

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI
BEFORE
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
ITA No. 8777 to 8780 /Del/2019 (A.Y 2013-14 to 2016-17)**

CHL Limited The Hotel Surya New Friends Colony, New Delhi PAN No: AAACC2587M	Vs.	ACIT Circle-6(1) New Delhi
(Appellant)		(Respondent)

ITA No. 9298/Del/2019 (A.Y 2015-16)

ACIT Circle-6(1) New Delhi	Vs.	CHL Limited The Hotel Surya New Friends Colony, New Delhi PAN No: AAACC2587M
(Appellant)		(Respondent)

Appellant by	Sh. Satish Khosla, Adv, Sh. Manish Malik, Adv & Sh. Pankaj Jain, AR
Respondent by	Sh. Rajesh Kumar Dhanesta, SR. DR

Date of Hearing	06/11/2024
Date of Pronouncement	10/12/2024

ORDER

PER BENCH:

The Assessee filed Appeals for Assessment Year 2013-14 to 2016-17 and the Revenue filed Appeal for Assessment Year 2015-16 by challenging the orders of Ld. Commissioner of Income Tax (Appeals)-2, New Delhi ["Ld. CIT(A)", for short] dated 30/08/2019 (A.Y 2013-14, 2014-15 & 2016-17) and order dated 27/09/2019 (A.Y 2015-16) respectively.

2. The Assessee raised the common grounds of Appeal for Assessment Years 2013-14 & 2014-15 except variance in the amount.

“1. 1(a) That the Ld. CIT(A) erred in sustaining the disallowance of Rs.2,61,050/- u/s. 14A of the I.T. Act, 1961.

1(b) That the Ld. CIT(A) failed to appreciate that the Assessing officer had incorrectly applied the provisions of Rule 8D of the I.T. Rules, 1962.

2. On the facts and in law the Ld. CIT(A) grossly erred in sustaining the addition u/s 36(1)(iii) of Rs. 13,36,481/- on account of disallowance of interest.

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

2.1 Grounds of Appeal for the Assessee for Assessment Year 2015-16 are as under: -

“1. On the facts and in law the Ld. CIT(A) grossly erred in sustaining the addition/disallowance amounting to Rs. 4,06,646/- claimed under Section 36(1)(iii) of the I.T. Act, 1961.

2. On the facts and in law the Ld. CIT(A) grossly erred in sustaining the addition/disallowance amounting to Rs. 6,48,730/- under the head repair and Maintenance.

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

2.2 Grounds of Appeal for the Assessee for Assessment Year 2016-17 are as under: -

“1. On the facts and in law the Ld. CIT(A) grossly erred in sustaining the addition u/s 36(1)(iii) to Rs. 9,86,716/- on account of disallowance of interest.

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

2.3. Grounds of Appeal filed by the Department for Assessment Year 2015-16 are as under: -

1. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) was right in law in restricting the addition on disallowance u/s 14A r.w.r. 8D to Rs.897/- against the addition made by the AO for Rs. 1,96,25,820/- by ignoring the fact that under rule 8D of the I.T. Rules, 1962, the disallowance is not to be restricted to the extent of exempt income.

2. Whether on the facts and circumstances of the case, the Ld. CIT (A) was right in law in deleting of Rs.6,11,552/- made on account of expenditure for repair & maintenance by ignoring the facts that these expenses have been made to earn enduring benefits, thus the same should be treated as capital expense.

3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.

Disallowance u/s 14A of the Income Tax Act, 1961 ('Act' for short).

3. The Grounds of Appeal No. 1(a) and 1(b) of the Assessee's Appeal for Assessment Year 2013-14, 2014-15 and the Grounds of Appeal No. 1 of the Revenue for Assessment Year 2015-16 are regarding issue of disallowance made u/s 14A of the Act.

3.1. The Assessee is aggrieved by sustaining the addition by the Ld. CIT(A) for Assessment Year 2013-14, 2014-15 by restricting the disallowance u/s 14A of the Act to the exempt income. The Department is also aggrieved by

the order of the Ld. CIT(A) for Assessment Year 2015-16 in deleting the partial addition and restricting the addition to the extent of exempt income.

3.2. Facts in brief are that, the Assessee had share-holder funds and revenue surplus with respective current year profit and all the funds are placed in common pool. As observed by the A.O. in the Assessment order, the investment in mutual funds are made from the mixed pool of resources. However, the A.O. made disallowance u/s 14A of the Act by relying upon the formula as per Rule 8D of Income Tax Rules 1962. The Ld. CIT(A) in first appeal restricted the disallowance to the exempt income.

3.3. The Ld. Counsel for the Assessee submitted that the Assessee had mixed pool funds and the available funds, which were more than the investments made in mutual funds. That the investment is made out of mixed pool funds with the presumption that it has been made out of the tax free funds available. The Ld. Counsel for the Assessee relied on the following Judgments and sought for allowing the Grounds of the Assessee and prayed for dismissal of the Ground of the Revenue: -

a) South Indian Bank Vs. CIT-(2001) 438 ITR 1(SC)

b) CIT (LTU) Vs. Reliance Industries Ltd.-410 ITR 466(SC)

3.4. Per contra, the Department's Representative relying on the Assessment Orders sought for dismissal of the Grounds of the Assessee and prayed for allowing the Ground of the Revenue.

