

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "K" Bench, Mumbai.

Before Shri Vikas Awasthy (Judicial Member) &  
Shri Gagan Goyal (Accountant Member)

I.T.A. No. 785/Mum/2024 (A.Y. 2014-15)

DCIT-1(3)1 Room No. 535 Aayakar Bhavan M.K. Road Mumbai-400 020. (Appellant)	Vs.	Grindwell Norton Limited Leela Business Park 5 <sup>th</sup> Level, Andheri Kurla Road, J.B. Nagar, S.O. Mumbai-400 059. (Respondent)
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C.O. No. 54/Mum/2024 (A.Y. 2014-15)

Grindwell Norton Limited Leela Business Park 5 <sup>th</sup> Level, Andheri Kurla Road, J.B. Nagar, S.O. Mumbai-400 059. (Appellant)	Vs.	DCIT-1(3)1 Room No. 535 Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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PAN : AAACG8725B

Assessee by	S/Shri Jeet Kamdar, Preet Goyal & Ms. Prachi Jain
Department by	Shri Mehul Jain, Sr.DR
Date of Hearing	16.05.2024
Date of Pronouncement	.05.2024

ORDER

Per Vikas Awasthy (JM) :-

This appeal by the Department is directed against the order of Commissioner of Income Tax (Appeals)-56, Mumbai [in short "the CIT(A)"] dated 19.12.2023 for assessment year 2014-15. The assessee has filed cross objections in appeal filed by the Department.

2. The Department has assailed the order of CIT(A) by raising following grounds:-

1. That on the facts and circumstances of the case and in law, the ld. CIT(A) has erred in deleting the disallowance of depreciation on intangible assets amounting to Rs. 63,68,225/-.
  2. That on the facts and circumstances of the case and in law, the ld. CIT(A) has erred in deleting the disallowance of additional depreciation claimed under section 32(1)(iia) without appreciating that the amendment vide Finance Act, 2015 is effective for A.Y. 2016-17 and thus not applicable for the instant A.Y. 2014-15.
  3. That on the facts and circumstances of the case and in law, the ld. CIT(A) has in deleting the disallowance of interest expenditure under section 14A r.w.r. 8D(2)(ii) without appreciating that assessee has not been able to demonstrate that the investment are made out of the interest free funds.
  4. The appellant craves that the order of the Ld.CIT(A) on the above ground be set aside and i.e. the order passed by the AO be restored.
  5. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.
3. Shri Mehul Jain representing the Department submitted that in ground No. 1 of the appeal the Revenue has assailed order of the CIT(A) in deleting disallowance of depreciation on intangible assets. The learned DR reiterating the findings of Assessing Officer submitted that similar claim of the assessee was rejected in A.Y. 2013-14 by the Assessing Officer.
4. In respect of Ground No. 2 relating to deletion of disallowance of additional depreciation claimed under section 32(1)(iia) of the Income Tax Act, 1961 (herein referred to 'the Act'), the learned DR submitted that assessee had claimed additional depreciation on plant and machinery purchased after 30.9.2012 i.e. second half of F.Y. 2012-13 relevant to assessment year 2013-14. Since, the asset was put to use for a period less than 180 days, assessee had claimed 10% depreciation (i.e. 50% of additional depreciation). In assessment year 2013-14, the same was allowed to assessee by the Assessing Officer. The assessee claimed remaining 50% depreciation in impugned assessment year 2014-15. The Assessing Officer disallowed the same. He referred to the Finance Bill 2015, Clause (10), wherein amendment

was proposed to section 32(1)(ia) by way of insertion of proviso allowing balance 50% additional depreciation. The learned DR pointed that the Finance Bill 2015 categorically states that amendment will take effect from 1<sup>st</sup> April, 2016 i.e. w.e.f. assessment year 2016-17. Therefore, assessee's claim of balance 50% additional depreciation was rightly rejected by the Assessing Officer in the impugned assessment year. He submitted that the CIT(A) while deleting disallowance of additional depreciation has erred in not considering the fact that the amendment is effective from A.Y. 2016-17.

5. In respect of ground No. 3, the learned DR submitted that assessee has made suo moto disallowance of Rs. 16,49,561/- under section 14A read with Rule 8D(2)(iii) of the Income Tax Rules. The Assessing Officer made further disallowance in respect of interest expenditure in accordance with Rule 8D(2)(ii). The CIT(A) has erred in deleting disallowance made under rule 8D(2)(ii) on account of interest expenditure. The learned DR prayed for restoring findings of the Assessing Officer and allowing appeal of the department.

6. Per contra, Shri Jeet Kamdar appearing on behalf of the assessee vehemently defended the order of the CIT(A) on the issues assailed by the department in appeal. The learned AR submitted that disallowance of depreciation on intangible asset is a recurring issue. The assessee had claimed depreciation on intangible assets for the first time in assessment year 2007-08. Assessee's claim of depreciation was disallowed by the Assessing Officer. Issue travelled to the Tribunal. The Tribunal in ITA No. 528/Mum/2012 vide order dated 27.7.2016 allowed assessee's claim of depreciation on intangible assets. The said order of Tribunal was upheld by the Hon'ble Bombay High Court in appeal by the Department in Income Tax Appeal No. 181 of 2018 decided on 7.6.2023. The Assessing Officer in subsequent assessment years has been consistently disallowing assessee's claim of depreciation on intangible assets, the CIT(A) and the Tribunal have

reversed the findings of the Assessing Officer and has decided the issue in favour of the assessee.

7. In respect of assessee's claim of additional depreciation on plant and asset, the learned AR submits that the assessee claimed 10% additional depreciation i.e. (50% of additional depreciation) under section 32(1)(ia) of the Act as the plant and machinery was used for less than 180 days in A.Y. 2013-14. The same was allowed to the assessee in assessment year 2013-14 by the Assessing Officer. The assessee claimed balance 50% in the impugned assessment year i.e. A.Y. 2014-15. The said claim of assessee was rejected by the Assessing Officer but allowed by the CIT(A) after examining the facts of the case. To controvert arguments of DR that amendment brought by the Finance Bill 2015 is prospective applicable for assessment year 2016-17, the learned AR placed reliance on the decision in the case of CIT Vs. Shri T.P. Textiles P. Ltd. reported as 394 ITR 43 (Madras), wherein amendment was held to be clarificatory and applicable retrospectively.

8. In respect of disallowance under section 14A, the learned AR submitted that the CIT(A) has granted relief to the assessee only in respect of interest expenditure after examining the fact that the assessee had own interest free funds to cover investments. To support the findings of CIT(A) he placed reliance on the decision in the case of CIT Vs. HDFC Bank Ltd reported as 383 ITR 529 (Bom) and South Indian Bank Ltd. Vs. CIT, 130 taxmann.com 178(SC).

9. The learned AR further submitted that in the cross objections the assessee has raised a ground with respect to disallowance under section 14A read with Rule 8D(2)(iii). Short prayer of the assessee is that disallowance be restricted to only dividend yielding investments. To support his contention on merits, he placed reliance on Special Bench decision in the case of Vireet Investments (P) Ltd. 82 taxmann.com 415 (Delhi Trib) (SB).

10. To controvert the submission of the assessee on the ground raised in cross objections the learned DR submitted that the assessee had made suo moto disallowance of Rs. 16,49,561/- under section 14A of the Act. While computing disallowance the assessee had not made any claim with regard to disallowance made only on dividend yielding investments. Therefore the CIT(A) has rightly rejected assessee's claim not made in return of income or revised return of income.

Decision :

11. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also considered the decisions on which learned AR has placed reliance in support of his contentions. Our findings on the issues raised in appeal and cross objections are as under :-

Disallowance of depreciation on intangible assets :

12. The assessee had taken over grinding wheel business of M/s. Orient Abrasives Ltd. as 'going concern' on slump sale basis during the period relevant to assessment year 2007-08. Alongwith other assets, the assessee had also acquired intangible assets in the nature of Trademarks, Technical Know-how, Marketing Network, Goodwill and Non-compete rights. The assessee for the first time claimed depreciation on said intangible assets in assessment year 2007-08. The claim of depreciation on intangible assets was rejected by the Assessing Officer. The issue travelled to the Tribunal. The Tribunal in ITA No. 528/mum/2012 for assessment year 2007-08, following the decision of Hon'ble Apex Court in the case of Smifs Securities Ltd. reported as 348 ITR 302 allowed assessee's claim of depreciation on intangible assets. The said decision of the Tribunal was upheld by the Hon'ble Bombay High Court in Income Tax Appeal No. 181 of 2018 (supra). Thereafter, in all subsequent assessment years the Tribunal following its

decision in assessment year 2007-08 has consistently allowed assessee's claim with regard to disallowance of depreciation on intangible assets. The Revenue has not been unable to show any distinguishing factor in the impugned assessment year, hence, we see no reason to deviate from settled position. Thus, ground No. 1 of appeal by the Revenue is dismissed being devoid of any merit.

Additional depreciation claimed under section 32(1)(iia) of the Act.

13. Assessee has claimed additional depreciation on plant and machinery acquired in second half of F.Y. 2012-13 relevant to assessment year 2013-14. It is an undisputed fact that the assessee had claimed 50% additional depreciation in assessment year 2013-14 and the same was allowed by the Assessing Officer. The assessee claimed remaining 50% additional depreciation in impugned assessment year. The same was disallowed by the Assessing Officer. The CIT(A) allowed assessee's claim of additional depreciation.

13.1 The Department's objections that the amendment brought in by the Finance Bill 2015 with regard to allowance of balance 50% additional depreciation is effective from 1.4.2016 i.e. w.e.f. assessment year 2016-17 onwards. We find that in the case of CIT Vs. Shri T.P. Textiles P. Ltd. (supra) the issue qua retrospectivity of amendment to section 36(1)(iia) has been considered. The Hon'ble Madras High Court after considering objections raised by the department held that the amendment is clarificatory in nature and would apply retrospectively. Thus, in light of the aforesaid decision we find no merit in the argument raised by learned DR. The CIT(A) has deleted disallowance of balance 50% additional depreciation claimed by the assessee after considering provisions of section 32(1)(iia) of the Act and various decisions placed on record by assessee during the course of submissions made before the First Appellate Authority. We see no infirmity in the findings

of CIT(A) on this issue. Hence, the same are upheld. Ground No. 2 raised in appeal by the Department is dismissed being devoid of any merit.

Disallowance under section 14A read with Rule 8D(2) :

14. In ground No. 3 of appeal, the Revenue has assailed findings of the CIT(A) in deleting disallowance of interest expenditure under section 14A read with rule 8D(2)(ii) of the Act. The assessee had made suo moto disallowance of Rs. 16,49,561/- under rule 8D(2)(iii) of the Act. The Assessing Officer in addition made disallowance under rule 8D(2)(ii) of Rs. 1,88,113/- on account of interest expenditure. The assessee before the CIT(A) demonstrated that own funds of the assessee comprising of Share Capital and Reserves and Surplus are much more than the total investments. The CIT(A) deleted the addition after examining facts and placing reliance on the decision of Hon'ble Jurisdictional High Court in the case of HDFC Bank Ltd. (supra) and the decision of Hon'ble Apex Court in the case of South Indian Bank Limited (supra). We see no error in the findings of CIT(A) on this issue. Accordingly ground No. 3 of appeal is dismissed.

15. The assessee in cross objections has assailed the order of the CIT(A) in not considering claim of the assessee with regard to disallowance under Rule 8D(2)(iii) to be made in respect of only dividend yielding investments. Undeniably, the assessee while making suo moto disallowance under section 14A of the Act has considered all the investments. The claim under rule 8D(2)(iii) to consider only dividend yielding investment was made for the first time before the CIT(A). The CIT(A) rejected said claim as the same was not made in the return of income or revised return of income. The Hon'ble Apex Court in Goetz (India) Ltd. Vs. CIT reported as 284 ITR 323 has held that the Assessing Officer can entertain a claim for deduction made in return of income or in revised return. However, the powers of Appellate Tribunal are not impinged to entertain claim not made in return of income. Thus, in the light of aforesaid decision of Hon'ble Apex Court, we admit claim made by the

assessee. The argument of disallowance under section 14A read with rule 8D(2)(iii) only on dividend yielding investments is supported by decision of Special Bench in the case of Vireet Investments (P) Ltd. (supra). The assessee has furnished computation of revised disallowance under section 14A at page No. 61 of the paper book. In principle, we allow ground raised by the assessee in cross objections. The Assessing Officer is directed to consider only dividend yielding investments for the purpose of making disallowance under Rule 8D(2)(iii). However, for the limited purpose of verification/quantification of claim of disallowance, we restore the issue to the Assessing Officer.

16. In the result, appeal of the Revenue is dismissed and cross objections of the assessee are allowed, in aforesaid terms.

Order pronounced in the open court on Friday the 17<sup>th</sup> Day of May, 2024.

Sd/-  
(Gagan Goyal)  
Accountant Member

Sd/-  
(Vikas Awasthy)  
Judicial Member

Mumbai.; Dated : 17/05/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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