

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

**BEFORE SH. CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SH. M BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 4413/Del/2017
(Assessment Year : 2012-13)

Addl. CIT, Special Range – 9, New Delhi	Vs.	M/s. The Hindustan Times Ltd., 18-20, K. G. Marg, New Delhi – 110 001
(APPELLANT)		PAN No. AAAC 4962 F (RESPONDENT)

And

ITA Nos. 2957 & 2956/Del/2017
(Assessment Years : 2012-13 & 2011-12)

M/s. The Hindustan Times Ltd., 18-20, K. G. Marg, New Delhi – 110 001	Vs.	Deputy Commissioner of Income Tax Circle 25(1), C.R. Building New Delhi – 110 002
PAN No. AAAC 4962 F (APPELLANT)		(RESPONDENT)

Assessee by	Shri Rohit Jain, Adv. Shri Deepesh Jain, Adv. and Shri Shourya Jain, C.A.
Revenue by	Shri Pramod Kumar, Sr. D.R.

Date of hearing:	16.07.2024
Date of Pronouncement:	29.08.2024

ORDER

PER M. BALAGANESH, ACCOUNTANT MEMBER :

1. These appeals in ITA No.4413/Del/2017 for A.Y. 2012-13, ITA No. 2957/Del/2017 for A.Y. 2012-13 and ITA No. 2956/Del/2017 for A.Y. 2011-12 arises out of the order by the Commissioner of Income Tax (Appeals)-15, Delhi dated 29.03.2017 (hereinafter referred to as Id CIT(A) in short) against the order of assessment passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 20.02.2015 (for A.Y. 2012-13) and dated 04.03.2014 (for A.Y. 2011-12) by the Assessing Officer (hereinafter referred to as Id. AO).

2. Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

3. Let us take up the appeal for the A.Y. 2011-12 in ITA No.2956/Del/2017 first. The Ground Nos.1 and 1.1 raised by the assessee are challenging the disallowance made under section 14A read with section 8D(2)(iii) of the Income Tax Rules (herein after referred as 'the Rules').

4. We have heard the rival submissions and perused the material available on record. The assessee company is engaged in the business of Real Estate, provision of various facilities/services to tenants and investment activities. The return of income for A.Y.

2011-12 have filed by the assessee company on 29.09.2011 declaring total income of Rs.29,08,55,450/- which was later revised on 25.03.2013 declaring total income of Rs.29,45,05,600/-. The assessee disclosed book profit under section 115JB of the Act at Rs.40,77,86,351/-. During the year under consideration, the assessee received exempt income in the form of dividend amounting to Rs.16,07,80,854/-. The assessee stated that 91.7% of total dividend income was received from old strategic long term investments as under:-

Dividend Income earned during the assessment year 2011-12

			Amount (Rs.)
Particulars	Dividend	Investment	Remarks
<i>HT Media Ltd.</i>	5,82,31,618	199,79,12,375	<i>These investments were acquired way back in financial year 2003-04 and 2004-05 – No fresh investment</i>
<i>Chambal Fertilizers & Chemicals</i>	8,92,74,153	111,56,91,000	<i>Major investment of Rs.88.62 cr. in earlier years.</i>
<i>Total (above investments)</i>	14,75,05,771	311,36,03,375	91.7% of total dividend income
<i>Other Dividend</i>	1,32,75,083		
Total	16,07,80,854		

5. The assessee made *suo moto* disallowance of Rs.36,54,208/- by considering the salary of Key Managerial Personnel (KMP), salary of Accountant, Communication Cost, Travelling and Conveyance Exps. & Printing and Stationary. Since the total

dividend income contributed 16.86% of the total Revenue of the Company, the assessee took 16.86% of the aforesaid expenses as attributable to earning of dividend income and disallowed a sum of Rs.36,54,208/- under section 14A of the Act. The working of the same is enclosed at page 94 of the paper book. The learned AO completely ignored the *suo moto* disallowance made by the assessee and proceeded on the premise that no *suo moto* disallowance was made by the assessee. This is evident from observation made by the learned AO in para 3.4 of the assessment order. The learned AO thereafter, directly proceeded to apply the computation mechanism provided in Rule 8D(2) of the Rules. However, while computing this disallowance, he took cognizance of the *suo moto* disallowance made by the assessee in sum of Rs.36,54,208/- and treated the same as an amount to be disallowable under Rule 8D(2)(i) of the Rules. The learned AO further made disallowance under Rule 8D(2)(iii) of the Rules in the sum of Rs.1,92,21,848/- both under normal provisions of the Act as well as in the computation of book profits under section 115JB of the Act. The Learned CIT(A) upheld the disallowance in principle and gave partial relief to the assessee by holding that only those investments which had actually yielded dividend income/exempt income to the assessee should be considered. Aggrieved by this order, the assessee is in appeal before us.

6. At the outset, we find that the learned AO had apparently proceeded on the premise that no *suo moto* disallowance was made by the assessee. No way in the assessment order he had

bothered to discuss as to why the basis adopted by the assessee for making *suo moto* disallowance is incorrect. The learned AO directly proceeds to apply the computation mechanism provided in Rule 8D(2) of the Rules. In our considered opinion, if *suo moto* disallowance of the expenditure has been made by the assessee and basis thereon has been explained by the assessee, then the learned AO ought to have recorded an objective satisfaction with the cogent reasons as to why such disallowance made by the assessee is incorrect and thereafter resort to proceed with the computation mechanism provided in Rule 8D(2) of the Rules. This is mandate of law provided in section 14A(2) of the Act r.w. Rule 8D(1) of the Rules. Since the same is conspicuously absent in the instant case, we hold that the disallowance made by the learned AO under section 14A of the Act deserves to be deleted. Hence, we hold that only a sum of Rs.36,54,208/- being the *suo moto* disallowance made by the assessee in the return of income under section 14A should be sustained. Accordingly, Ground Nos.1 and 1.1 raised by the assessee are allowed.

7. The ground Nos. 2, 2.1 & 2.2 raised by the assessee are challenging the disallowance of expenses under section 14A r.w. Rule 8D of the Rules while computing the book profits under section 115JB of the Act.

8. We have heard the rival submissions and perused the material available on record. The facts relevant for the purpose of adjudication of these grounds had already been considered

hereinabove. The Special Bench of Delhi Tribunal in the case of Vireet Investments Pvt. Ltd. reported in 165 ITD 27 (Del ITAT) (SB) had categorically held that computation mechanism provided in Rule 8D(2) of the Rules cannot be imputed in the book profit computation under clause (f) of Explanation 1 to section 115JB(2) of the Act . However, the direct expenses identified by the assessee in the sum of Rs.36,54,208/- as explained attributable to the earning of exempt income requires to be disallowed. Hence, we direct the learned AO to disallow Rs.36,54,208/- while computing book profits under section 115JB of the Act. Accordingly, ground nos. 2, 2.1 and 2.2 raised by the assessee are partly allowed.

9. Ground Nos. 3 & 3.1 raised by the assessee are challenging the disallowance of painting expenditure of Rs.1,38,53,944/- by treating it as capital expenditure and on without prejudice basis, not granting depreciation thereon.

10. We have heard the rival submissions and perused the material available on record. At the outset, both the parties agreed that this issue has already been decided by this Tribunal in assessee's own case for A.Y. 2008-09 in ITA No.1629/Del/2012 dated 31.01.2024. The only difference being in earlier years, the assessee had raised an additional ground claiming the cost of painting as a Revenue expenditure before the Tribunal. Whereas for the year under consideration, the same was raised as an additional ground before the learned CIT(A) itself. The learned CIT(A) also placed reliance on the order passed by his predecessor

for A.Y. 2008-09 and disallowed the depreciation on paintings by also making an enhancement thereon by treating the cost of painting as a capital expenditure. As stated earlier, this issue is no longer *res integra* in view of the decision taken by this Tribunal in assessee's own case for A.Y. 2008-09 in ITA No.1629/Del/2012 dated 31.01.2024. For the sake of convenience the relevant operative portion of the order is reproduced herein below:

“8. The Ground No. 3 and Additional Ground No. 3.1. raised by the assessee are challenging the allowability of expenditure incurred on Paintings.

8.1. We have heard the rival submissions and perused the materials available on record. The assessee during the year incurred expenditure of Rs 61,49,308/- towards paintings, which were meant for display in the office of the assessee. The said paintings were capitalized as furniture and fixtures in the fixed assets schedule and depreciation @ 10% was claimed by the assessee depending upon the date on which they were put to use in accordance with provisions of section 32 of the Act. The ld.AO disallow the depreciation claimed by the assessee on the ground that the paintings were „personal effects“ and not „ capital assets“. The ld. CIT(A) held that though the paintings are used in the business premises of the assessee, depreciation thereon is not allowable as the same constitutes „personal effects“ and the value of paintings increases with the passage of time rather than diminishing. The assessee had challenged the disallowance of depreciation before us and had also raised an additional ground alternatively that the said cost of paintings which is being used in the business premises of the assessee would be eligible for deduction as revenue expenditure.

8.2. We find that the assessee rents out office / commercial space and provides facility management services to its tenants. During the year under consideration, the assessee had earned service income of Rs 6.81 crores. It was submitted that the paintings / works of art constitute part of interior decoration to improve aesthetics of the reception and common area of the buildings, which are regularly visited by its clients and from the assessee is deriving income. The assessee buys customized paintings which are regularly replaced after few years with other contemporary paintings, shuffles the location of the paintings, puts them in new locations in the common areas etc, in order to provide world class interiors to its clients, both existing and prospective, with a view to obtain more prestigious clients and consequently increase revenues through new clients. The paintings acquired have short life in so far as

the assessee is concerned and the same perform as a functional role in the business of the assessee. It was submitted that the paintings also include a few specific to the business operations of the assessee, depicting the history of "The Hindustan Times" which is specific to the business of the assessee having no re-saleable value. Owing to the nature of business, the assessee keeps on refurbishing the common areas frequently to attract the foreign visitors, employees of the multinational companies, which, in turn, attracts more clients and also gets higher return from the maintenance income as compared to the other buildings located in the same area. We are completely convinced with the aforesaid submissions of the assessee and hold that the cost of paintings are meant for aesthetic purpose and for having better environment and accordingly to be construed as expenditure wholly and exclusively incurred for the purpose of business of the assessee herein. Our view is further fortified by the decision of Hon"ble Karnataka High Court in the case of CIT vs Wipro Ltd reported in 360 ITR 408 (Kar) which is directly on the impugned issue in favour of the assessee. Hence we have no hesitation in allowing the cost of paintings as a revenue expenditure. Accordingly, the Additional Ground raised by the assessee in this regard is allowed. Consequentially the depreciation claimed by the assessee on the paintings during the year under consideration and in the subsequent years are to be disallowed. The Ground No.3 raised by the assessee is dismissed and Additional Ground No. 3.1. raised by the assessee is allowed."

11. In view of the above, we hold that cost of paintings is to be considered as Revenue expenditure and accordingly ground no. 3 is allowed. In view of the decision on ground no.3, the ground no.3.1 become infructuous.

12. In the result, the appeal of the assessee for A.Y. 2011-12 is partly allowed.

Assessee's appeal in ITA No.2957/Del/2017 for A.Y. 2012-13

13. All the grounds raised by the assessee in its appeal for A.Y. 2012-13 are identical with those grounds raised by it in A.Y. 2011-12 except with variance in figures. Hence, the decision

rendered by us for A.Y. 2011-12 shall apply mutatis mutandis for A.Y. 2012-13 also in view of identical facts except with variance in figures. Accordingly, the appeal of the assessee for A.Y. 2012-13 is partly allowed.

Revenue's appeal in ITA No.4413/Del/2017 for A.Y. 2012-13

14. The only ground raised by the Revenue in its appeal for A.Y. 2012-13 is that the disallowance under section 14A of the Act is required to be made even if no exempt income is earned by the assessee on certain investments. This issue is no longer *res integra* in view of the decision of Hon'ble Jurisdictional High Court in the case of M/s Era Infrastructure (P) Ltd. (2022) 141 taxmann.com 289. By placing reliance on the same, the ground raised by the Revenue is hereby dismissed.

15. To sum up, the appeal of the assessee for A.Y. 2011-12 is partly allowed; appeal of the assessee for A.Y. 2012-13 is partly allowed and appeal of the Revenue for A.Y. 2012-13 is dismissed.

Order pronounced in the open court on 29.08.2024

Sd/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Date:- 29.08.2024

Priti Yadav, Sr. PS*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI