

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

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 799/Mum/2023 (A.Y.2018-19)

M/s Cape Trading LLP

Plot No. C-30, Block –G,
Raheja Towers, Opp. SIDBI,
Bandra Kurla Complex,
Bandra (East), Mumbai-400 018
PAN: AALFC1496M

..... Appellant

Vs.

NFAC, Delhi

Pin- 110001

..... Respondent

&

ITA No. 589/Mum/2023 (A.Y.2018-19)

NFAC, Delhi

Pin- 110001

..... Appellant

Vs.

M/s Cape Trading LLP

Plot No. C-30, Block –G,
Raheja Towers, Opp. SIDBI,
Bandra Kurla Complex,
Bandra (East), Mumbai-400 018
PAN: AALFC1496M

..... Respondent

Appellant by : Shri Madhur Agarwal
Respondent by : Shri K. C. Selvamani, Ld. CIT-DR

Date of hearing : 19/07/2023
Date of pronouncement : 16/10/2023

ORDER

PER GAGAN GOYAL, A.M:

These cross appeals by Assessee and Revenue are directed against the order of National Faceless Appeal Centre (NFAC), Delhi dated 16.01.2023 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2018-19. The assessee has raised the following grounds of appeal:-

Ground No.1:

On facts and circumstances of the case and in law, Ld. CTT(A) erred in disallowing expenditure under section 14A of the Act amounting to Rs. 8,68,644/- as against the correct amount of Rs. 29,495/-.

The appellant therefore prays before your Honour to restrict the disallowance u/s. 14A to Rs. 29,495/- as against the disallowance of Rs. 8,68,644/- made by Ld. CIT (A)

Ground No.2:

On the facts and circumstances of the case, Ld. CIT (A) erred in not appreciating the fact that the appellant has incurred expenses which are statutory and administrative in nature, which is specific in nature and are not incurred for the purpose of earning exempt income.

Ground No.3:

The Appellant craves to add, alter, amend or omit any of the grounds of appeal before or during the hearing of the appeal.

2. The revenue has raised the following grounds:-

1 "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition made of Rs. 127, 74 ,74,531/- made by the by the AO?" in respect of unexplained U/s. 68 of the IT Act.

2 "The Ld.CIT(A) has erred in deleting addition made stating that the assessee firm has explainable Sources as against the addition made by AO u/s. 68 of the Act, amounting to Rs. 127,74,72,531/-

3 "If there is any additional ground, which may arise subsequently, that may be raised during the course of hearing before the Hon'ble ITAT."

3. The brief facts of the case are that assessee filed its return of income on 21.09.2018, declaring total income at Rs. 3,92,64,100/-. Later on, assessee firm revised its return of income on 29.03.2019 at Rs. 3, 92, 64,100/-. Case of the assessee was selected for limited scrutiny under CASS for examining the issue of **Unsecured Loans and Expenses Incurred for Earning Exempt Income**. During the year under consideration assessee firm received unsecured loans from the partners as under:

Sl No.	Name and Address of Lender	PAN No. of the Lender	Amount outstanding as on 01.04.2017	Amount taken during the year	Amount repaid during the year	Amount outstanding as on 31.03.2018	Rate of interest
1	Neel Chandru Raheja Plot no. C-30, Block G, Opp SIDBI, Bandra Kurta complex, Bandra (E), Mumbai- 400051	AAAPR5866R	13,91,20,000/-	86,15,000/-	4,47,85,000/-	10,29,50,000/-	Interest free loan
2	Chandru L Raheja Plot no. C-30, Block G, Opp SIDBI, Bandra Kurta complex, Bandra (E), Mumbai- 400051	AAAPR5867Q		63,18,38,000/-		63,18,38,000/-	Interest free loan
3	Jyoti Chandru Raheja Plot no. C-30, Block G, Opp SIDBI, Bandra Kurta complex, Bandra (E), Mumbai- 400051	AADPR5770R		63,18,38,000/-		63,18,38,000/-	Interest free loan
	Total		13,91,20,000/-	1,27,22,91,000/-	4,47,85,000/-	1,36,66,26,000/-	

4. AO issued notices to the partners-cum-creditors to establish their Identity, genuineness and creditworthiness in respect of un-secured loan provided to assessee firm amounting to Rs. 127,22,91,000/-. Partners-cum-creditors responded to various notices issued by AO, but AO did not find the same as satisfactory and made an addition of total amount of Rs. 127, 22, 91,000/- received from all the three partners-cum-creditors. In addition to this AO also made an addition of Rs. 51,81,531/- on account disallowance of expenses u/s. 14A of the Act. Assessee being aggrieved with this addition preferred an appeal before the Ld. CIT(A), who in turn deleted the addition of Rs. 127,22,91,000/- made u/s. 68 of the Act and addition of Rs. 51,81,531/- made u/s. 14A was restricted up-to Rs. 8,68,644/-. With this order of Ld. CIT (A), both the assessee and revenue felt aggrieved and a cross appeal is preferred against this order of Ld. CIT (A) before us.

5. We have gone through the order of AO passed u/s. 143(3) r.w.s. 144B of the Act, order of Ld. CIT (A) passed u/s. 250 of the Act along with submissions of the assessee and grounds of appeal raised by both the side. For sake of convenience, we are taking up the appeal of Revenue first for adjudication as substantial matter is involved therein.

6. Addition in the case of assessee was made on the ground of doubtful creditworthiness of partners-cum-creditors, as the amount given as un-secured loan by them to the assessee vis-à-vis origin of their source, i.e., other partnership firms/LLP in which they are partners and receiving share of profit are not commensurate with each other. As per AO, income of those LLPs in which

partners-cum-creditors are partners declared lower income as compared to share of profit received by all the three partners-cum-creditors, hence loans given by them to the assessee is not substantiated in terms of amount and treated as per section 68 of the Act. On this issue a detailed deliberation of the facts and figures is carried out by the Ld. CIT (A) in appellate proceedings before him. We have thoroughly observed the whole proceedings before Ld. CIT (A).

7. We have perused the order passed by Ld. CIT (A) who has deleted the addition of Rs. 1,27,74,72,531/- made by the AO u/s 68 of the Act by returning following findings:-

7.0 The AO admits that at the time of assessment, only the returned income of LLP was seen and the exempt income offered in the ROI was "Inadvertently" omitted. These would have shown that the investor parties had sufficient balance in their accounts and had sufficient incomes to invest in the appellant and hence the conclusion reached at that point in time that unsecured loans given by the parties of assessee were not properly explained was in hind sight not correct. This had resulted in addition of Rs. 127, 22, 91,000/- u/s 68 of the Act.

7.1 Now, keeping in light the facts as narrated in the remand report, the addition of Rs. 127,22,91,000/- is deleted and appeal of appellant on this ground is hence allowed. As a result, ground Nos. 1 & 2 of the appellant are allowed.

8. Ld. CIT (A) called the remand report from the AO on this issue and extracted the remand report in 38 pages, but has failed to examine the same in order to pass the order deleting the additions made by the AO. The order passed by Ld. CIT (A) is cryptic one and he has not given any reasons nor examined the remand report as to how the addition made by the AO is liable to be deleted. Ld. AR for the assessee and Ld. DR for the revenue have also agreed with the Bench

that the findings returned by Ld. CIT (A) are without any reasons who has simply deleted the additions made by the AO by referring to the remand report given AO. The issue raised by the revenue in the present appeal is required to be decided afresh by the Ld. CIT (A) by passing a reasoned order. Therefore, the present appeal is remanded back to the file Ld. CIT (A) to decide afresh after giving adequate opportunity to the assessee. **Hence, Ground no. 1 & 2 raised by the revenue are allowed for statistical purposes.**

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9. Cape LLP is holding investments in shares of various group companies aggregating to Rs. 205, 58, 44,970/- which are made out of own funds and out of interest free borrowed fund which clearly demonstrates that no interest bearing borrowing were utilized for making investments in shares. The assessee has claimed deduction for expenses aggregating to Rs. 13, 62,059/-in its return of income which is of statutory and administrative in nature like auditor fee, filing fee, business support fees, printing & stationery etc. None of these which are incurred for the purpose of earning of exempt income and hence no expenditure needs to be disallowed for the purpose of provisions of section 14A. There are other expenses like share sale expenses, loss on sale of shares etc. which are debited to profit and loss account and the same are already disallowed in the computation of income for AY 2018-19 since these expenses are pertaining to income which is offered under Capital Gain.

10. Out of abundant caution, the assessee proposes to disallow an amount of Rs. 29, 495/- on account of section 14A of the Act. The said amount comprises of an ad hoc amount of Rs. 25000 /- and bank charges amount of Rs. 4, 495/- Revised computation of income is already submitted by assessee. At this juncture, the assessee bring to our notice that the coordinate bench had accepted same proposition in its own case (erstwhile company Cape Trading Pvt Ltd which was converted into LLP on 17th March, 2016 for A.Y. 2010-11 on similar set of facts as in the year under consideration. For subsequent years the position of disallowance of 14 A is as under:

AY 2011-12	Not selected for scrutiny
AY 2012-13	Not selected for scrutiny
AY 2013-14	CIT(A) has accepted Tribunal view
AY 2014-15	CIT(A) has accepted Tribunal view
AY 2015-16	Not selected for scrutiny
AY 2016-17	Not selected for scrutiny
AY 2017-18	The Assessing officer has accepted Tribunal view

11. Copy of CIT (A) appeal order for A.Y.2013-14 & A.Y.2014-15 is furnished by the assessee for reference. (Annexure -18 & Annexure -19). Relevant extract of the decision of the Hon'ble ITAT while passing order for the year i.e. AY 2010-11 is reproduced as under:

Cape Trading Private Limited the Hon'ble Income Tax Appellate Tribunal (ITAT)
vide ITA No. 3772/ Mum/ 13 dated 11.03.2015

"The Assessing Officer while making the disallowance u/s.14A worked out the disallowance under Rule 8D (2) (iii) at Rs. 20,86,230/- which shows that the working under the provisions of Rule 8D negates the actual total expenditure debited by the assessee in the P & L account on administrative and other expenses. In any case, disallowance cannot be made more than the total expenses debited to the P & L account. From the details of the expenses, it is clear that most of the expenses are specific in nature and exclusively incurred for the business activity of the assessee. Therefore, the expenses on account of auditor fee, legal and professional fees, profession tax, business support fees cannot be said to have any direct or proximate nexus with the activity of investment or earning the exempt income. Thus the disallowance u/s 14A can be made only to the extent of allocation of these expenses which has direct or proximate nexus with earning of exempt income. From the details of the expenses, we find that the printing and stationary expenses and bank charges & commission are only two items which could have direct or proximate nexus with the investment and exempt income. Therefore, the disallowance u/s 14A r.w. Rule 8D (2)(iii) Cannot exceed to the allocable expenses incurred by the assessee for a composite activity resulting taxable exempt income. The working of disallowance under Rule 8D (2) (iii) by the Assessing Officer clearly shows that it exceeds not only the expenses debited and claimed by the assessee which could have a proximate nexus with the earning of income but also to the total expenditure debited by the assessee in the P&L account under the head administrative and other expenses. Therefore, it turns out to be contradictory to the actual facts and gives absurd results in complete disregard to the scheme of disallowance u/s.14A. Therefore, the provisions of Rule 8D (2)(iii) Cannot be applied in the case of the assessee as it becomes unworkable and unrealistic. In the facts and circumstances of the case, we find that when the provisions of Rule 8D (2)(iii) becomes unworkable then in the absence of any finding as well as any specific expenses debited to the P & L account which would have a direct or proximate nexus for earning the dividend income the disallowance made by the assessee suo moto is just and proper. Accordingly, we delete the disallowance made by the Assessing Officer."

12. It can be observed that all along in the past in this case disallowance u/s. 14A has been restricted to Rs 25000 /- in addition to the direct expenses incurred for investment in shares. Thus, relying on the above mentioned judicial

precedence, it is found to be reasonable that contention for disallowance U/s. 14A of the Act be accepted and revised computation of income is also accepted. Considering the above facts, we are inclined to delete the proposed addition of Rs 51, 81,531/- made in the assessment order.

13. During the year under consideration the assessee earned Dividend income of Rs.4, 02, 64,101/-. The assessee had offered to tax the dividend Income u/s. 115BBDA of the Act. The same has been reflected in the Return of Income under Schedule S-1, i.e., Income chargeable to Tax at special rates. As per section 115BBDA the LLP offered dividend income of Rs.3,92,64,101/- to tax at the rate of 10% (In excess of Rs.10,00,000/-) as per Clause (a) of Sub Sec (1) of Sec 115BBDA. Assessee is holding investments in shares of various group companies aggregating to Rs. 2055,84,4,970/- which is made out of own funds and out of interest free borrowed funds which clearly demonstrates that no interest bearing borrowing were utilized for making investments in shares.

14. Assessee has claimed expenses in its return of income which are of statutory and administrative in nature like auditors fee, filing fee, business support fees, printing & stationery etc., which are not being incurred for the purpose of earning of exempt income and hence no expenditure needs to be disallowed for the purpose of provisions of section 14A. Without prejudice to above, out of abundant caution an ad hoc amount of Rs. 25,000/- and bank charges are disallowed on year on year basis while computing income. However, inadvertently no such disallowance was made for the year. Hence, assessee filed

revised computation considering disallowance of Rs.29, 495/- under section 14A of the Act.

15. Out of Total expenses amounting to Rs. 51, 81,531/-, assessee *suo-moto* disallowed Rs. 43, 12,887/-. Balance amount of Rs. 8,68,644/- pertains to statutory and administrative in nature like auditors fee, filing fee, business support fees, printing & stationery etc., which are not being incurred for the purpose of earning of exempt income and hence no expenditure needs to be disallowed for the purpose of provisions of section 14A. Still, following the earlier practice continuously followed by the assessee amount of Rs. 25,000/- and bank charges are disallowed on year on year basis while computing income, relying on the decision of coordinate bench in assessee's own case for A.Y. 2010-11 discussed (supra). **In view of this ground raised by the assessee is allowed and order of Ld. CIT (A) is set-aside.**

16. **In the result, appeal of the assessee is allowed.**

17. **In the Result appeal filed by the assessee is allowed and appeal of revenue is allowed for statistical purposes.**

Order pronounced in the open court on 16th day of October, 2023.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 16/10/2023

Dhananjay, Sr. PS

Copy of the Order forwarded to:

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

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai