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

SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA Nos.5834 & 5835/Del/2017
Assessment Years: 2013-14 & 2014-15

M/s. JBM Auto Ltd., 601, Hemkunt Chambers, 89, Nehru Place, New Delhi	**Vs.**	ACIT/DCIT Circle-13(2), New Delhi
PAN :AAACJ9630N		
(Appellant)		**(Respondent)**

With

ITA Nos.5020 & 5021/Del/2017
Assessment Years: 2013-14 & 2014-15

DCIT, Circle-13(2), New Delhi	**Vs.**	M/s. JBM Auto Ltd., 601, Hemkunt Chambers, 89, Nehru Place, New Delhi
		PAN :AAACJ9630N
(Appellant)		**(Respondent)**

Assessee by	Sh. Salil Aggarwal, Sr. Advocate Sh. Shailesh Gupta, CA Sh. Madhur Aggarwal, Advocate
Department by	Sh. Sandeep Mishra, Sr. DR

Date of hearing	04.12.2023
Date of pronouncement	21.02.2024

ORDER

PER SAKTIJIT DEY, VICE-PRESIDENT

Captioned cross appeals arise out of two separate orders of learned Commissioner (Appeals) pertaining to assessment years 2013-14 and 2014-15.

ITA No.5834/Del/2017 (Assessee's Appeal)
AY: 2013-14

2. In ground nos. 1 to 3, the assessee has challenged disallowance of Rs.35,66,390/- under section 14A of the Income-tax Act, 1961 (in short 'the Act') read with Rule 8D of the Income-tax Rules, 1962.

2. Briefly the facts are, the assessee is a resident corporate entity stated to be engaged in the business of manufacturing of tools, dyes and sheet metal components, assemblies and sub-assemblies. In course of assessment proceedings, the Assessing Officer noticed that the assessee has earned exempt income by way of dividend amounting to Rs.3,67,80,000/- in the year under consideration. Whereas, the assessee has not disallowed any expenditure attributable to the earning of such income. Noticing this, the Assessing Officer called upon the assessee to explain,

why disallowance under section 14A of the Act read with Rule 8D should not be made. In response to the query raised by the Assessing Officer, the assessee furnished a detailed reply justifying its claim that no disallowance under section 14A read with Rule 8D can be made. The Assessing Officer, however, was not convinced with the submissions of the assessee. Accordingly, he proceeded to compute disallowance under Rule 8D read with section 14A of the Act. While doing so, he disallowed an amount of Rs.4,23,24,958/- under Rule 8D(2)(ii) towards interest expenditure. Further, he disallowed an amount of Rs.35,66,390/- under Rule 8D(2)(iii) towards administrative expenditure. Thus, in aggregate, he disallowed the amount of Rs.4,58,91,348/-. The assessee contested the disallowance before learned first appellate authority. After considering the submissions of the assessee in the context of facts and materials on record, learned first appellate authority granted partial relief to the assessee by deleting the disallowance of interest expenditure amounting to Rs.4,23,24,958/- made under Rule 8D(2)(ii). However, she upheld the disallowance of Rs.35,66,390/- under Rule 8D(2)(iii).

3. Before us, learned counsel appearing for the assessee submitted that before making disallowance, the Assessing Officer has not recorded the requisite satisfaction, which is mandatory in terms with sub-section (2) of section 14A read with Rule 8D(2). Thus, he submitted, in absence of proper satisfaction, disallowance made is invalid. In support, he relied upon the judgment of Hon'ble Jurisdictional High Court in case of Coforge Ltd. Vs. ACIT [2021] 128 taxmann.com 99 (Delhi). Without prejudice, he submitted, the disallowance under Rule 8D(2)(iii) can be made only with reference to investment giving rise to exempt income during the year under consideration.

4. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

5. We have considered rival submissions and perused the materials on record. We have also applied our mind to the decisions relied upon. It is evident, in the year under consideration the assessee has earned exempt income by way of dividend amounting to Rs.3.67 crores. Whereas, the assessee did not make any *suo motu* disallowance under section 14A read with

Rule 8D. When the Assessing Officer called upon the assessee to explain, why the disallowance under section 14A read with Rule 8D should not be made, the submissions of the assessee was that the investments made in subsidiaries and joint ventures are in the nature of strategic investments and not with an intendment to earn exempt income. On a perusal of assessment order, it is very much clear that the Assessing Officer has recorded reasons/satisfaction, why assessee's explanation is not acceptable and disallowance has to be made under section 14A read with Rule 8D. It is now fairly well settled that strategic investment in group entities cannot escape the rigours of section 14A read with Rule 8D. Furthermore, it is not a case where the assessee has made any *suo motu* disallowance, which could have shifted the burden to the Assessing Officer to record satisfaction to establish that the disallowance made by the assessee is incorrect, having regard to the entries made in the books of account. Therefore, in our view, the decision in case of Coforge Ltd. (supra) would not be apply to the facts of the present appeal. Thus, we are unable to accept assessee's contention that the Assessing Officer has not recorded any satisfaction, which

invalidates the disallowance under section 14A read with Rule 8D. However, we find substantial merit in the alternative contention of learned counsel for the assessee that the disallowance under Rule 8D(2)(iii) should be computed with reference to investments giving rise to exempt income during the year and not the entire investment, which might give rise to exempt income in further. The Assessing Officer is directed to re-compute the disallowance under Rule 8D(2)(ii) accordingly. Grounds are partly allowed.

6. In ground nos. 4 & 5, the assessee has challenged the disallowance of depreciation on leasehold property claimed as amortization.

7. In course of assessment proceedings, the Assessing Officer noticed that the assessee has debited an amount of Rs.9,79,782/- to profit and loss account towards depreciation of a leasehold land. However, for the purpose of computation of income, the assessee, though, added back the said amount to the income, but claimed the very same amount as amortization of leasehold rent by reducing the same from the computation of income. Though, the assessee justified such reduction, however, the Assessing

Officer following the past assessment history relating to such issue in assessment years 2009-10, 2010-11, 2011-12 and 2012-13 disallowed the amount of Rs. 9,49,782/-.

8. Before us, learned counsel appearing for the assessee submitted that the issue is squarely covered by the decision of the Tribunal in assessee's own case in assessment years 2010-11, 2011-12 and 2012-13. A copy of the order passed by the Coordinate Bench was placed on record.

9. Learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

10. Having considered rival submissions, we find, while deciding identical issue in assessee's case in ITA No.4713/Del/2014 and Ors., dated 26.04.2018, the Coordinate Bench has set aside the issue to the Assessing Officer with the following observations:

> *"8. In Ground No.2, the assessee has challenged the disallowance of depreciation on leasehold property claimed as amortization to the extent of Rs.9,83,222/-. We find that similar issue had come up for consideration before the Tribunal in assessee's own case for the Assessment Year 2010-11 in ITA No.3922/Del/2014, wherein the Tribunal on following ground:-*
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> > *"2. On the facts and in the circumstances of the case, the CIT(A) had erred in confirming disallowance of Rs.9,80,090/- in respect of expenditure on amortization of leasehold land by holding it to be a capital expenditure whereas the amount is*

clearly admissible as revenue expenditure u/s. 37(1) of the Income Tax Act."

The Tribunal has set aside the issue to the file of the Assessing Officer for fresh adjudication and in accordance with law after relying upon the assessee's own case for the earlier years. The relevant observations of the Tribunal read as under:-

> *"Ground No.2 of the assessee is covered by the decision of the Co-ordinate Bench of the Tribunal in the assessee's own case in ITA No.3805/Del/2011 and ITA No.1641 & 1779/Del/2013 vide order dated 13.04.2017 wherein the issue has been set aside to the file AO for denovo adjudication. Para 13 of the order is extracted for ready-reference:-*
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> *"13. "Ld. Counsel has tried to impress upon this bench that payments made to lessor are in nature of advance rents. However, there is no material on record to show that assessee has made these payments as advance rent for future years to secure any reduction in rent payable for future years or for any other business consideration. We are, therefore, unable to appreciate arguments advanced by Id. Counsel that these advances paid are towards advance rent. Even from the terms of agreements, it is not clear as to whether advances paid has been adjusted against future rent or whether these are in the nature of security deposits which are refundable in nature on termination of agreements. Both parties before us have expressed their intention regarding issue being re-adjudicated by assessing officer de novo. Accordingly, we are inclined to set aside this issue to Ld. AO for fresh adjudication. Ld. AO shall investigate upon and take all necessary steps to ascertain true nature of alleged lease premium paid by assessee in the three agreement made as per law. Needless to say that assessee would cooperate with assessing officer and provide with all necessary relevant documents as called for by him. Ld. AO is hereby directed to decide issue as per law.*
>
> *In the result the grounds raised by assessee stands allowed for statistical purposes*
>
> *4. Respectfully following the aforesaid decisions and the proposition of law laid down therein, we set aside this issue to the file of the AO for fresh adjudication in accordance with law.*

9. Thus, following the same precedence, we also set aside issue to the file of the Assessing Officer to be decided accordingly. Accordingly, ground no.2 is allowed for statistical purposes."

11. Facts being identical, respectfully following the decision of the Coordinate Bench in assessee's own case, as referred to above, we restore the issue to the Assessing Officer for fresh adjudication after providing due and reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

12. In the result, appeal is partly allowed.

ITA No.5020/Del/2017 (Revenue's Appeal)
AY: 2013-14

13. In ground nos. 1 and 2, the Revenue has challenged the partial relief granted by learned first appellate authority on the issue of disallowance made under section 14A read with Rule 8D.

14. While considering assessee's appeal, being ITA No. 5834/Del/2017 in the earlier part of the order, we have discussed this issue at length. Though, the Assessing Officer had disallowed the interest expenses under Rule 8D(2)(ii) for an amount of Rs. 4,58,91,348/-, however, learned first appellate authority deleted such disallowance and recorded a categorical factual finding that investments giving rise to the exempt income were made out of the interest free funds and no borrowed fund was utilized. The Revenue has failed to bring any material on record to controvert

the aforesaid factual finding of learned first appellate authority. That being the factual position on record, we do not find any infirmity in the decision of learned first appellate authority qua the disallowance under Rule 8D(2)(ii). The grounds are dismissed.

15. In ground no. 3, the Revenue has challenged the disallowance of Rs. 85,612/- towards static creditors.

16. We have considered rival submissions and perused the materials on record. As could be seen from the facts on record, in course of assessment proceedings, the Assessing Officer, having noticed that certain credit balances have remained outstanding from past several years, took a view that there is cessation of liability in respect of such creditors. Accordingly, he disallowed the amount of Rs.85,612/- While deciding the issue, learned Commissioner (Appeals), having factually verified that certain creditors have been written off and amounts have been added back to the income in subsequent years and in respect of certain creditors payments have been made, deleted the addition.

17. Before us, learned Departmental Representative has failed to bring any material on record to controvert the aforesaid factual finding of learned first appellant authority. That being the case,

we decline to interfere with the decision of learned first appellate authority. Ground raised is dismissed.

18. In ground no. 4, the Revenue has challenged deletion of disallowance of Rs. 1,77,232/- under section 40(a)(ia) of the Act.

19. As could be seen from the facts on record, the assessee has paid custody and listing fees to NSE, BSE, NSDL and CDSL. Being of the view that such payments are for technical services coming within the purview of section 194J of the Act, the Assessing Officer observed that the assessee was required to deduct tax at source. Since, the assessee had failed to do so, the Assessing Officer disallowed the amount of Rs.1,77,232/- under section 40(a)(ia) of the Act.

20. Before us, it is a common point between the parties that the issue is squarely covered by the decision of the Tribunal in assessee's own case in assessment years 2010-11 to 2012-13 (supra), wherein, the Coordinate Bench has held as under:

> *"13 We find that now this issue stands settled by the Hon'ble Supreme Court in the case of CIT Vs. Kotak Securities Ltd. reported in (2016) 383 ITR 1 (SC), wherein the Hon'ble Supreme Court concluded that transaction charges paid to BSE by its members does not fall under the category of technical services, and therefore, no TDS is following the ratio laid down by the Hon'ble Apex Court in the case of CIT Vs. Kotak Securities (supra), we hold that the aforesaid nature of payment does not fall within the category of Technical and Managerial fee and accordingly assessee was not required to deduct*

TDS u/s. 194J. Accordingly, ground no. 3 raised by the assessee is allowed."

21. Facts being identical, respectfully following the decision of the Coordinate Bench, we uphold the decision of learned first appellate authority. Ground raised is dismissed.

22. In the result, appeal is dismissed.

ITA No. 5835/Del/2017 (Assessee's Appeal)
AY: 2014-15

23. Ground nos. 1 to 3 are on the issue of disallowance under section 14A read with Rule 8D. These grounds are identical to ground nos. 1 to 3 of ITA No.5834/Del/2017 decided by us in the earlier part of the order. Following our decision therein, we direct the Assessing Officer to re-compute the disallowance under Rule 8D(2)(iii) by considering only those investments, which have yielded exempt income during the year under consideration. Grounds are partly allowed.

24. Ground nos. 4 and 5 are identical to ground nos. 4 and 5 of ITA No. 5834/Del/2017 decided by us in the earlier part of the order. Following our decision therein, we restore the issue to the Assessing Officer with similar directions. Grounds are allowed for statistical purposes.

25. In the result, appeal is partly allowed.

ITA No.5021/Del/2017 (Revenue's Appeal)
AY: 2014-15

26. In ground nos. 1 and 2, the Revenue has challenged the deletion of disallowance of interest expenditure made under Rule 8D(2)(ii) read with section 14A of the Act. The issue raised in these grounds is identical to the issue raised in ground nos. 1 and 2 of ITA No. 5020/Del/2017 decided by us supra. Following our decision therein, we dismiss the grounds.

27. Ground no. 3 relates to deletion of disallowance of Rs.14,11,211/- representing delayed payment of employees contribution to Provident Fund (PF) and Employees State Insurance. As fairly submitted by learned counsel appearing for the assessee, the issue is squarely covered against the assessee in view of the decision of Hon'ble Supreme Court in case of Checkmate Services Pvt. Ltd. Vs. CIT-1 in Civil Appeal No. 2833 of 2016. Thus, following the ratio laid down by Hon'ble Supreme Court in the aforesaid decision, we uphold the disallowance made by the Assessing Officer.

28. In ground no. 4, the Revenue has challenged the disallowance of Rs.1,30,323/- representing static creditors. This issue is identical to the issue raised in ground no. 3 of ITA No. 5020/Del/2017 decided by us in the earlier part of the order. Following our decision therein, we uphold the order of learned first appellate authority on the issue. Ground raised is dismissed.

29. In the result appeal is dismissed.

30. To sum up, assessee's appeal are partly allowed. Whereas, Revenue's appeals are dismissed.

Order pronounced in the open court on 21st February, 2024

Sd/-	***Sd/-***
(M. BALAGANESH)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**VICE-PRESIDENT**

Dated: 21st February, 2024.
RK/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi