, it cannot be said that loans have been given out of borrowed funds. Ld. Assessing Officer noted that similar disallowance was made in the earlier years and has simply made the disallowance on the ground that ITAT order in the earlier years is subjudice before the Honble Since this issue is covered by the order of the Tribunal, of the earlier year's order for the Assessment Years 2011-12 and 2012-13, therefore, respectfully following the same and consistent with the view taken in the earlier years, the grounds raised by the Revenue are dismissed."

Therefore, by respectfully following the above order of the Tribunal and inconsistent with the views taken in the earlier years we dismiss the Ground No. 1 raised by the Revenue.

8. The Ground No. 2 is in respect of disallowance u/s 14A of the Act which has been deleted by the Ld.CIT(A). The very same disallowance was made u/s 14A of the Act has been deleted by the CIT(A) in the Assessment Year 2015-16 which has been questioned by the Department in ITA No. 8137/Del/2018. The Co-ordinate Bench of the Tribunal while deleting the said disallowance held as under:-

“In so far as disallowance of 14A, it is an admitted fact that there is no exempt income during the year, therefore, no disallowance u/s. 14A can be made in view of the decision of Hon’ble Delhi High Court in the case of Joint Investment Pvt. Ltd. (2015) 59 taxmann.com 295. It has also been pointed out before us that this Tribunal in earlier years had deleted the similar disallowance made by the Assessing Officer. Even the Id. CIT(A) have deleted the disallowance following various judicial decisions upholding that disallowance u/s,14A cannot be involved when no exempt income has been earned by the assessee in the relevant Assessment Year. Accordingly, this ground is also dismissed.”

By respectfully following the various judicial pronouncements and also the order of the Co-ordinate Bench mentioned (supra), we are of the opinion that disallowance u/s 14A cannot be made when no exempt income has been earned by the assessee in the relevant Assessment Year. Accordingly, we do not find merit in Ground No. 2 of the Revenue and the same is dismissed.

9. The Ground No. 3 of Revenue is in respect of adjustment in book profit of addition made as per Section 14A read with Rule 18D. It is well settled law that when there is no exempt income, no disallowance is called for. Apart from the same, the similar issue has already been decided in favour of the assessee by this Tribunal for the Assessment Year 2014-15 & 2015-16. Therefore, following the Rule of consistency we dismiss the Ground No. 3 of the Revenue.

10. In the result, the Appeal of the Revenue is dismissed.

Order pronounced in the open court on : 25/08/2022.

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated : 25/08/2022

R.N Sr PS

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI