

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.7443/Del/2017
Assessment Year: 2014-15

Montage Enterprises Pvt. Ltd., C-53, Shashi Garden, Near Pocket-5, Gurudwara Mayur Vihar, Phase-I, New Delhi PAN No.AACCM8173H	ACIT Central Circle- 27 New Delhi
(APPELLANT)	(RESPONDENT)

ITA No.7881/Del/2017
Assessment Year: 2014-15

ACIT Central Circle- 27 New Delhi	Montage Enterprises Pvt. Ltd., C-53, Shashi Garden, Near Pocket-5, Gurudwara Mayur Vihar, Phase-I, New Delhi PAN No.AACCM8173H
(APPELLANT)	(RESPONDENT)

Appellant by	Sh. M.P. Rastogi, Advocate Sh. Manish Jha, Advocate
Respondent by	Sh. Anshul, Sr. DR

Date of hearing:	16/05/2024
Date of Pronouncement:	20/06/2024

ORDER**PER SUDHIR KUMAR, JM:**

ITA No. 7443/Del/2017 and 7881/Del/2017 are cross appeals by the assessee and the revenue are directed against the order of the Commissioner of Income Tax (Appeals)-29, New Delhi, [hereinafter referred to as "CIT(A)"], New Delhi vide order dated 13.10.2017 pertaining to A.Y.2014-15 and arises out of the order dated 30.03.2016 passed by the Assessing Officer under Section 143(3) of the Act, 1961 [hereinafter referred as 'the Act'].

2. Aggrieved by the order of the lower authorities, the assessee is in appeal before us by raising the following grounds of appeal:-

“Ground No.1 It is contended that the Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts disallowing the amount of Rs 23,85,191/- under Section 14A of the Income Tax Act, 1961, since section 14A is not applicable in the case of appellant.

Ground No. 2: It is contended that the Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts confirming the disallowance of Rs. 23.85,191/- u/s 14A read with rule 8D in computing

the book profit u/s 115JB of The Income Tax Act, 1961.

Ground No. 3: It is contended that the Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts in confirming the inclusion of self CENVAT CREDIT of Rs 71,65,295/- in the book profit under section 115JB of the Income Tax Act, 1961.

Ground No. 4: It is contended that the Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts in confirming the Self CENVAT credit availment amounting to Rs. 71,65,295/- as an income not derived from industrial undertaking and accordingly reducing the deduction under section 80IB of the Income Tax Act.

Ground No.5 : It is contended that the Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts in confirming the reduction of certain other income while computing deduction under section 80IB and 80IC of the Income Tax Act, 1961.”

3. Whereas in the Revenue's appeal, following grounds have raised :-

“1. The Ld. CIT(A) has erred in law and in facts in not appreciating the fact that the assessee company was having own funds as well as interest bearing funds and interest expenditure was incurred by the assessee during the FY 2013-14, therefore, provisions of Rule 8D(2)(ii) of the I.T. Rules gets attracted.

2. The Ld. CIT(A) has erred in law and facts in not appreciating the fact that the assessee has failed to explain the source of cash seized from his premise.

3. That the grounds of appeal are without prejudice to each other.

4. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time hearing of the appeal.”

4. Brief facts of the case are that the assessee company is engaged in the business of manufacturing and trading of flexible packaging material in rolls and pouch form. During the year under consideration the consolidated sales and job work

receipts of the company from its five units at Malanpur, Jammu, Noida, Haridwar-I and Haridwar-II was Rs.14,530.87 lacs against Rs.11,926.99 lacs in the immediately preceding previous year. The assessee has filed the return of income declaring Rs 1106288506/- under the normal provision of the Act and book profit of Rs 1540622238/- for the AY 2014-15. The case of the assessee was taken up for scrutiny. Notice u/s 143(2) and 141(2) of the Act along with questionnaire was issued to the assessee. In the response of the notice and questionnaire requisite information were filed by the assessee. The AO vide order dated 30-03-2016 has made the addition Rs.155,33,48,544/-and started the penalty proceeding. Aggrieved by the order of the AO assessee has filed the appeal before the Ld CIT(A). The Ld CIT(A) by order dated 13-10-2017 partly allowed the appeal .

5. We have heard the parties and perused the records.

6. Before us, Ld counsel for the assessee has submitted that all the issue as raised in grounds of appeal filed by the assessee as well as the revenue are squarely covered by the decision of the Tribunal in assessee's own case for the assessment year 2008-09 to 2009-10, 2011-12 and 2011-12.

7. The Ld. DR also admitted that issues involved are covered in favour of the assessee. He has submitted that at the time of search a cash of Rs 2.17 crore was found and out of that Rs 2.05 was seized. It has further submitted that assessee has failed to explain the source of cash seized from the premises.

8. Perusal of the order of the AO reveals that the assessee has earned dividend Rs.5291268/- from the investment which has been claimed as exempted. The AO has disallowed Rs.5561011/- u/s 14A read with rule 8D. It is seen that during the year, the assessee company has earned dividend income of Rs.52,91,268/-. The assessee asked as to why disallowance should not be made U/s. 14A the same has been claimed to be exempt.

9. The Ld. CIT(A) has partly allowed the appeal and the relevant findings are as under :-

“9. Ground No.2 for all the three years relates to contention of the appellant against addition made by the AO under section 14A r.w.s. 8D of the IT Rules. In this regard, being identical facts, the decision of my predecessor in the appellate order passed for the AY

2011-12 in the appellant's own case is followed in which it is held that:-

“.....8. Since in the year under consideration also the same issues and facts are there as were existing in the AY 2009-10 and 2010-11, therefore, relying on my orders for said assessment years, I hold that application of section 14 read with Rule BD is correct and appellant's contention that section 14A is not applicable in the appellant's case is rejected.

8.1 With regard to the disallowance of interest component of Rs.82,66,124/- as per Rule 8D's calculation, the appellant was asked to submit the dates as well as bank details on which the investment in share application were made and whether on those dates the balance as per bank was overdraft or not, so as to verify whether the own funds were used or borrowed funds were used. On going through the bank statement of those dates when the investments were made, it is seen that all the investments apparently were from own funds because on the respective dates when the investments were made there was credit balance as per bank statements i.e. no overdraft

facility were availed. Therefore, in these circumstances, I am of the view that investments were made from the appellant's own funds and hence no disallowance on account of interest can be made under section 14A with rule 8D.

The AO is however directed to again re check the details and if he finds the debit balance was there, as per bank statement on the days when the investment in shares/share application is made, then in that event the interest calculated on the product basis be worked out to that extent only for the purpose of interest disallowance under Rule 8D disallowance be made.

8.2 With regard to the applicability of disallowance on account of administrative expenses, Rs.24,13,116/ being 0.5% of average investment, relying on my findings given in appellant's own case for AY 2009-10 and 2010-11, I hold that disallowance made as per Rule SD is correct. The appellant thus gets a relief of Rs.82,66,124/- in ground nos.3 to 6 on the issue of disallowance under section 14A read with Rule 8D....."

In view of above discussion, the appellant gets relief of Rs.50,53,090/- (for the AY 2012-13), Rs.39,40,998/- (for the AY 2013-14) and Rs.31,75,820/- (for the AY 2014-15) only being interest component but the balance amounts of disallowances are confirmed. order passed for the AY 2011-12 in the appellant's own case is followed in which it is held that:-

10. Ground no.3 for all the three years relates to contention of the appellant against computing book profit under section 115JB of the IT Act on the basis of disallowances made under section 14A of the IT Act. Since, the addition/disallowance while adjudicating ground no.2 (supra) has been restricted to Rs.22,26,265/- for the AY 2012-13, Rs.24,12,364/- for the AY 2013-14 and Rs.23,85,191/- for the AY 2014-15, therefore, the AO is directed to restrict the amounts of additions accordingly while calculating book profit to the impugned amounts only. Accordingly, the appeals are disposed off.

16. Ground nos. 9 & 10 for the AY 2014-15 relate to contention of the appellant against addition of

Rs.2,05,00,000/- made by the AO under section 68 of the IT Act. The fact of the case is that the AO found that there was a cash of Rs.2.05 crores seized during the course of search action, however, nature and source of the same was not explained, therefore, he made addition of the same under section 68 of the IT Act.”

10. We find that this Tribunal in assessee's own case for the Assessment years 2009-10 to 2011-12 vide order dated 29-03-2018 have allowed the appeals after holding as under :-

“22. Since, the issue involved in grounds no.1, 5 and 6 in assessee's appeal and grounds no.1 and 2 in the Revenue's appeal were exactly the same as were involved in Assessment Year 2008-09, therefore, finding given therein will apply mutatis mutandis in this year also. Accordingly, grounds no. 1. 5 and 6 of the assessee are allowed whereas the Revenue's grounds are dismissed.

23. Coming to the issue of disallowance u/s.14A r.w. Rule SD of Rs.35,78,530/-, the brief facts are that assessee has received a sum of Rs.1,47,52,936/- as dividend which was claimed as exempt. In response to the show cause notice, the assessee submitted that these were old investments and all the investments were made out by own funds and all borrowed

money were used for the purpose of business. However, the Assessing Officer without examining the books of account and the nature of expenditure debited in the books of account as well as identifying any expenditure which can be said to be attributable for earning of exempt income, has mechanically applied Rule 8D and computed the disallowance of Rs.2,51,81,751/- which consisted of disallowance of interest of Rs.2,16,03,221/- under Rule 8D2(ii) and investment of Rs.35,78,530/- expenditure under Rule 8D2(iii). on account of indirect expenditure under Rule 8D2(iii)

24. Ld. CIT (A) has directed the assessee to give, firstly, the reconciliation of the bank details and the dates on which the investments were made; secondly, whether on those dates the balance as per overdraft was there or not; and lastly, to verify whether own fund have been used for the investment. After going through these details, he found that investments have been made from assessee's own funds, because when the investments were made there were huge credit balance as per bank statements and no overdraft facility were availed. Accordingly with this finding, he held that no disallowance of interest should be made. However for certain verification, he has given to the Assessing Officer as per the direction given at pages 21 and 22 of the order. However with regard to the calculation of administrative cost @0.5% under Rule 8D (2)(iii), he upheld the action of the Assessing Officer.

25. Before us, the learned counsel submitted that, first of all there was only one dividend cheque received during the year and all investments were made in the earlier years. This aspect was clearly stated before the Assessing Officer that no expenditure has been incurred for the purpose of earning the dividend income. In so far as the disallowance of interest is concern, he submitted that there is a categorical finding by the CIT(A) which is also borne out from the record that no borrowed funds have been diverted for the purpose of investment and hence no disallowance can be made on account of interest.

26. On the other hand, learned DR strongly relied upon the order of the Assessing Officer and Id. CIT (A) and submitted that, once the assessee has a dividend income which is claimed as exempt then expenditure needs to be attributable.

27. After considering the aforesaid submissions and on perusal of the relevant finding given in the impugned orders as well as material referred to before us, we find that in so far as disallowance of interest expenditure is concern, the same has rightly been deleted by the Id. CIT (A) after due verification of the records that none of the investments have been made out of borrowed funds and has been made by assessee's own fund. In view of such a clear cut finding, no disallowance of interest can be made. With regard to other disallowance on account of administrative cost, we find that assessee has given a categorical explanation that no expenditure can be said to be attributable especially when all the investments were made in

much earlier years and there is only one dividend cheque received during the year. Once assessee has produced all the relevant books of account, explained the nature of expenses debited and has explained that none of the expenditure can be said to be attributable to earning of exempt income, then onus shifts upon the Assessing Officer to examine the books of account and nature of expenditure debited and after recording his 'satisfaction' as per the mandatory requirement given in Section 14A(2) and (3) r.w.s. Rule 8D(1), then only he can proceed to make disallowance under Rule 8D, This has been clearly stated by the Hon'ble Delhi High Court in the case of HT Media Ltd. Vs. Pr. CIT, reported in (2017) 399 ITR 576 (Del.) and Hon'ble Apex Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. Dy. CIT & Anr. Reported in (2017) 394 ITR 449 (SC). Thus, in the absence of any recording of mandatory satisfaction as per Section 14A (2) r.w.s. Rule 8D (1) Assessing Officer cannot mechanically apply Rule 8D for the purpose of disallowance. Accordingly disallowance made u/s. 14A by Assessing Officer is hereby deleted.”

11. Since similar observation and findings are there by the Assessing officer and CIT(A) in this year also, therefore, we respectfully following the order of the Tribunal in assessee own's case for the earlier years, this issue is allowed in favour of the assessee. Accordingly, disallowance made by the AO is hereby directed to be deleted.

12. In ground no.2, the disallowance u/s14A has been challenged while computing the book profit u/s.115JB, this matter has also been decided in favour of the assessee by the Tribunal and this issue is also covered by the judgment of **Hon'ble Karnataka High court in the case of Sobha Developers vs DCIT 429 ITR 5236 (Kar)**. Accordingly we hold that no disallowance u/s 14A is made while computing the book profit. The ground no 2 is allowed.

13. In ground no.3 the assessee has challenged for confirming the inclusion of self Cenvat Credit availment of Rs 71,65,295/- for the Assessment year 2014-15 in the book profit u/s 115 JB. This issue has already been decided by the Tribunal in assessee's own case so the self Cenvat credit cannot be treated as a part of book profit. Ground no 3 is decided accordingly.

14. As regards of ground no 4&5 , ld counsel for assessee has submitted that same were allowed in favour of the assessee by the Ld CIT(A) by the common order dated 13-10-2017.

15. The Ld. DR has submitted that assessee has failed to explain the source of cash seized from the assessee premise. The Ld CIT(A) has observed in his order in para no 16.1 as under :-

16.1 I have considered the facts and circumstances of the case, submission of the appellant and perused the assessment order. I find from the copy of cash book of the appellant which was also available before the AO for verification that total cash of Rs.2.17 crores was available in the cash book on the day of search on 19.02.2014 out of which Rs.2.05 crores was seized. There was opening cash balance of Rs.2,09,46,463/- available as on 18.02.2014. On the same day Rs. 1,38,10,000/- was received from the customers out of which Rs.1.30 crore were deposited into their bank account maintained with Axis Bank and Rs.44,935/- was paid on account imprest and other expenses. All these facts were duly supported by the document/evidences as mentioned by the appellant in their submission. Thereby, the closing balance as on 18.02.2014 was of Rs.2,17,11,538/- and the same is verifiable from the cash book of the appellant. In this regard, the reply of the appellant filed during the course of assessment proceedings is also mentioned by the AO in his order on page 18. On perusal of all these facts and submission of the appellant, I find that the appellant has explained the nature and source of

the impugned cash balance, therefore, making addition under section 68 was not justified.

16. Assessee has explained the nature and source of the impugned cash balance therefore addition made by AO was rightly deleted by the Ld CIT(A). The ground no. 2 taken by revenue decided accordingly.

17. In the result, the appeal of the assessee is allowed for stational purpose and appeal of the revenue is dismissed.

Order pronounced in the open court on 20.06.2024.

Sd/-
(DR. B R R KUMAR)
ACCOUNTANT MEMBER

NEHA, Sr. PS
Date:- .06.2024
Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(Appeals)
5.DR: ITAT

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI