

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

**BEFORE SH. G.S. PANNU, VICE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1091/Del/2023
Assessment Year: 2018-19

ACIT Circle – 13 (1) New Delhi	Vs.	Living Media India Ltd. K-9, Connaught Place, New Delhi-110001 PAN No.AAACL0087H
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Anshul, Sr. DR
Respondent by	Sh. Madhur Aggarwal, Advocate

Date of hearing:	02/05/2024
Date of Pronouncement:	27/06/2024

ORDER

PER ANUBHAV SHARMA, JM:

The revenue has filed the present appeal against the order dated 22.02.2023 passed by National Faceless Appeal Centre, Delhi (here in after referred as 'NFAC') arising out of order of National e-Assessment Centre, Delhi order dated 18.03.2021 under Section 143(3) r.w.s. 143 (3A) and 143 (3B) of the IT Act.

2. The revenue has raised the following grounds of appeal :-

“1. That whether on the facts and in law, the Ld. CIT(A) is erred in deleting the disallowance of Rs.6,53,02,248/- u/s. 14A r.w. Rule 8D for earning exempt income of Rs.6,79,08,666/-.

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

3. Heard and perused the record.

4. Ground No 1 relates to section disallowance of Rs 6,53,02,248/-under section 14A of the Act. In respect of this ground, it was argued before the CIT(A) that that the assessee had adequately and properly disallowed a sum of Rs.26,06,418/- under section 14 A of the Act and the disallowance, so made by the AO is without pointing out any deficiency discrepancy in the working of the assessee.

5. It comes up from the impugned order, that CIT(A) observes that while submitting the return of income, the assessee itself has disallowed sum of Rs.26,06,418/- in the computation of income. The AO, invoked the provisions of Section 14 A read with Rule 8D and further taking the interest amount and other detailed investments into consideration, the total disallowance was determined at Rs. 6,79,08,666/- and therefore, incremental disallowance amounting to Rs.6,53,02,248/- has been made in the assessment year.

6. Further it comes up that in the course of appeal before the CIT(A), the assessee has stated that this is a covered matter as this issue has also been decided by CIT(A) and ITAT in favour of the assessee in the earlier assessment years. For the A.Y. 2016-17, the CIT(A) allowed the relief to the appellant and sustained the addition to the extent of disallowance made by the appellant suo motto. The CIT(A) has reproduced the relevant portion of the CIT(A)'s order for the A.Y 2016- 17 dated 16-05-2019 as under.-

"6.5 The then CIT(Appeal) 5, Delhi while allowing the part relief has observed in the appellate order in AY 2011-12 dated 10.12.2015 as follows:

"8.2.1 I have given careful consideration to the issue in question. The assessee was in the receipt of dividend Income of Rs. 2,57,40,528/-. It offered a disallowance of Rs. 48,23,318/- suo-moto in the return of income. Perusal of the working of the disallowance show that an amount of Rs. 6,22,868/- was offered under rule 80(2)(1). This shows that the appellant admits that there is certain direct expenditure incurred in relation to the exempt income. In the revised working this amount has been taken an nil. No explanation has been offered as to why the direct expenditure that has been incurred In respect of exempt Income has been revised. I see no reason to give relief on the expenditure suo- offered. In so far as the question of interest is concerned, there is an increase in investment

from Rs. 67.30 crores to Rs. 102.42 crores. It is seen that net fresh investment during the year totals Rs. 37.12 crores (new investments of Rs. 47.03 crores sale of investment of Rs. 9.91 crores). As per the note to Schedule VI of the balance sheet the appellant acquired the share of TV Today to the tune of Rs. 11.91 crores, pursuant to the sale of radio business by Broadcasting Ltd. to TV Today Network Ltd. as per the composite share holders agreement between the two parties duly approved by the shareholders and the Delhi High Court dated 21.11.2009 & 24.12.2010 respectively. In addition shares to the tune of Ra 14.51 crores in Today Merchandise Pvt. Ltd. (TMPL) were received in pursuance to sale of its business concern "Bag It Today as a going concern on slump sale basis to TMPL. As result, no cash outflow transactions's The balance fresh investment during the year is Rs. 82.11 was involved in these two lakh in ITAS Media Pvt. Ltd., Rs. 18.18 crores in Automotive Exchange Pvt. Ltd. and Rs. 1.59 crores in World Media Trading Pvt. Ltd. The case of the appellant is that investments made during the year (other than those acquired through non cash sources) of Rs. 20.60 crores are entirely funded through Internal funds. It is pointed out that the profits for the year before tax, ax, inclusive of the non cash adjustment, depreciation, is Rs 22.22 reserves of Rs. 39.89 on account of crores and the appellant had opening crores. This clearly shows that no

borrowed funds have been utilized for purposes of making the fresh investment during the year.

8.2.1 I have perused the facts stated above and find myself in agreement with the legal contention of the appellant that in a situation where the own funds are more than the investment in exempt assets, no disallowance can be made out of the interest expenditure. This has been the view of the e Bombay High Court in Reliance Utilities and Power Ltd. (313 ITR 340) and HDFC Bank Ltd. (366 ITR 505). It has most recently been followed by the Delhi Bench of ITAT in the Motors LTD. (154 ITD 306). Accordingly in my view no disallowance of case of T&T interest expenditure u/s 14A read with rule 8D(2)(ii) is warranted.

8.2.2 Coming to the issue of disallowance of administrative expenses, the AR has pointed out that, despite offering a sum of Rs. 42,00,450/- in the return of income on this account, in view of the fresh case laws, the amount may be revised to Rs. 11,05,860/- by considering only those investments from which dividend Income has been received. It is noted in this regard that the appellant has not maintained separate accounts with regard to the investment portfolio nor has it been pointed out which decisions support its claim that only those Investments are

to be considered for purposes of section 14A which have yielded exempt Income during the year. The Rule 8D(2) (iii) cannot be applied as per the assessee's convenience. So far as the Delhi High Court decision in the case of ACB India Ltd. is concerned, which presumably the appellant is relying upon, the ratio would apply in a situation where the disallowance is to be computed by applying the provisions of Rule BD and not to self admitted disallowance of direct expenditure incurred in this regard. In any case, if for arguments sake, the appellant's contention is accepted then also the said amount becomes disallowable as non business expenditure. Therefore this contention of appellant is dismissed. The disallowance offered by the appellant of Rs. 48,23,318/- under Rule 8D(2)(iiii) is sustained since the same has been offered in the return of Income itself. Ground no. 8 is partly allowed.”

7. Thus in AY 2016-17, following the appellate stage findings in favour of assessee for the AYs 2012-13, 2014-15 and 2015-16, the disallowance was restricted to suo-motto disallowance and in present AY 2018-19, the CIT(A) following the same has restricted disallowance to the extent of suo-moto disallowance.

8. Though Ld. DR has relied the findings of assessing officer, but was not able to substantiate as to if investments were not entirely funded through Internal funds. That being the case, we find no error

in order of CIT(A), in following the previous year findings at appellate stage, more so when for AY 2010-11, Hon'ble Delhi High Court has dismissed the appeal of revenue by order dated 23/03/2018 vide ITA no. 352/2018, by holding as follows;

“Clearly, the AO had fallen into error in overlooking that the assessee had deployed its own substantial part of funds to derive a tax exempt income.”

9. Resultantly the appeal of Revenue is dismissed.
Order pronounced in the open court on 27.06.2024.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

NEHA

Date:- 27.06.2024

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI