

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

BEFORE

SHRI LALIET KUMAR, Hon'ble JUDICIAL MEMBER

&

SHRI MANJUNATHA G., Hon'ble ACCOUNTANT MEMBER

आ.अपी.सं / ITA No.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
781/Hyd/2020	2016-17	M/s. Jasper Industries Private Limited, Hyderabad [PAN: AAACJ5760H]	Asst. Commissioner of Income Tax, Circle-2(1), Hyderabad
6/Hyd/2021	2016-17	Dy. Commissioner of Income Tax, Circle-2(1), Hyderabad	M/s. Jasper Industries Private Limited, Hyderabad [PAN: AAACJ5760H]

निर्धारिती द्वारा/Assessee by: Shri C.S. Subrahmanyam and
Shri EV Sri Krishna, ARs

राजस्व द्वारा/Revenue by: Shri K. Meghnath Chowhan, CIT-DR

सुनवाई की तारीख/Date of hearing: 22-05-2024

घोषणा की तारीख/Pronouncement on: 05-06-2024

आदेश / ORDER

PER MANJUNATHA G., A.M. :

These are cross-appeals filed by the assessee and the Revenue, are directed against the order(s) passed by the Commissioner of Income Tax (Appeals)-11, Hyderabad dt. 15-09-2020 and pertains to the assessment year (AY) 2016-17. Since, the facts are identical and issues are common in

both the appeals, for the sake of convenience, we decide these appeals by way of this common order.

2. The assessee has raised the following grounds:

“1. The Ld. CIT(A) erred in allowing the appeal in part.

2. (a) The Ld.CIT(A) erred in holding that disallowance u/s. 14A of the Act is called for in the appellant’s case and erred in directing the Assessing Officer to make a disallowance of Rs.1,22,85,858/- u/s. 14A of the Act to the extent of dividend income.

(b) The Ld.CIT(A) erred ought to have appreciated that the Assessing Officer has not made any disallowance u/s 14A of the Act, in the assessment under consideration.

(c) The Ld. CIT(A) ought to have appreciated that the disallowance of Rs.1,22,85,858/- made u/s. 14A of the Act is a fresh disallowance which tantamount to enhancement of assessment which requires opportunity of being heard to the appellant.

(d) The Ld. CIT(A) erred in not giving any enhancement notice to the appellant before directing the Assessing Officer to make the disallowance of Rs.1,22,85 ,858/- u/s. 14A of the Act.

(e) The Ld. CIT(A) ought to have appreciated that the direction given to the Assessing Officer to make the disallowance of Rs.1,22,85,858/- u/s 14A of the Act is void ab initio since no notice of enhancement of assessment has been given to the appellant.

3. (a) Without prejudice to other grounds, the Ld. CIT(A) ought to have appreciated that no disallowance u/s. 14A of the Act is called for in the appellant’s case since no expenditure has been incurred by the Factual Ground appellant towards investment in the equity shares.

(b) The Ld. CIT(A) ought to have appreciated that there is no nexus between the borrowed funds and the impugned investment.

(c) The Ld. CIT(A) ought to have appreciated that the Assessing Officer has not established that the assessee

has diverted the borrowed funds for the purpose of the impugned investment.

(d) The Ld. CIT(A) ought to have appreciated that the impugned investment has been made out of internal accruals and free reserves of the appellant.

(e) The Ld. CIT(A) ought to have appreciated that the impugned investment in subsidiaries is purely for commercial expediency, and being a part of expanding its activities, thereby complimenting and supplementing the assessee own business.

(f) The Ld. CIT(A) ought to have appreciated that the impugned investment is purely a long term strategic investment, not for dividend income and that it cannot be separated from business activities of the appellant.

(g) The Ld. CIT(A) ought to have appreciated the fact that investments were made in subsidiaries which were in nature of similar business as that of assessee .

(h) The Ld. CIT(A) erred in not appreciating the fact that the borrowed funds were utilized for the purpose for which they were obtained i.e. business purpose and that there was no diversion of borrowed funds for other purpose.

(i) Without prejudice, disallowance u/s 14A has to be restricted to 0.5% of the value of investments on which dividend income is earned.

4. (a) The CIT (A) has erred in upholding the disallowance of Rs.4,50,000/- being fees for increase in authorize share capital stating the same is nature of capital expenditure.

(b) The CIT (A) ought to have appreciated the fact that the fees paid for increase in authorized capital is for the purpose of business growth.

(c) The CIT (A) ought to have appreciated fact that Impugned expenditure is wholly and exclusively used for the purpose of business, it is revenue nature and therefore allowable u/ s 37.

(d) Without prejudice, the ROC fee if considered to be as capital in nature, the same has to be allowed as deferred expenditure u/ s 35D of the Act and to allow 1/5th of the

total fee paid for increase in Technical Ground authorized share capital.

5. (a) The CIT (A) has erred in not deleting the disallowance on Depreciation of Rs. 13,38,390/- on commercial Trucks.

(b) The CIT (A) ought to have appreciated the fact that admissible depreciation rate on commercial vehicles is 40% where as the assessee has claimed depreciation at the rate of 30% which is well within the limit.

(c) The CIT(A) ought to have appreciated the fact that the trucks fall under the category of Part III-3(iii) of table of rates at which depreciation @40% is admissible in respect of tangible assets as laid down u/ s 32 of the Act.

6. The CIT (A) has erred in directing the case back to AO instead of directly allowing the amount of Losses and Unabsorbed Depreciation where the assessee have a valid claim of brought forward business losses of Rs.3,27,55,324/- and Unabsorbed Depreciation of Rs. 7,18,04,971/-.

7. The appellant may, add or alter or amend or modify or substitute or delete and / or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal.”

3. The Revenue has raised the following grounds:

“1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in restricting the disallowance of interest expenditure to the extent of exempt income earned Rs. 1,22,85,858/- and also erred in deleting the disallowance u/s. 36(1)(iii) of Rs. 12,61,33,670/- made by the Assessing Officer even though there is diversion of interest bearing funds.

2. Whether in facts and circumstances of the case, the Ld.CIT(A) erred in deleting the disallowance of Rs. 39,05,729/- under sundry creditors even though the assessee failed to prove the same before the Assessing Officer without even bringing on record the correctness of the claim made even during proceedings before CIT(A).

3. Any other grounds that be urged at the time of hearing.”

4. The brief facts of the case are that the assessee, M/s. Jasper Industries Private Limited, is engaged in the business of trading in automobiles and spare parts, filed its return of income for the AY. 2016-17 on 14-10-2016, admitting NIL income, after setting off of current year loss of Rs. 1,24,96,676/- and brought forward losses of Rs.20,68,224/-. The case was selected for scrutiny and during the course of assessment proceedings from the financial statements of the assessee, the AO noticed that the assessee had received dividend income of Rs. 1,22,85,858/- on investment in equity shares and claimed exemption u/s. 10(38) of the Income Tax Act, 1961 ("the Act"). The AO further noted that the assessee has made a total investment in equity instrument of Rs. 97.02 crores as on 31-03-2016. The AO further noted that the assessee has borrowed short term and long term loans from banks and financial institutions. On analysis of financial statement, the AO observed that there is an increase in investment in equity instruments to the tune of Rs. 42.30 crores and at the same time, there is an increase in long term and short term borrowings to the tune of Rs. 32.62 crores.

5. The AO called upon the assessee to explain as to why, interest paid on borrowed loans for the purpose of business, cannot be disallowed u/s. 36(1)(iii) of the Act for diverting interest bearing funds for non-business purposes like investment in equity instrument etc. In response, the assessee submitted that the various investments made by the assessee in shares and securities of companies is for joint venture with

Tata Group of companies for strategic business purposes. The assessee further submitted that it is in the business of dealership of passengers' cars, manufactured by Tata Motors. As a business strategy, wherever Tata Groups comes up with a new venture either in the field of manufacturing of automobiles or related activities, the assessee has invested in shares of the said venture, which resulted in various business advantages, therefore, submitted that investments in equity instruments of various companies cannot be treated in isolation with business of the assessee for the purpose of provisions of section 36(1)(iii) of the Act.

6. The AO after considering relevant submissions of the assessee and also taken note of the financial statements for the impugned assessment year, opined that the assessee is in the business of sale of Tata Motor Vehicles and also providing services through its workshops. Therefore, investment in equity instruments cannot be treated as business activity of the assessee. Since the assessee has diverted interest bearing funds for non-business purpose being investment in equity instruments, interest paid on borrowed capital to the extent of diversion of funds for non-business purpose cannot be allowed as deduction in terms of Section 36(1)(iii) of the Act. Therefore, taking into account interest cost debited to profit and loss account, he has worked out average rate of interest of 13% p.a. which is interest paid by the assessee on cash credit facilities availed from various banks, has worked out interest disallowance of Rs. 12,61,33,670/- u/s. 36(1)(iii) of

the Act. The AO had also invoked provisions of section 14A r.w. Rule 8D of the Income Tax Rules, 1962 (the Rules”) and observed that when the assessee earned exempt income, related expenditure, including interest expenditure needs to be disallowed. Since, disallowance u/s. 36(1)(iii) of the Act has already been made, disallowance u/s. 14A of the Act is not warranted. The AO had also made additions towards disallowance on fees paid for increase in authorised share capital amounting to Rs. 4,50,000/- on the grounds that the said expenditure is capital in nature and cannot be allowed as deduction. Further, the AO had made adhoc disallowance of 20% of un-proved sundry creditors on the ground that the assessee could not furnish confirmations from the parties. Similarly, the AO has disallowed excess depreciation claimed on trucks on the ground that when the vehicles are used in the business of the assessee, higher depreciation provided for commercial vehicles, which are used in the business of hiring cannot be allowed.

7. Being aggrieved by the assessment order, the assessee preferred appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee reiterated its arguments made before the AO in light of certain judicial precedents. The assessee further submitted that the appellant is mainly engaged in the business of sales and services of Tata Motors, has made various investments in joint venture companies promoted by the Tata Group for the betterment of business. Therefore, the AO is erred in disallowing interest expenditure u/s. 36(1)(iii)

of the Act. The assessee has also challenged various disallowances made by the AO, including disallowance of expenses incurred for increase in authorised capital, adhoc disallowance of sundry creditors and addition on excess depreciation on trucks.

8. The Ld.CIT(A) after considering the submissions of the assessee and also taken note of various evidences filed by the assessee, observed that the AO has not brought on record any materials to show that the investment made in equity instruments is out of loan taken by the appellant during the year. The AO has not made out a case of diversion of funds to invoke provisions of section 36(1)(iii) of the Act. Therefore, opined that the AO is erred in disallowing of interest expenditure u/s. 36(1)(iii) of the Act. However, invoked the provisions of section 14A r.w. Rule 8D of the Rules, 1962 and directed the AO to disallow the interest expenditure or restrict the disallowance of interest expenditure to the extent of exempt income earned by the appellant for the relevant assessment year. Insofar as disallowance of ROC paid for increase in share capital, Ld.CIT(A) by following the decision of the Hon'ble Supreme Court in the case of Brookband India Ltd. 91 Taxman 26 (SC), sustained the additions made by the AO on the ground that ROC paid for increase in authorised capital is capital in nature and cannot be allowed in terms of Section 35D of the Act. Ld.CIT(A) had also directed the AO to delete the adhoc disallowance made towards un-proved sundry creditors on the ground that when the AO has not

doubted the purchases/expenses, there cannot be any disallowance just because the assessee is not able to furnish confirmations from the parties. Like-wise, the Ld.CIT(A) sustained addition made towards disallowance of excess depreciation on the ground that the excess depreciation provided for motor vehicles is only in a case where those vehicles are employed in the business of hiring, but not for those vehicles which are used in the business of the assessee.

9. Aggrieved by the order of Ld.CIT(A), both the assessee and Revenue preferred appeals before us.

10. The first issue that came up for consideration from Grounds No. 2 & 3 of assessee's appeal and Ground No. 1 of Revenue's appeal is on the issue of disallowance of interest expenditure u/s. 36(1)(iii) of the Act and section 14A r.w. Rule 8D of the Rules. The Ld.Counsel for the assessee, Shri C.S. Subrahmanyam, CA, submitted that the Ld.CIT(A) erred in sustaining the additions towards disallowance of interest expenditure by invoking the provisions of section 14A r.w. Rule 8D of the Rules and directing the AO to restrict such disallowance to the extent of exempt income earned by the assessee, without appreciating the fact that when the appellant has filed necessary details and proved that investment in equity instruments are for the purpose of strategic investment, there cannot be any disallowance towards interest expenditure. Ld.Counsel for the assessee referring to various investments in equity instruments submitted that the assessee is in the business of dealership

of Tata Motors. Further, as and when Tata Motors come up with a new venture, the assessee has made investment in shares which gave business advantage to the assessee. The Ld.AO and the Ld.CIT(A) without appreciating the relevant facts, simply disallowed interest expenditure u/s. 14A r.w. Rule 8D of the Rules. Therefore, he submitted that disallowance of interest expenditure sustained by the Ld.CIT(A) should be deleted.

11. The Ld.CIT-DR, Shri Meghnath Chowhan, on the other hand, submitted that the Ld.CIT(A) erred in restricting the interest disallowances to the extent of exempt income u/s. 14A r.w. Rule 8D of the Rules, even though the AO has brought out various facts, which attract provisions of Section 36(1)(iii) of the Act. Ld.CIT-DR further submitted that on analysis of financial statements, it was noticed that there is an increase in investments with corresponding increase in borrowed capital for the impugned assessment year. The AO after considering relevant explanation furnished by the assessee opined that the assessee could not adduce any reasons for diverting interest bearing funds for non-business purpose. However, the Ld.CIT(A) without appreciating the relevant facts, simply restricted the interest disallowance to the extent of exempt income.

12. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. We have also carefully considered various evidence filed by the assessee in light of relevant reasons given

by the Ld.AO and the Ld.CIT(A) to deal with the issue of disallowance of interest u/s. 36(1)(iii) of the Act. The provisions of section 36(1)(iii) of the Act deals with deduction towards interest paid on borrowed capital. In case loans borrowed for the purpose of business are not utilized or in case a diversion of interest bearing funds for non-business purpose, interest relatable to the portion of loans, which has been used for non-business purpose cannot be allowed as deduction. In the present case, the AO claimed that the assessee has diverted interest bearing funds for non-business purposes like investment in equity instruments. The AO has analysed the financial statement of appellant for the impugned assessment year and observed that there is an increase in short term and long term borrowings. According to the AO, the assessee could not establish business nexus with investment in equity instruments. Therefore, invoked the provisions of section 36(1)(iii) of the Act and disallowed proportionate interest. It was the argument of the Ld.Counsel for the assessee before the lower authorities that investment in equity instruments of various companies is for the purpose of commercial expediency. The assessee being a dealer of Tata Motors, has made investment in various joint ventures, promoted by Tata Group, which have directly or indirectly benefitted to the business of the assessee. Since the investment in equity instrument is for the purpose of business, the question of disallowance of interest expenditure does not arise.

12.1. We have given our thoughtful consideration to the reasons given by the AO to disallow the interest expenditure u/s. 36(1)(iii) of the Act and section 14A r.w. Rule 8D of the Rules in light of various averments made by the Ld.Counsel for the assessee and we do not subscribe to the reasons given by the AO for the simple reason that, just because there is increase in investment in equity instrument, it cannot be said that the assessee has diverted interest bearing funds for non-business purpose. Further, there is no finding from the AO with regard to the diversion of loan borrowed for the purpose of business for non-business purpose. Although the AO refers to increase in equity instruments and corresponding increase in long term and short term borrowings, but failed to make out a case that increase in investments in equity instruments is out of borrowed funds. Further, the assessee has filed all the evidences and proved that investment in equity instruments of various companies is for strategic business purpose and said investments gave business advantage to the assessee. We find that the assessee has made investments in various companies like M/s. Bhaskar Transport Pvt. Ltd., M/s. Bhubaneswar Power Pvt. Ltd., (BPPL), M/s. J.L. Power Ventures Pvt. Ltd., M/s. Aditya Automotive Applications Pvt. Ltd., M/s. Jasper Automobiles Pvt. Ltd., and M/s. Indicor Steel Pvt. Ltd. All these companies are directly or indirectly connected with business carried on by the assessee. If the amounts so invested is purely a strategic investment and for the purpose of commercial expediency, then the AO cannot held that the said investments are for non-business purpose.

Further, by investing in various companies linked with Tata Group concern, the company got several advantages in its automobile dealership business, since the appellant is only a sole and exclusive authorised dealer of Tata Motors for the entire state of Telangana and in the three districts of Andhra Pradesh for commercial vehicles. Further, the said investment has given various business advantages to the assessee. Therefore, we are of the considered opinion that the AO is erred in treating the investment in equity instruments is not for the purpose of business of the assessee. Ld.CIT(A) after considering the relevant submissions, has rightly held that the AO failed to make out a case of diversion of interest bearing funds for non-business purpose and consequently, provisions of section 36(1)(iii) of the Act, cannot be invoked. Thus, we are inclined to uphold the findings of the Ld.CIT(A), and reject the grounds raised by the Revenue.

12.2. Having said so, let us come back to the provisions of section 14A r.w. Rule 8D of the Rules. The AO had also invoked provisions of section 14A r.w. Rule 8D of the Rules and observed that said disallowance of interest is also covered under the provisions of Section 14A of the Act. Ld.CIT(A) has approved the findings of the AO insofar as invoking the provisions of section 14A r.w. Rule 8D of the Rules, however, directed the AO to restrict the disallowance of interest expenditure to the extent of exempt income earned by the assessee for the relevant assessment year. In our considered opinion, there is no error in the reasons given by the Ld.CIT(A)

to restrict the disallowance interest expenditure u/s. 14A r.w. Rule 8D of the Rules to the extent of dividend income earned for the assessment year, because this issue is fully covered by the decisions of the Hon'ble Supreme Court in the case of CIT vs. Chettinad Logistics Pvt. Ltd., (2018) 95 taxmann.com 250 (SC). A similar view was also taken by the Hon'ble Delhi High Court in the case of Cheminvest Ltd., vs. CIT (2015) 61 taxmann.com 118 (Delhi), wherein it was clearly held that if no exempt income, then, no disallowance u/s. 14A r.w. Rule 8D of the Rules. In other words, disallowance u/s. 14A r.w. Rule 8D of the Rules does not exceed the exempt income earned for the relevant assessment year. In the present case, Ld.CIT(A) restricted the disallowance u/s. 14A r.w. Rule 8D of the Rules to the extent of exempt income earned by the assessee. Therefore, we are inclined to uphold the findings of the Ld.CIT(A) and reject the grounds raised by the assessee.

13. Next issue that came up for our consideration from Ground No. 2 of Revenue's appeal is disallowance of adhoc addition made towards un-proved sundry creditors. Ld.AO has disallowed 20% of un-proved sundry creditors on the ground that the assessee did not file the verifiable details with regard to sundry creditors. It was the argument of the Ld.Counsel for the assessee that when purchases/expenses are not doubted, no disallowance can be made towards sundry creditors, just because the confirmations were not filed from the parties.

13.1. We have heard both the parties and considered the relevant reasons given by the Ld.CIT(A) to delete the addition made towards adhoc disallowance of sundry creditors. The assessee has filed confirmation letters to the extent of 90% of sundry creditors shown in the books of account of assessee for the relevant assessment year. For some cases although the assessee has requested the parties to file confirmations, but for various reasons, few parties have not responded. The AO disallowed 20% of remaining creditors, where there was no confirmation from the parties. However, the AO has not given any plausible reasons for making adhoc disallowance of un-proved sundry creditors. In our considered view, there cannot be any adhoc disallowance, without giving proper reasons for such disallowance. Ld.CIT(A) after considering the relevant facts has rightly deleted the addition made by the AO. Thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground raised by the Revenue.

14. The next issue that came up for our consideration from Ground No. 4 of assessee's appeal is with regard to disallowance of ROC fees for increase in authorised share capital. Ld.Counsel for the assessee at the time of arguments submitted that the assessee does not want to press the said ground, since the same has been decided against the assessee in the case of Brookband India Ltd. (supra). Therefore, we are of the considered view that there is no error in the reasons given by the Ld.CIT(A) to sustain the addition made towards disallowance of ROC paid for increase in authorised share

capital. Thus, we are inclined to uphold the action of the Ld.CIT(A) in this regard and reject the ground raised by the assessee.

15. The next issue that came up for our consideration from assessee's appeal is with regard to disallowance of excess depreciation claimed on commercial vehicles. Ld.Counsel for the assessee, at the time of hearing submitted that the assessee does not want to press the said ground, challenging the disallowance of depreciation. Therefore, Ground No. 5 of assessee's appeal is dismissed as not pressed.

16. The next issue that came up for our consideration from assessee's appeal in the form of Ground No. 6 is with regard to set-off of brought forward business losses/un-absorbed depreciation. Ld.Counsel for the assessee at the time of hearing submitted that the assessee does not want to press the said ground, challenging the set-off of brought forward business losses/un-absorbed depreciation. Therefore, Ground No. 6 of assessee's appeal is dismissed as not pressed.

17. In the result, the appeal of the assessee is partly allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 5th June, 2024.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Sd/-
(MANJUNATHA G.)
ACCOUNTANT MEMBER

Hyderabad, Dated : 05-06-2024

TNMM

Copy forwarded to:

1. M/s. Jasper Industries Private Limited, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad.
2. Dy. Commissioner of Income Tax, Circle-2(1), Hyderabad.
3. Asst. Commissioner of Income Tax, Circle-2(1), Hyderabad.
4. Pr.CIT(Central), Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

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