

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri B.R. Baskaran (AM)

I.T.A. No. 2238/Mum/2015
(Assessment Year 2011-12)

M/s. Neural Technologies & Software Pvt. Limited 3405/C, Oberoi Woods Moham Gokhale Road Goregaon East Mumbai-400 063.	Vs.	ITO 9(2)(3) Room No. 225 2 nd Floor Aayakar Bhavan M.K. Road Mumbai-400 020.
(Appellant)		(Respondent)

PAN No.AABCN1689E

Assessee by	Shri Devenra Jain
Department by	Shri Ajay
Date of Hearing	11.7.2016
Date of Pronouncement	11.7.2016

ORDER

The appeal filed by the assessee is directed against the order dated 16-01-2015 passed by Ld CIT(A) for assessment year 2011-12.

2. The first issue urged by the assessee relates to the disallowance made u/s 14A of the Act. The assessee earned dividend income of Rs.16,107/- and claimed the same as exempt. The assessee did not make any disallowance u/s 14A of the Act. Hence the AO computed the disallowance as per Rule 8D and disallowed a sum of Rs.2,58,280/- as per Rule 8D(2)(iii) of the I.T Rules. The Ld CIT(A) confirmed the disallowance in principle, but the restored the matter to the file of the AO with the direction to re-compute the disallowance, since the assessee disputed the computation of average value of investment made by the AO.

3. Before me, the Ld A.R submitted that the disallowance u/s 14A should not exceed the dividend income and in this regard he placed reliance on the decision rendered by Hon'ble Delhi High Court in the case of Joint Investments Pvt Ltd Vs. CIT (ITA 117/2015 dated 25.2.2015) and also the decision rendered by the co-ordinate bench in the case of Daga Global Chemicals Pvt Ltd (ITA No.5592/Mum/2012).

4. I heard Ld D.R and perused the record. From the assessment order, I notice that the value of investments held by the assessee has increased from Rs.4.31 crores at the beginning of the year to Rs.6.01 crores at the end of the year. The assessee has not given the details of investment and also the details of expenses debited to the profit and loss account. But the fact remains that the net investment has increased during the year by Rs.1.70 crores, which would have involved uses of all types of resources of the company. In the case of Joint Investments Pvt Ltd (supra), the Hon'ble High Court of Delhi has finally restored the matter back to the file of the AO, since the disallowance of Rs.52.56 lakhs worked out by the AO in that case has exceeded the dividend income of Rs.48.90 lakhs. Since the accounts of the assessee were not examined by the AO, the Hon'ble High Court has restored the matter to the file of the AO. Hence the question of disallowance u/s 14A would depend upon the facts prevailing in each case. Accordingly I am of the view that the decision rendered by the division bench of the Tribunal in the case of Daga Global chemicals Pvt Ltd should also be considered as having been rendered under the facts prevailing in that case.

5. In the instant case, as noticed earlier, the details of investments are not available on record and the details of expenses debited to the profit and loss account is also not brought on record. The AO also did not examine the accounts of the assessee before invoking Rule 8D of the IT Rules. Accordingly, I

am of the view that this issue requires fresh examination at the end of the AO. Accordingly I set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO.

6. The Ld A.R did not press the Ground No.2 relating to penalty for relocation and per diem to employee. Accordingly they are dismissed as not pressed.

7. The next ground relates to the disallowance of foreign travel expenses of Rs.10,407/- incurred on the spouse of the director. The Ld A.R submitted that the spouse of the director was also a director, i.e., both husband and wife are the directors of the company. The Ld A.R also made a statement at bar that the lady director has also drawn salary and she is in charge of certain operations of the Company. Since the Ld A.R has made a statement at bar to the above said effect, I am of the view that foreign travel expenses incurred on the spouse of the director, being employee of the assessee company, cannot be disallowed. Accordingly, I set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow the foreign travel expenses, subject to verification of the statement made by Ld A.R at bar.

8. The last issue relates to the computation of annual letting value of the property used by group company. The AO noticed that the flat given to the director on free of rent was used by another sister concern for correspondence purposes. The assessee declared rental income of Rs.5000/- p.m., but the AO estimated the income at Rs.50,000/- p.m. The Ld CIT(A) also confirmed the same on the reasoning that the sales turnover of the assessee company has gone down and the same would not warrant giving flat at free of rent to the director.

9. I heard the parties on this issue and I do not find any merit in the view canvassed by Ld CIT(A). It is a settled proposition of law that the tax authorities are not entitled to sit in the arm chair of the business man and dictate the terms of business. The fact is that the director has been given rent free accommodation as per the service agreement and the same cannot be questioned by the tax authorities on the reasoning of fall in turnover, particular the said position was accepted in the earlier years. The question is with regard to the usage of the same flat for correspondence purposes by another group company. According to the assessee, it has provided a table space only to that company and the address of the flat alone is being used by that company. The Ld A.R also submitted that the Annual letting value, if at all requires computation, cannot exceed the municipal value and in any case, the municipal value of the table space shall be less than Rs.5000/- p.m. charged by the assessee. I find merit in the said submission of Ld A.R. Accordingly, I set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the addition made by him on this account.

10. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order has been pronounced in the Court on 11.7.2016

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 11/7/2016
Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

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