4. We have heard both the parties and perused the material available on record. It is not in dispute that the Assessee had mixed pool funds and the available funds were more than the investment made in mutual funds the investments were made out of mixed pool funds on the presumption that it has been made out of the tax free funds available. The Hon'ble Supreme Court in the case of South Indian Bank Vs. CIT-(2001) 438 ITR 1(SC) held as under:-

"28. The above conclusion is reached because nexus has not been established between expenditure disallowed and earning of exempt income. The respondents as earlier noted, have failed to substantiate their argument that assessee was required to maintain separate accounts. Their reliance on Honda Siel (supra) to project such an obligation on the assessee, is already negated. The learned counsel for the revenue has failed to refer to any statutory provision which obligate the assessee to maintain separate accounts which might justify proportionate disallowance.

29. In the above context, the following saying of Adam Smith in his seminal work - The Wealth of Nations may aptly be quoted:

"The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid ought all to be clear and plain to the contributor and to every other person."

Echoing what was said by the 18th century economist, it needs to be observed here that in taxation regime, there is no room for presumption and nothing can be taken to be implied. The tax an individual or a corporate is required to pay, is a matter of planning for a taxpayer and the Government should endeavour to keep it convenient and simple to achieve maximization of compliance. Just as the Government does not wish for avoidance of tax equally it is the responsibility of the regime to design a tax system for which a subject can budget and plan. If proper balance is achieved between these, unnecessary litigation can be avoided without compromising on generation of revenue.

30. In view of the forgoing discussion, the issue framed in these appeals is answered against the Revenue and in favour of the assessee. The appeals by the Assesseees are accordingly allowed with no order on costs."

5. Since there is no dispute regarding the fact that the Assessee had mixed pool funds and the available funds were more than investments made in the mutual funds and the investment made out of mixed pool funds with the presumption that it had been made out the tax funds available, by following the ratio laid down in the Hon'ble Supreme Court in the case of South India Bank (supra) and Reliance Industries Ltd., we are of the opinion that the Ld. CIT(A) has committed error in sustaining the addition u/s 14A of the Act by incorrectly applying Rule D8 of the IT Rules. Accordingly, we allow Grounds of Appeal No. 1(a) and 1(b) of the Assessee for Assessment Year 2013-14, 2014-15 and dismiss the Grounds of Appeal No. 1 of the Revenue for Assessment Year 2015-16.

Disallowance of interest u/s 36(1) (iii) of the Act.

6. The Grounds of Appeal No. 2 of the Assessee for Assessment Year 2013-14 & 2014-15, the Grounds of Appeal No.1 of the Assessee for Assessment Year 2015-16 and 2016-17 are regarding disallowance made by the A.O. u/s 36(1) (iii) of the Act which has been confirmed by the Ld. CIT(A).

7. The Ld. CIT(A) while upholding the disallowance, gave finding in detail for Assessment Year 2016-17, therefore, the brief facts for Assessment Year 2016-17 are considered for the sake of convenience.

7.1 During the assessment proceedings, the Ld. A.O. has issued show cause notice on the issue of disallowance of interest in following manners: -

“From perusal of the balance sheet it is found that your long term borrowing as on 31/03/2016 is Rs. 4404.49. You have paid interest on long term borrowing at Rs. 498.17 lakh. The interest so paid is 11.01%. It is found that investment by your company in Venus Portfolio Pvt. Ltd., Saraswati Kunj society and barter advances as on 31.03.2016 is Rs. 112.44 lakh. Pleases explain that why disallowance of commensurate interest is not made at the same rate on this investment which is not for the purpose of business. This comes to Rs. 12,37,964/-.”

7.2. The Assessee replied to the show cause notice contending that the advances to M/s Saraswati Kunj Society were made in the year 1995 for the purchase of a plot, which was towards membership in the society and intended to have a corporate office in Gurgaon to enhance the business. Thus the Assessee explained that it was for the purpose of business. In the case of advances to Venus Portfolio Pvt. Ltd. it was replied by the Assessee that the advances were given for the purchase of a plot in Jaipur for the purpose of Hotel/Distilleries project. In the case of barter advances also the Assessee has claimed that the advances were for business purposes. The Assessee has also contended that right from the beginning when the advances were given, no additions were made by the Assessing Officer in the income returned on this account. The Addition for the first time has been made in respect of the amount outstanding against M/s Saraswati Kunj Co-operative Housing Society only in the Assessment Years under consideration.

7.3. After considering the reply of the Assessee the additions have been made by disallowing the interest which have been confirmed by the Ld. CIT(A) in the Assessment Years 2013-14, 2014-15, 2015-16 and 2016-17, which are under challenge before us.

8. The Ld. Counsel for the Assessee submitted that no disallowances have been made by the Department for Assessment Year 2010-11, 2011-12 & 2012-13 wherein the interest claimed by the Assessee were allowed. The Ld. Counsel for the Assessee by referring to the Assessment Orders for Assessment Year 2010-11, 2011-12 & 2012-13, sought for allowing the Grounds of appeal.

9. Per contra, the Department's Representative submitted that the principal of *res-judicata* does not apply to the income tax matters and by relying on the orders of the Lower Authorities sought for dismissal of the above Grounds.

10. We have heard both the parties and perused the material available on record. It is not in dispute that the claim of the Assessee have been accepted by the Department right from Assessment Year 2010-11 to 2012-13, no disallowances have been made by the A.O. which can be corroborated by the Assessment Orders for Assessment Year 2010-11 to 2012-13 which were passed u/s 143(3) of the Act. By following the Rule of consistency as reiterated by Hon'ble Supreme Court in the case of M/s

Excel Industries Ltd. reported at 358 ITR 295(SC) and M/s Radhasoami Satsang reported at 193 ITR 321 and finding merit in the contention of the Ld. Assessee's Representative, we allow the Grounds of Appeal No. 2 of the Assessee for Assessment Year 2013-14 & 2014-15, the Grounds of Appeal No. 1 for Assessment Year 2015-16 and 2016-17 and delete the disallowance made by the A.O. u/s 36(1) (iii) of the Act which has been confirmed by the Ld. CIT(A).

Disallowance under the head of repair and Maintenance

11. The Grounds of Appeal No. 2 of the Assessee and Ground No. 2 of the Revenue's Appeal respectively for the Assessment Year 2015-16 are regarding disallowing/sustaining the expenditure claimed under the head of repair and Maintenance. The Assessee is aggrieved by disallowance of Rs. 6,48,690/- and the Department is aggrieved by the deletion of an amount of Rs. 6,11,552/- on account of expenditure for repair and maintenance.

12. The Ld. Counsel for the Assessee submitted that the corroded pipelines were changed and no new asset was brought into existence and to prove the same the Assessee produced the bills before the Ld. CIT(A), but the Ld. CIT(A) erroneously observed that the said expenditure is capital in nature. The Ld. Counsel also submitted that repair and maintenance are ongoing process and in the earlier years such expenditure have been

allowed by the order of the Tribunal. Relying on the orders of the Tribunal for Assessment Year 2012-13, 2001-02 and Assessment Year 1997-98, sought for deletion of the disallowance which was claimed under the head of repair and Maintenance.

13. Per contra, the Department's Representative relying on the orders of the Lower Authorities sought for the dismissal of the above Grounds of the Assessee.

14. We have heard both the parties and perused the material available on record. Similar issue regarding disallowance of expenditure claimed under the head of repair and Maintenance have been adjudicated and decided in favour of the Assessee by the Coordinate Bench of the Tribunal for Assessment Year 2012-13 in ITA No. 326/Del/2017, wherein it is held as under:-

“12. In the totality of the facts and circumstances of the case, we are of the view that the expenditure incurred by the assessee for smooth running of its business is to be allowed as revenue expenditure. Further, by incurring the expenditure, no new asset had come into existence and hence, there is no merit in making the aforesaid disallowance in the hands of the assessee except the expenditure of Rs.10,68,750/-. Accordingly, we allow the expenditure as revenue expenditure in the hands of the assessee and direct the Assessing Officer to capitalize the expenditure of Rs.10,68,750/- and allow depreciation on the same. Hence, Ground No.2 raised by the assessee is partly allowed as indicated.

13. The last issue in present appeal is against the disallowance of travelling expenditure totaling to Rs.8,07,800/-, holding the expenditure to be personal in nature. In the hands of the assessee, the expenditure has

been incurred by the assessee on the travelling of the Directors and other employees of the assessee for foreign travel to Ghana, South Africa. The said expenditure is on air tickets and purchase of dollars. The assessee is a limited concern and there is no merit in the orders of the authorities below in making the aforesaid disallowance on account of personal nature. We reverse the findings of the authorities below and allow the claim of the assessee in entirety.”

15. By respectfully following the order of the Tribunal for Assessment Year 2012-13 in Assessee’s own case and considering the nature of the business of the Assessee which involve preservation and maintenance of already existing assets and also considering the fact that such expenditures have been allowed for Assessment Year 2012-13, 2001-02 and 1997-98, we find no reason to sustain the disallowance made by the Ld. CIT(A). Accordingly, the disallowance sustained by the Ld. CIT(A) for the year under consideration is hereby deleted. Thus, the Ground No. 2 of the Assessee for Assessment Year 2015-16 is allowed and the Ground No. 2 of the Revenue for Assessment Year 2015-16 is dismissed.

16. In the result, appeals of the Assessee in ITA Nos. 8777/Del/2019, 8778/Del/2019, 8779/Del/2019 and 8780/Del/2019 are allowed and Appeal of the Revenue in ITA No. 9298/Del/2019 is dismissed.

Order pronounced in open Court on 10th December, 2024

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 10/12/2024

R.N, Sr. PS

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI