

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 5874/Del/2018
(Assessment Year : 2014-15)

ACIT Circle – 10(2) New Delhi PAN No. AABCG 9903 G (APPELLANT)	Vs.	Guardian Lifecare Pvt. Ltd. A-258, Okhla Industrial Area, Phase-I, New Delhi-110 020 (RESPONDENT)
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And

ITA No. 6152/Del/2018
(Assessment Year : 2014-15)

Guardian Lifecare Pvt. Ltd. WZ-56, Second Floor, Ram Nagar, Tilak Nagar, New Delhi – 110018 PAN No. AABCG 9903 G (APPELLANT)	Vs.	ACIT Circle – 10(2) New Delhi (RESPONDENT)
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Assessee by	-None-
Revenue by	Shri Hemant Gupta, Sr. D.R.

Date of hearing:	03.10.2022
Date of Pronouncement:	25.10.2022

ORDER

PER ANIL CHATURVEDI, AM:

These two cross appeals filed by the Revenue and assessee are directed against the order dated 14.06.2018 passed by the

Commissioner of Income Tax (Appeals)-35, New Delhi relating to Assessment Year 2014-15.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a company stated to be engaged in the business of retail trading of medicines, nutrition, health supplements etc. Assessee electronically filed its return of income for A.Y. 2014-15 on 30.09.2014 declaring total loss of Rs.25,36,32,400/-. The case was selected for scrutiny and thereafter, assessment was framed u/s 143(3) of the Act vide order dated 29.12.2016 and the total loss was determined at Rs.21,82,97,763/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 14.06.2018 in Appeal No.536/2016-17 granted partial relief to the assessee. Aggrieved by the order of CIT(A), Revenue and Assessee are now in appeal and has raised the following grounds:

Revenue's grounds of appeal in ITA No.5874/Del/2018 for A.Y. 2014-15 :

- 1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition made on account of disallowance u/s 14A r.w. Rule 8D(ii) of the Act, ignoring the CBDT circular no.5/2014 which clarifies that disallowance u/s 14A r.w. Rule 8D can be made even if the taxpayer in a particular year has not earned any exempt income, as long as expenditure was incurred for earning such income.*

- 1.1 *Whether on the facts and circumstances of the case, the Ld.CIT(A), in deleting the disallowance u/s 14A of the Act, has erred in relying upon the decision in the case of Cheminvest Ltd. Vs. CIT(378 ITR 33).*
- 1.2 *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact that there is no settled proposition, applicable uniformly across all fact-situations, to the effect that no disallowance u/s 14A can be made in case the assessee has not earned any exempt income in a particular year, as evident from the decision in the case of Lally Motors (P) Ltd. vs PCIT, Jalandhar[2018] 93 taxmann.com 39(Amritsar-Trib.) wherein the decision in the case of Cheminvest Ltd.(supra) has also been considered.*
2. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the disallowance of expenses of Rs. 2,97,33,533/- claimed by the assessee to have been incurred as “marketing fees” paid to a related party, ignoring the findings of the AO that all the sales were made locally and the assessee has neither filed any documentary evidence substantiating the nature & purpose of the payments, nor has it furnished any explanation regarding deduction of tax on the payments.*
 - 2.1 *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in considering the additional information and documents filed by the assessee during the appellate proceedings in contravention of the provisions of Rule 46A of the Income Tax rules, 1962.*
 - 2.2 *Without prejudice to the generality of the foregoing, whether on the facts and the circumstances of the case, the Ld. CIT(A) has erred in accepting the explanation of the assessee that the payments were in the nature of reimbursements to the related foreign entity were made through its domestic associate entity M/s Guardian Nutrition Health Supplement Pvt. Ltd. and therefore , no tax was liable to be deducted bythe assessee.*
 - 2.3 *Whether the Ld. CIT(A) has erred in deleting the addition of Rs.2,97,33,353/- on account of disallowance of marketing fees with the observation that the expenditure*

has been accepted in the past, ignoring the fact that principle of re judicata is not applicable to the Income tax proceedings.

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

Assessee's grounds of appeal in ITA No.6152/Del/2018 for A.Y. 2014-15:

1. *That in the facts and circumstances of the case, the CIT(A) erred in confirming addition of Rs.48,11,891/- made by AO as disallowance of interest on advances to various parties.*
2. *That the appellant craves leave to add, alter, amend or drop the above ground at the time of hearing."*

5. The case file reveals that the appeal was listed for hearing on 17.11.2021, 24.01.2022, 06.04.2022, 28.06.2022 and 03.10.2022. On all the occasions, the assessee did not appear before the Tribunal despite notices issued through RPAD nor any application was filed seeking for adjournment. Further, the notice issued by the Registry through RPAD was returned unserved with the postal remarks "the company by this name is not at this address". Considering the aforesaid facts, we have no option except to dispose of the appeal on merits, after hearing the Ld. D.R.

First we proceed with assessee's appeal in ITA No. 6152/Del/2018 :

6. During the course of assessment proceedings, AO noticed that assessee had claimed interest expense of Rs.3,36,81,725/-. AO also noticed that assessee had taken term loans from related

parties. He noted that assessee had also taken unsecured loans during the year under consideration. He also noticed that assessee had given long term loans and advances to various parties. The assessee was asked to file the details regarding loans and advances taken by it and given by it to different parties along with the interest paid / received. AO noted that assessee had paid interest @ 8% to Guardian Nutrition & Health Supplement Pvt. Ltd. but had failed to provide details regarding purpose of loans given to related parties, source of such loans and interest cost associated thereto. AO also noted that assessee had not furnished required details as called for by him. AO thereafter, on the basis of the loans given to the related parties worked out the average loans at Rs.5,34,65,460/- and by applying the rate of 9% per annum, being the cost of funds, worked out the disallowance of interest on loans given to such related parties at Rs.48,11,891/- and made its additions. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) upheld the action of AO by observing as under:

4.2.3.3. In the instant case, there is no "commercial expediency". Simply by saying that investment has been made for expansion of business or the sister concerns are in the same line or supporting business is not good enough to prove commercial expediency. The appellant has not been able to explain commercial expediency in extending interest free loan to the sister concerns without charging any interest and there is no material on record to show that the appellant has derived any business benefit by way of such investment. The expression "Commercial Expediency" is an expression of wide import and include such expenditure as a prudent businessman/business entity incurs for the purpose of business. The expenditure may not have been incurred under legal obligation but yet it is allowable as business expenditure if it was incurred on the ground of commercial expediency. The submissions

filed by the appellant company have been considered and are not found to be tenable. The case laws cited are distinguishable in facts. The AO has taken the figures from the accounts of the appellant company filed during assessment proceedings. In view of the above discussion, the addition made by AO of interest expenditure of Rs. 48,11,891/-is upheld. Therefore, Appeal on Ground No. 1 is dismissed.

7. Aggrieved by the order of CIT(A), assessee is now in appeal before us.

8. Before us, Learned DR supported the order of AO.

9. We have heard the Learned DR and perused the material available on record. The issue in the present ground is with respect to the disallowance of interest expenditure. We find that CIT(A) while upholding the action of AO found that assessee was not able to explain commercial expediency in extending interest free loan to the sister concern and no evidence has been placed by the assessee before any authorities to demonstrate that assessee has derived any business benefit by making such investment. Before us, also assessee has not placed any material on record to point out any fallacy in the finding of CIT(A). In such a situation, we find no reason to interfere with the order of CIT(A).

Thus the ground of assessee is dismissed.

10. In the result, appeal of assessee is dismissed.

Now we take Revenue's appeal in ITA No.5874/Del/2018 for A.Y. 2014-15:

11. **Ground No.1** is with respect to the deleting the disallowance u/s 14A of the Act.

12. During the course of assessment proceedings, AO noticed that assessee had non-current investments in related companies amounting to Rs.97,67,257/- at the beginning and at the end of the year. AO was of the view that since the income from such investments would be exempt, disallowance u/s 14A of the Act was warranted. He accordingly, by applying the provision of Rule 8D worked out the disallowance u/s 14A of the Act at Rs.12,88,746/-.

13. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who deleted the addition. While deleting the addition, CIT(A) has given a finding that assessee did not earn any exempt income and therefore, in view of the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs. CIT-IV 61 Taxmann.com 118 (Delhi), no disallowance was warranted.

14. Before us, Learned DR supported the order of AO.

15. We have heard the Learned DR and perused the material available on record. The issue in the present ground is with respect to the deleting the disallowance u/s 14A of the Act. We find that while deleting the addition CIT(A) has given a finding

that Section 14A would not apply if no exempt income is received or receivable during the year under consideration. CIT(A) by following the decision of Hon'ble Delhi High Court in the case of CIT vs. Holcim India Pvt. Ltd. 57 Taxmann.com 28 (2015) Delhi held that in absence of any exempt income, no disallowance u/s 14A of the Act is warranted. Before us, Revenue has not pointed out any fallacy in the findings of CIT(A) nor has placed any contrary binding decision in its support. We, therefore, find no reason to interfere with the order of CIT(A). **Thus the ground of Revenue is dismissed.**

16. **Ground No.2** is with respect to deleting disallowance of Rs.2,97,33,533/-.

17. During the course of assessment proceedings, AO noticed that assessee had claimed Rs.2,97,33,533/- as "Marketing Fees" paid in foreign currency. He noticed that entire sales of the assessee was local sales and in such scenario, prima facie, there was no reasons for incurring marketing expenses in foreign currency. Assessee was therefore asked to file the details which were filed. AO after considering the submissions made by assessee held that assessee has failed to justify the payment of marketing fees. He further noted that the payment has been made to a related party, the payment of marketing fees had increased more than 100% whereas, the sales had fallen down. AO concluded that since assessee has not discharged its onus of proving the payment was for the purpose of business he

disallowed the expenses of Rs.2,97,33,533/- and made its addition.

18. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) while deleting the addition noted as under:

The appellant company obtained consultancy from foreign company, GNC Inc, USA. The products of GNC Inc were sold by the appellant company and it is they who benefited from the consultancy. Expenditure was borne by the appellant company. At appellant's behest, payment to the overseas company, M/s. GNC Inc was made by M/s. Guardian Nutrition Health Supplements Pvt. Ltd, appellant's sister concern, only after deduction of TDS. There is no transaction between appellant and its sister concern, Guardian Nutrition Health Supplement Pvt. Ltd. There is only one payment i.e. to M/s. GNC Inc, USA, on which TDS had been deposited with the Government. The appellant has submitted that M/s. Guardian Nutrition Health Supplement Pvt. Ltd. was only a facilitator of the transaction and had not gained anything from the transaction. The appellant has stated that the expenditure in the past had been accepted in the past. No cogent reason for deviation from established norm has been made out by A.O. In view of the submissions filed by the appellant company, the appeal on this ground is allowed.

19. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

20. Before us, Learned DR supported the order of AO.

21. We have heard the Learned DR and perused the material available on record. The issue in the present ground is with reference to the disallowance of marketing expenses made by A.O, but, deleted by the Ld. CIT(A). We find that A.O. while disallowing the expenses has noted that no documentary evidence in the form of agreement was filed by the assessee to support the consultancy

payment. We find that Ld. CIT(A) while deleting the addition has not given any categorical finding about the production of agreement for Consultancy Payment by the assessee before him or having obtained any report from A.O. on that issue. In view of the aforesaid facts, we are of the view that the issue needs to be re-examined at the end of Ld. CIT(A). We, therefore, restore the issue back to the file of Ld. CIT(A) to decide the issue after examining the agreements on that issue and after obtaining the remand report from A.O. Ld. CIT(A) shall grant adequate opportunity of hearing to both the parties. **Thus, the grounds of Revenue is allowed for statistical purposes.**

22. In the result, appeal of the Revenue is partly allowed for statistical purposes.

23. To sum-up, appeal of the Assessee is dismissed and appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 25.10.2022

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 25.10.2022
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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI