

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)  
AND  
SHRI AMARJIT SINGH (ACCOUNTANT MEMBER)

ITA 5308/Mum/2017  
(Assessment year 2012-13)

M/s Sapphire Land Development Private Limited, M/s Thar & Co, Chartered Accountants, 203, Capri, Anant Kanekar Marg, Bandra (E), Mumbai-400 051 <b>PAN : AAACS7785H</b>	vs	Asst. Commissioner of Income-tax, Central Circle-5(4), Mumbai Room No.1927, 19 <sup>th</sup> Floor Air India Building, Nariman Point Mumbai-400 021
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	None
Department represented by	Shri Somendu Kumar Dash – Sr DR

Date of hearing	13/09/2022
Date of pronouncement	16/11/2022

**ORDER**

**PER : Shri Amarjit Singh (Accountant Member):**

This is an appeal filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)-53, Mumbai [hereinafter Ld.CIT(A)] dated 26/05/2017 against the assessment order passed by the Assessing Officer under section 143(3) of the Income-tax Act, 1961 (in short, 'the Act) for the Assessment Year 2012-13. The grounds of appeal raised by the assessee are as under:-

*“Following grounds of appeal are without prejudice to each other:*

- 1) The Learned CIT (A) has erred in law & on facts in upholding the disallowances of Rs.1,19,82,373/-made u/s 14A r.w. Rule 8D(2)(iii) of the Income Tax Act, 1961 in the order passed by the Asst. Commissioner of Income Tax, which is bad in law.*
- 2) The Learned CIT (A) has further erred in this connection in directing the learned AO to work out the quantum of interest under Rule 8D(2)(ii) & further in Rule 8D(2)(i) relating to investments in shares of Shree Ashtavinayak Cine Vision Ltd & HDIL.*
- 3) The Learned CIT(A) has erred in Law upholding the disallowance of depreciation claimed of Rs. 10,83,326/-on vehicles.*
- 4) The Learned CIT(A) has further erred upholding in reducing block of vehicles allowed to be carried forward to Rs. 6,01,98,435/- against carried forward by the Appellant Company at Rs. 6,74,26,955/- .*
- 5) The Learned CIT(A) erred in upholding the disallowances of Yacht Expenses to the tune of Rs. 1,74,52,582/-.”*

2. This case was listed for hearing on nine occasions, but nobody has attended for hearing from the side of the assessee. Therefore, the case is adjudicated after hearing the Ld.DR and after taking into consideration the material placed on record by the assessee. Further fact of the case are discussed while adjudicating the ground of appeal filed by the assessee as follows:

**3. Grounds 1 & 2 : Disallowance of 1,19,82,373/- u/s 14A r.w.r.8D(2)(iii) of the Act.**

3.1 The fact in brief is that assessee filed return of income declaring loss of Rs.66,08,18,361/- for the year under consideration on 29/09/2012. The assessment under section 143(3) of the Act was finalized on 28/03/2015. During the course of assessment, the Assessing Officer observed that assessee has not made any disallowance for the expenses incurred towards earning exempt income as per provisions of section 14A of the Act. Therefore, the Assessing Officer has computed the disallowance under section 14A r.w.r. 8D(2)(iii) to the amount of Rs.1,19,82,373/- and added to the total income of the assessee. During the course of appellate proceedings before the Ld.CIT(A),

the Ld.CIT(A) directed the Assessing Officer to recompute the quantum of disallowance under section 14A r.w.r. 8D as per the alternative plea of the assessee, after considering only those investments from which exempt income was received by the assessee as per the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd vs CIT (ITA No.749/2014). Vide paper book dated 23/07/2019 the assessee submitted that disallowance under section 14A r.w.r. 8D cannot exceed the exempt income and also placed reliance on the decision of ITAT, Mumbai Bench in Daga Global Chemicals Pvt Ltd vs ACIT ITA No.5592/Mum/2012 and Hon'ble Delhi High Court in Joint Investments Pvt Ltd vs CIT (2015) 372 ITR 694 (Del).

3.2 After considering the above facts, we observe that now it is settled on the basis of various decision of different courts that disallowance under section 8D(2)(iii) of the Act cannot exceed exempt income. Accordingly, we direct the Assessing Officer to restrict the disallowance to the extent of exempt income earned by the assessee after examination of the relevant detail to be filed by the assessee. Therefore, grounds of appeal of the assessee is partly allowed.

4. **Grounds No.3 & 4 : Depreciation of Rs.10,83,326/-**

4.1 During the course of assessment, the Assessing Officer disallowed depreciation of Rs.10,83,326/- claimed on 3 vehicles registered in the name of three individual employees of associate company. Consequently, the Assessing Officer reduced the written down value of the vehicles in the block of assets. The assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) has dismissed the appeal of the assessee holding that the 3 vehicles were not in the name of the assessee company and the same were in the name of employees of group

concern of the assessee company. In the paper book filed by the assessee on page 243, it was submitted that by the Board Resolution, the assessee company has authorized the three employees to purchase the vehicles on behalf of the company. It was also submitted that all three persons were the employees of the group concern of the assessee company with whom the assessee company had regular business transactions. It is also submitted that payments for purchase of all the three vehicles were made by the assessee company and these cars were used for the business purpose of the assessee company. However, on perusal of material on record, it is found that assessee has not placed on record relevant supporting evidences to demonstrate that vehicles were used for the purpose of business and copy of Board Resolution, etc. to substantiate that assessee company was authorized to purchase these vehicles in the name of the employees of the group concern, etc. Therefore, we restore this issue to the file of the Assessing Officer to decide afresh after verification and examination of the relevant supporting details to be furnished by the assessee. Accordingly, ground 3 & 4 of the assessee are allowed for statistical purpose.

5. **Ground 5 : Disallowance of Yacht Expenses to the amount of Rs.1,74,52,582/-.**

5.1 During the course of assessment, the Assessing Officer noticed that assessee has claimed yacht expenses to the amount of Rs.1,74,52,582/-. The Assessing Officer stated, during the course of assessment, assessee failed to furnish cogent evidence and credible explanation in order to prove that the aforesaid yacht expenses were incurred in connection with the business of the assessee company. The Assessing Officer found that assessee was in the business of real estate as builder and property developer and in this line of

business there was no use of vessel / yacht. He further stated that assessee has not furnished any supporting evidences of yacht expenses and failed to establish that the same was used for the purpose of business of the assessee. Therefore, the Assessing Officer has disallowed the claim of yacht operating expenses. Assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) stated that actually yacht expenses were incurred in connection with the business of the group concern of the assessee company, viz. Vijaydurg Ports Private Limited's Greenfield Port Project at Sindhudurg District in Southern Maharashtra (VDPPL) which had used the high speed vessel for carrying out on-site investigation, surveys and status for the purpose of submitting the detailed project report to the Maharashtra Maritime Board. The assessee has submitted that the said expenses were incurred on yacht which was used in connection with the group concern VDPPL. However, the assessee has not substantiated with any relevant supporting evidence that these expenses were used for the business purpose of the assessee company, therefore, we do not find any reason to interfere in the decision of the Ld.CIT(A). Accordingly, this ground of the assessee stands dismissed.

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

7. In the result, appeal filed by the assessee is partly allowed.

Sd/-

sd/-

(KULDIP SINGH)	(AMARJIT SINGH)
<b>JUDICIAL MEMBER</b>	<b>ACCOUNTANT MEMBER</b>

Mumbai, Dt : 16 November, 2022

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**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR,  
ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Dy./Asstt. Registrar) ITAT, Mumbai