

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

**BEFORE,
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.7248/Del/2018
(ASSESSMENT YEAR-2013-14)**

**ITA No.7249/Del/2018
(ASSESSMENT YEAR-2014-15)**

M/s Jay Bharat Maruti 601, Hemkunt Chambers 89, Nehru Place New Delhi-110 019 PAN-AAACJ 2021K	Vs.	Addl. CIT Circle-13(2) New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Shailesh Gupta, Adv.
Respondent by	Sh. Sandip Kumar Mishra, Sr. DR

Date of Hearing	19/10/2023
Date of Pronouncement	31/10/2023

ORDER

PER YOGESH KUMAR U.S., JM:

The both appeals by Assessee are filed against the orders of Learned Commissioner of Income Tax (Appeals)-5, Delhi ["Ld. CIT(A)", for short], dated 23/08/2018 for Assessment Years 2013-14 and 2014-15 respectively. The common ground taken by the

Assessee in both appeals accept variance of figure which are as under:

“On the facts and in the circumstances of the case the CIT(A) has erred both on facts and in law in sustaining illegal addition of Rs.6,45,411/- U/s.14A of the IT Act which is wholly unauthorized by law and contrary to the statutory provisions and binding precedents and hence the addition is liable to be deleted.”

2. In both the above captioned appeals, the assessee aggrieved by the addition of Rs.6,65,411/- (AY: 2013-14) and addition of Rs.5,47,922/- (AY 2014-15) made u/s 14A of the Income Tax Act (“the Act” for short).

3. The brief fact of the case are that the Assessing Officer has disallowed expenditure with regard to exempt income by invoking section 14A r.w. Rule 8D of the IT Rules. It is the case of the assessee that during the respective years, the assessee company received the dividend of Rs.10,92,098/- (AY 2013-14) and Rs.6,65,698/- (AY 2014-15) out of old investments. No actual expenditure by way of interest relating to borrowed fund has been incurred by the assessee for receipt of the said dividend incomes which have been received out of old investments. Further, during the years no investment was

made by the assessee company. The Ld. AO made the additions by invoking section 14A of the Act which has been sustained by the Ld. CIT(A). As against the order of the Ld. CIT(A), the assessee preferred the preset appeals for AYs 2013-14 and 2012-13 on the ground mentioned above.

4. The Ld. Counsel for the assessee submitted that the similar issue has been decided by the Co-ordinate Bench of the Tribunal in Assessee's own case for AYs 2005-06, 2007-08, 2008-09, 2009-10, 2010- 11, 2011-12 & 2013-14, wherein the addition made by the Lower Authorities in terms of section 14A r.w. Rule 8D of the Rules have been deleted. Therefore, sought for deletion of the addition in years under consideration.

4. Per contra, the Ld. AR relying on the findings and the conclusion of the Lower Authorities sought for dismissal of the appeal.

5. We have heard the parties and perused the material. The Coordinate Bench of the Tribunal in Assessee's own case in ITA Nos. 4524/Del/2009, 4538/Del/2010, 2226/Del/2011,

5570/Del/2012, 6075/Del/2014 & 6619/Del/2014 for Asst Years 2005-06, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 & 2013-14, deciding the very same issue held as under:

“6. Before the authorities below, the submissions of the assessee as incorporated in the impugned orders are that, in so far as disallowance of interest expenditure is concerned, the assessee had categorically explained that firstly, no loan was utilized for making the investments; and secondly, assessee had huge surplus funds in the form of net profits and capital surplus. For instance, in the Assessment Year 2007-08, the assessee had earned profit after taxation at Rs.1197.41 lakhs and capital and reserves of Rs.5410.87 lakh; for the Assessment Year 2008-09 net profit of Rs.1583.62 lakh and capital and reserves at Rs.6704.62 lakh; and in Assessment Year 2009-10 the net profit of Rs.1036.08 lakh and capital and reserves of Rs.7487.41 lakh. The investments made in the purchase of equity shares in Assessment Year 2007-08 was Rs.235 lakhs in Assessment Year 2007-08; no investment in Assessment Year 2008-09; and in Assessment Year 2009-10 the investment was only Rs.6 lakh. Apart from that, assessee had also given break up of secured loan including cash credit that all these loans were for specific purpose and none of the loan account was utilized for purchasing the investment. Thus, interest expenditure could have been disallowed. In so far as disallowance of indirect expenditure is concerned the assessee has given detailed working of suo moto disallowance attributing indirect expenditure on which Assessing Officer has neither point out any defect nor has recorded any satisfaction that why the claim of the assessee is not maintainable. Once the assessee had sufficient interest free funds for making such investment and interest bearing loan has not been diverted in any investment earning exempt income, then there is no question of any disallowance of interest expenditure and same is directed to be deleted. Even the disallowance of indirect expenditure is uncalled for, firstly for the reason that assessee has given the working of suo moto disallowance and Assessing Officer has not recorded any satisfaction which is mandatory requirement before proceedings to apply Rule 8D in terms of section 14A(2). Hence, all the disallowance are directed to be deleted.”

6. By respectfully following the Assessee's own case for Asst. Years 2005-06, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 & 2013-14, as the assessee has given the working of *suo moto* disallowance and Assessing Officer has not recorded any satisfaction which is mandatory requirement before proceedings to apply Rule 8D in terms of section 14A of the Act and in the absence of any change in the facts and circumstances of the case, disallowance are directed to be deleted.

7. In the result, both appeals in ITA Nos. 7248/Del/2018 & 7249/Del/2018 filed by the Assessee are allowed.

Order pronounced in open Court on 31st October, 2023.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: 31/10/2023

Pk/Sr.ps

Copy forwarded to:

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

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI