

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C ": NEW DELHI
BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 1455/Del/2019
(Assessment Year: 2015-16)

Holtec Consulting Pvt. Ltd, C Block, 01-0103, Imperial Tower, Community Centre, Narina Vihar, New Delhi (Appellant)	Vs.	Add. CIT, Special Range-4, New Delhi (Respondent)
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PAN: AAACH0031M

Assessee by :	Shri Atul Ninawat, Adv
Revenue by:	Shri Anuj Garg, Sr. DR

Date of Hearing	02/11/2022
Date of pronouncement	16/11/2022

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. The present appeal has been preferred by the Assessee against the order dated 16.11.2018 of Ld. CIT(A)-35, New Delhi (hereinafter referred as Ld. First Appellate Authority) arising out of an appeal before it against the assessment order dated 24.12.2017 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the AO, Addl. CIT, Special Range-4, New Delhi (hereinafter referred as the Ld. AO).

2. Brief facts of the case are that assessee is a company engaged in the business of providing multi-disciplinary engineering and management consulting services. The Income tax return was filed by the appellant for the Assessment Year 2015- 16 on 30th November 2015, declaring total income as Rs. 27,52,74,780/- on which tax

including interest becomes payable as Rs. 9,36,71,906/-. Against the aforesaid tax liability appellant company claimed taxes withheld on source amounting to Rs. 3,68,19,390/-, advance tax paid amounting to Rs. 5,30,00,000/- and self assessment tax paid of Rs. 38,58,221/- and accordingly, claimed refund amounting to Rs. 5,710/-. The income tax return was picked up for scrutiny assessment and order u/s 143(3) of the Income Tax Act, 1961 ('Act') was passed, wherein the Income was assessed at Rs. 30,14,41,610/- after making following disallowances:

- a. Disallowance on account of excessive commission paid to directors of the appellant company amounting to Rs. 1,50,13,873/- u/s 40A(2)(a) of Act.
- b. Disallowance on account of expenses in relation to earning exempt income as per Section 14A of the Act read with rule 8D of Income Tax Rules, 1962 amounting to Rs. 1,12,02,953/-.

The Ld. Assessing officer has assessed the Income of the appellant at Rs 30,14,41,606/- and raised a demand of Rs. 1,27,40,620/-. The Ld. CIT(A) had sustained the disallowance u/s 14A.

3. The assessee has now raised the following grounds of appeal:-

- "1. The order passed by the Learned CIT(A) ['Ld CIT(A)], upholding the disallowance of INR 25,48,011/- made by the learned Assessing Officer ('Ld. AO') u/s 14A of the Income Tax Act, 1961 ('the Act'), is bad in law and on the facts and circumstances of the case.*
- 2. The Ld. CIT(A) has erred in upholding the disallowances that have been made by the Ld. AO, by acting in a mechanical manner without appreciating the distinguished facts of the year under consideration and by following the Ld. CIT(A) own order for AY 2009-10 & AY 2010-11.*
- 3. The Ld. CIT(A) has erred in upholding the disallowances that have been made by the Ld. AO based on conjectures*

and surmises and without bringing on record any expenditure incurred for earning exempt income.

4. *The Ld. CIT(A) has erred in upholding the disallowances that have been made by the Ld. AO erroneously without excluding investments not yielding any income or yielding taxable income while applying Rule 8D(iii) of Income Tax Rules, 1962.*
5. *The Ld. CIT(A) has erred in upholding the disallowance without appreciating the scheme of law laid u/s 10(2A) the Act."*

4. Heard and perused the record.

5. On behalf of the assessee/ appellant it was submitted that the issue of disallowances made u/s 14A read with Rule 8D(2)(iii) should be restricted to investments yielding exempt income and he relied on assessee's own case for Assessment Year 2009-10 and 2010-11 and submitted that Tribunal has held that while making disallowances u/s 14A the following types of investments need to be excluded for applying Rule 8D(2)(iii) of the Act. First, investments which yielded taxable income and second, investments which yielded no income. It was submitted that the break-up of investment yielding exempt/ taxable or no income was submitted to the Id tax authorities below and also made available at page 290 and 309 of the paper book. It was submitted that the correct amount of disallowance should be as follows:-

Particulars	Details	Balance as on 31.03.2007	Balance as on 31.03.2008	Average
Total Investments	(A)	2,13,66,97,410	2,37,96,31,180	2,25,81,64,295
Investment yielding no income	(B)	28,20,03,690	25,81,00,102	23,11,67,748
Investment yielding exempt income	(C)=(A+B)	1,85,46,93,720	2,12,15,31,078	1,98,81,12,399
Disallowance under Rule 8D(iii)	(D) = (C)*0.5%			99,40,562
Less: Already disallowed by appellant	(E)			87,868
Net Disallowance under Rule 8D(iii)	(FMD)-(E)			98,52,694

6. The Id DR however, supported the findings of the lower authorities below.

7. Considering the similar fact in assessee's own case for AY 2014-15, ITA no 5891/Del/2018, the Tribunal has held as follows:-

"5. We have considered the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the A.O. in the instant case invoking the provisions of Section 14A read with Rule 8D made disallowance of Rs.1,03,35,000/- which has been upheld by the Ld. CIT(A). We find an identical issue had come-up before the Tribunal in assessee's own case in A.Y. 2012-13, we find the Tribunal vide ITA.No.1773/Del./2018 order dated 31.03.2021 for the A.Y. 2012-13 has restored the issue to the file of A.O. by observing as under :

"5. We have given thoughtful consideration to the orders of the authorities below. We find force in the contentions of the Id. counsel for the assessee. This Tribunal in assessee's own case in ITA No. 7050/DEL/2017 for A.Y 2013-14 vide order dated 23.12.2021, has held as under :

"4. Learned AR submitted that the authorities below failed to analyse the nature of investment as to whether the investment is yielding taxable income, exempt income or no income and that the satisfaction regarding the incorrect amount disallowed by the assessee was not recorded by the Assessing Officer. He, however, submitted that facts & circumstances and questions of law involved this year are identical to the ones involved for the assessment years 2009-10, 2010-11 and 2011-12, in which years, a coordinate Bench of this Tribunal in ITA.No.4563/ Del/2012 for assessment year 2009-10, 1057/ Del/ 2014 for A.Y. 2010-11 and 2148/Del/2015 for A. Y. 2011-12, restored the issue back to the file of Assessing Officer to

consider the issue afresh in the light of observations made in ITA No. 4563/Del/2012 for assessment year 2009-10. Learned AR prayed that this issue for this year may also be restored back to the file of Assessing Officer to consider the same in consonance with the view to be taken for assessment year 2009-10.

5. In view of the admitted position that the facts and circumstances involved for this year are identical to ones involved in assessment years 2009-10, 2010-11 and 2011-12, in which the issue was restored to the file of Assessing Officer to take a fresh view in the light of directions given in ITA.No. 4563/ Del/2012 for assessment year 2009-10, we are of the considered opinion that the request of the assessee can be accepted. We accordingly, while setting aside the impugned findings of the authorities below, restore the issue to the file of Assessing Officer to decide the same in the light of the view to be taken for earlier assessment years."

5.1. Since the facts of the case of the impugned appeal are identical to the facts of the case decided by the Tribunal in assessee's own case in the preceding assessment years, therefore, respectfully following the decision of the Tribunal in assessee's own case for the A.Ys. 2009-10 to 2013-14, we restore the issue to the file of A.O. with a direction to decide the issue afresh in the light of decision of the Tribunal in assessee's own case (supra). Needless to say A.O. shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. We hold and direct accordingly. Grounds raised by the assessee are accordingly allowed for statistical purposes."

8. The rules of propriety require following the same. Accordingly, the appeal is allowed for statistical purposes and the Ld. AO is directed to decide the issue afresh in the light of decision of the Tribunal in assessee's own case (supra).

Order pronounced in the open court on 16/11/2022.

-Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 16/11/2022
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi