

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “C”, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1292/M/2023
Assessment Year: 2012-13**

Dy. Commissioner of Income Tax, Circle-14(1)(1), Room No.432, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020 (Appellant)	Vs.	M/s. Privilege Industries Ltd., 9-09, Dheeraj Arma, Anant Kanekar Marg, Bandra (East), Mumbai – 500 051 PAN: AAEC56532N (Respondent)
--	-----	--

Present for:

Assessee by : Shri Nimesh Thar, A.R.
Revenue by : Shri H.M. Bhatt, Sr. A.R.

Date of Hearing : 20 . 07 . 2023
Date of Pronouncement : 26 . 07 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, Dy. Commissioner of Income Tax, Circle-14(1)(1), Mumbai (hereinafter referred to as ‘the Revenue’) by filing the present appeal, sought to set aside the impugned order dated 18.02.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2012-13 on the grounds inter-alia that :-

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the disallowance of Rs.36,43,837/- u/s 14A r.w.r 8D of

the Income Tax Act, 1961 when disallowance is calculated as per the formula given in Rule 8D.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the disallowance of Rs.3,59,90,933/-on account of advertisement expenses when same will be resulting in benefit for many years and therefore expenditure has to be spread over the years.

3. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

4. The appellant craves leave to amend, or alter any grounds or add a new ground, which may be necessary.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee company is into the business of manufacturing, dealers, importers, exporters, distillers and distributors. During the scrutiny proceedings the Assessing Officer(AO) noticed that the assessee has shown investment of Rs.5,53,34,993/-. The assessee worked out its disallowance under section 14A read with 8D to the tune of Rs.2,76,675/-. However the AO disagreed with the disallowance made by the assessee and computed the disallowance to the tune of Rs.36,43,837/-. The AO also made a disallowance of Rs.3,59,90,933/- on account of advertisement expenses claimed by the assessee and thereby framed the assessment under section 143(3) of the Income Tax Act, 1961 (for short ‘the Act’)

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the disallowance made by the AO by allowing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the Revenue has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

Ground No.1

5. Undisputedly during the year under consideration the assessee has made investment of Rs.5,53,34,993/-. It is also not in dispute that the assessee has not earned any exempt income during the year under consideration.

6. In the light of the aforesaid undisputed facts the Ld. CIT(A) by relying upon the decision rendered by Honourable Delhi High Court in case of Cheminvest Ltd. vs. CIT 378 ITR 33 (Delhi) proceeded to delete the deletion on the ground that in the absence of any exempt income no disallowance can be made under section 14A. So in these circumstances we do not find any ground to interfere into the deletion of addition made by the Ld. CIT(A). So ground No.1 is decided against the Revenue.

Ground No.2

7. The AO made disallowance of Rs.3,59,90,933/- claimed by the assessee on account of advertisement expenses by returning following findings:

"In the Profit & Loss A/c appellant claimed advertisement expenses of Rs.4,49,88,667/-. This expense has been incurred to promote the product of appellant company. However, Ld. A.O. held that by incurring said advertisement expense appellant company secured long-term benefits and hence he disallowed 4/5th of advertisement exp i.e. Rs.3,59,90,933/- and allowed only 1/5th of exp. During the appellate proceedings, appellant submitted that the advertisement expenses incurred is comparable with the relevant exp in the earlier years. In AY

2013-14 assessee incurred Rs.4,01,43,613/- and in AY 2014-15 incurred Rs.45919017/- on advertisement exp whereas the relevant figure of AY 2015-16 is Rs 4,49,88,667/- which is comparative with earlier years. Further, it is not a case where Ld. A.O doubts about the genuinity of expenses incurred Further, appellant has relied upon the judgement of Hon'ble Delhi High court in case of CIT Vs Modi Revlon (P) Ltd 210 Taxman 161 (Delhi). In this case it has been held that entire royalty expense to be allowed to assessee as revenue expenditure. After considering the facts and the circumstances of the case, it is my considered opinion that the reliance of appellant on the above case is correct and justified. Hence, the claim of appellant company of 100% allowance of advertisement expenditure is found correct and no proportionate disallowance can be made out of advertisement expenses. I therefore delete the disallowance of advertisement expenses of Rs.3,59,90,933/-"

8. Bare perusal of the order passed by the Ld. CIT(A) deleting the disallowance made by the AO on account of advertisement expenses shows that the AO has not disputed the incurring of expenses but disallowed 4/5th of the same on the ground that by incurring these expenses assessee company has secured long term benefits and allowed only 1/5th of the expenses. Moreover, it is admitted fact on record that assessee has incurred expenses to the tune of Rs.4,01,43,613/- and Rs.4,59,19,017/- for A.Y. 2013-14 and 2014-15 respectively which were allowed by the department. So Ld. CIT(A) passed the order by following the rule of consistency.

9. We are of the considered view that when genuineness of the expenses incurred is not in dispute and in the earlier years revenue has been allowing bigger amount of expenses than the year under consideration we find no scope to interfere into the deletion of disallowance made by the Ld. CIT(A), hence ground No. 2 raised by the revenue is dismissed.

10. In view of what has been discussed above appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 26.07.2023.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 26.07.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.