

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 6089/DEL/2017 [A.Y 2014-15]

M/s Apollo International Limited Office No. 303, 3 rd Floor DLF Courtyard, Saket New Delhi	Vs.	The Dy. C.I.T Circle -3(1) New Delhi
--	-----	--

PAN: AAAACA 6447 N

(Applicant)

(Respondent)

Assessee By : Shri Manu K. Giri, Adv

Department By : Shri Kanv Bali, Sr. DR

Date of Hearing : 05.12.2022

Date of Pronouncement : 08.12.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) -1, New Delhi dated 01.08.2017 pertaining to A.Y. 2014-15.

2. The assessee has raised the following grounds of appeals:

“1. The Assessing Officer has erred in disallowing an amount of Rs. 46,90,217/- u/s 14A of the Act read with rule 8D of the Income tax.

2. The Assessing Officer has erred in disallowing the club expenses amount of Rs. 3,49,177/- u/s 37(2) of the I.T. Rules.”

3. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has earned exempt income and was of the opinion that disallowance u/s 14A of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] r.w.r 8D of the Rules needs to be made and, accordingly, computed the disallowance at Rs. 46,90,217/-.

4. The matter was agitated before the ld. CIT(A) and it was strongly contended that dividend of Rs. 87.64 lakhs was received from Apollo Tyres Ltd on which the assessee has suo moto disallowed Rs. 8,17,045/- and it was strongly contended that investment in other companies has not yielded any dividend income and investment was made out of internal accruals of the assessee company, therefore, no further disallowance is called for.

5. After considering the facts and submissions, the Id. CIT(A) was of the opinion that investment made in foreign companies cannot be considered for disallowance u/r 8D2(iii) of the Rules as dividend received from foreign companies is subject to tax and accordingly, directed the Assessing Officer to reduce the value of investment made in foreign company Apollo Investment FZC Sharjah.

6. The other issues raised by the assessee were dismissed.

7. Before us, the Id. counsel for the assessee reiterated what has been stated before the lower authorities. It has been brought to our notice that this Tribunal in assessee's own case in Assessment Year 2010-11 has accepted that only those investments need to be considered which yield exempt income and pleaded that the same view should be taken.

8. Per contra, the Id. DR strongly supported the findings of the Assessing Officer.

9. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that the dividend received from foreign companies is taxable in India. Therefore, the Id. CIT(A) has rightly excluded investment in shares of foreign companies. In so far as exclusion of investment not yielding any exempt income is concerned has been considered and decided by the Special Bench of the Tribunal in the case of Vireet Investment Pvt Ltd and Anr 165 ITD 0027 in favour of the assessee and against the Revenue, which decision has been followed by this Tribunal in assessee's own case in Assessment Year 2010-11 in ITA No. 09/DEL/2015

10. Respectfully following the decision of the Special Bench [supra], we direct the Assessing Officer to restrict the disallowance u/s 14A r.w.r. 8D2(iii) to average value of investment which yield exempt income during the Assessment Year. Ground No. 1 is allowed in part for statistical purposes.

11. Ground No. 2 relates to the disallowance of club expenses amounting to Rs. 3,49,177/-.

12. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has incurred club expenses to the tune of Rs. 3,49,177/-. On receiving no supporting evidences, addition of Rs. 3,49,177/- was made.

13. When the matter was agitated before the Id. CIT(A), the assessee furnished details of club expenses as under:

DLF Golf Resorts Ltd	Rs. 1,27,772/-
DLF Golf Resorts Ltd	Rs. 1,27,772/-
The Oberoi Belvedere	<u>Rs. 93,633/-</u>
	<u>Rs. 3,49,177/-</u>

14. Supporting evidences were also furnished. It was explained that business organizations provided facilities to their officers to attend and avail services of clubs. Such clubs make corporate membership. It was explained that expenses are in the nature of entrance fees, annual fees, life membership fees and reimbursement of actual expenses etc. The purpose of the expenditure is to have a suitable platform for meeting people and getting advantage of meeting many people at a time to maintain old contacts and also to make new contacts.

15. Explanation of the assessee did not find any favour with the Id. CIT(A), who confirmed the disallowance.

16. Before us, the Id. counsel for the assessee reiterated what has been stated before the Id. CIT(A).

17. Per contra, the Id. DR pointed out that though the assessee has claimed to have furnished details and supporting evidences, yet, while deciding the issue, the Id. CIT(A) has categorically stated that no such supporting documents have been submitted.

18. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee never furnished details before the Assessing Officer but considering the details mentioned by the Id. CIT(A) at Para 6 of his order, it appears that the same was furnished before the Id. CIT(A), though the decision is in contradiction to facts mentioned at Para 6 of the order of the Id. CIT(A).

19. Finding contradiction in the findings of the Id. CIT(A) with the facts mentioned at Para 6 of his order, we are of the considered view that the disallowance should be restricted to 50% of Rs. 3,49,177/-, which means that addition of Rs. 1,74,588/- is sustained. The assessee will get part relief.

20. In the result, the appeal of the assessee in ITA No. 6089/DEL/2017 is partly allowed.

The order is pronounced in the open court on 08.12.2022.

Sd/-

[C.M. GARG]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 08th December, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	