

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 778/JP/2016
निर्धारण वर्ष/Assessment Year :2012-2013

M/s Vijay Industries, Cinema Road, Khairthal (Alwar)- 301404	बनाम Vs.	ACIT, Circle-1 Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAPV 7282R		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से/ Revenue by : Shri R.C.Verma (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 09/03/2017
उदघोषणा की तारीख/Date of Pronouncement: 17/03/2017

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Ld. CIT(A), Alwar dated 12.07.2016 for the A.Y. 2012-2013. The assessee has taken the following two grounds of appeal:-

"1.0 *That the learned Assessing officer has erred in law as well as on the facts and circumstances of the case in making a disallowance out of interest and other expenses of Rupees*

11,26,190.00 within the meaning of section 14A of the Income Tax Act, 1961 and Id CIT (A), Alwar has erred in sustaining a sum of Rs. 2,53,417.00 out of same. This issue is a covered issue by the order of ITAT in the assessee's own case for the AY 2006-07 vide appellate order no. 673/JP/2015 dt. 17.06.2016, therefore, the same deserves to be deleted.

2.0 That the learned Assessing officer has erred in law as well as on the facts and circumstances of the case in making a disallowance of Rupees 4,70,926.00 out of the remuneration paid to the partners, and Id CIT (A) has erred in sustaining a sum of Rs. 120000.00 out of the same".

2. Regarding the ground no. 1, the Id. Counsel for the assessee submitted that the disallowance u/s 14A came up before the Hon'ble ITAT, Jaipur Bench Jaipur in assess's own case for A.Y. 06-07. The AO for this year by holding that the assessee has simply stated that interest free funds of Rs. 19,43,629/- was available with it against which it has invested Rs. 18,77,160/- in shares but specific details regarding date of investment in shares and availability of cash as on that date has not been furnished by the assessee, disallowed the interest on unsecured loan on proportionate basis as per sec. 14A r.w.r. 8D. The Ld. CIT (A) confirmed the disallowance.

3. The Id AR submitted that the Hon'ble ITAT vide order dt. 17.06.2016 in ITA No. 673/JP/15 for AY 2006-07 deleted the subject disallowance. It was submitted that the facts for the year under

consideration is same as that of A.Y 06-07 in as much as the investment in shares remains at Rs. 18.77 lacs. Further, the assessee has also not received any dividend income and thus no disallowance u/s 14A can be made in view of the decision of Delhi High Court in case of Cheminvest Ltd. ITO 378 ITR 33 dt. 02.09.2015. Hence, in view of the decision of Hon'ble ITAT for A.Y. 06-07, the disallowance made u/s 14A be directed to be deleted.

4. It is further submitted that for A.Y. 09-10 to A.Y. 11-12, the Hon'ble ITAT vide order dt. 21.10.2016 restored the issue of disallowance u/s 14A of the Act to the file of the AO to verify the nexus between the exempt income and the expenses based on its decision for A.Y. 07-08 and 08-09 dated 04-12-2014. However, it is submitted that while passing the order for A.Y. 09-10 to A.Y. 11-12, the Hon'ble ITAT has not considered its own decision for A.Y. 06-07 where it was held that there is sufficient interest free funds for making investment in shares. Thus, the facts being same and there is no fresh investment between A.Y. 07-08 to 11-12, no part of interest can be disallowed. In view of above, the disallowance confirmed by the Ld. CIT(A) be deleted.

5. The relevant finding of the Id. CIT(A) are contained as under:-

"4.4 I have perused the assessment order as well as submissions made by the appellant and find that an addition of Rs.11,26,190(on total investment of Rs. 83,42,160) had been made by the AO u/s 14A of the IT Act on the ground that borrowed funds have been used for making investments. Therefore, proportionate

expenses have to be allocated against the income earned on such investment. AO had considered for this purpose the investment of Rs. 64,65,000/- made in building at Hanuman Nagar, Jaipur and in shares of Rs. 18,77,160 by the appellant for working out disallowance u/s 14A of the IT Act.

4.4 The appellant has contended before the AO that investment made in the building may not be considered for the purpose of making a disallowance u/s 14 of the IT Act, as this issue had been considered by the Hon'ble ITAT Jaipur 'A' Bench in the case of the appellant in ITA NO. 902/JP/2010 and has given the following findings, in their order dated 23-09-2011:- para 4.8 of the order "we have heard both the parties. The assessee has shown the rental income from building purchased at Hanuman Nagar, Jaipur. Section 14A is applicable in respect of deduction relating to income which does not form part of the total income. Therefore, investment made in property at Hanuman Nagar cannot be considered for the purpose of ascertaining the disallowance u/s 14 of the Act. If the assessee has made investment in shares and the assessee is not trader in shares then assessee which earns the income from shares is only dividend and since the dividend is exempt therefore, section 14A is applicable. Reliance is placed on the decision of the Hon'ble Kerala High Court in the case of CIT vs. Smt. Leela Ramchandaran 2010-TIOL-541-HC-Kerala. The Hon'ble Punjab & Haryana High Court in the case of CIT v/s Hero Cycles Ltd. 323 ITR 518 held the AO should record the finding that expenditure has been incurred in earning the exempt income. Without recording such a finding, disallowance cannot be made. In the instant case, the AO has disallowed only interest and has not considered expenditure to be disallowed only interest and has not established the nexus between borrowed funds and investment in shares and will accordingly disallow the interest."

4.5 AO has observed that there were no interest free funds available with the appellant and the investment in shares have been made out of the interest bearing funds. However, AO has not given any credit for the investment made in the building and has made disallowance u/s 14A of the IT Act on the total amount of Rs.83,42,160 and which comes to Rs.11,26,190. AO has accordingly worked out the disallowance of Rs. 11,26,190 (Rs.83,42,160 x 13.5%) on investment made by the appellant in shares u/s 14A of the IT Act vide order dated 25-03-2015, against which the present appeal has been filed.

4.6 I find that this issue of working out the quantum of disallowance has already been considered by the undersigned in the case of the appellant for AY 2011-12 in appeal no. 452/2013-14 vide order dated 30-12-2015, wherein the proportionate interest expenditure disallowed by the AO relating to investment in shares u/s 14A of the IT Act was upheld, in the light of the findings given earlier by the Hon'ble ITAT, Jaipur Bench in that year. Therefore, investment of Rs.64,65,000 made in the building at Hanuman Nagar has to be excluded for working out disallowance u/s 14A of the IT Act.

4.7 Considering the facts stated above, and as there is no change in the facts of the case in this year, I confirm the disallowance of the proportionate interest expenditure of Rs.2,53,417 (Rs.11,26,190/83,42,160 x18,77,160) relating to investment of Rs.2,53,417 out of the total disallowance of Rs.11,26,190 made by the AO under this head is confirmed.

6. Respectfully following the later decision of the Coordinate Bench dt. 21.10.2016, we hereby restore the issue of disallowance u/s 14A of the Act to the file of the AO to verify the nexus between the exempt

income and the expenses. In the result, ground taken by the assessee is allowed for statistical purposes.

7. Regarding the ground no. 2, the Id. Counsel for the assessee submitted that the disallowance confirmed by the Ld. CIT(A) is on account of not considering the income from lease rent of car as income derived from the business activities. It is to be noted that the ratio laid down by the Hon'ble ITAT, Jaipur Bench, Jaipur in assessee's own case for A.Y. 08-09 while allowing remuneration to partners with reference to the insurance receipt is also applicable to income of lease rent on car which is also arising in the course of the business. Hence, the AO be directed to allow remuneration to partners on this receipt also and the disallowance made by AO be directed to be deleted.

8. The relevant findings of the Id CIT(A) are as under:

"5.3 I have perused the assessment order as well as submissions made by the appellant and find that a disallowance of Rs.4,70,926 has been made by the AO on account of partner's remuneration on the ground that income from lease rent on car and insurance receipts cannot be considered as part of business income for computing book profit u/s 40(b)(v) of the IT Act. AO has therefore disallowed the remuneration after excluding these receipts from the book profit.

5.4 The appellant has stated that these receipts are very much part of the business and do not have its independent existence and therefore may be allowed as deduction for partner's remuneration. The appellant has also placed reliance on the orders passed by the CIT(A), Alwar for AY 2009-10 in the case of the appellant for treatment of insurance receipts as part of

business income for the purposes of computation of book profits and partner's remuneration.

5.5 I find that this issue has already been considered in the case of the appellant by the undersigned in the preceding year in Appeal no. 452/13-14 vide order dated 30-12-2015 for A.Y. 2011-12 and there is no change in the facts of the case in this year. Following the reasoning given in that order, I hold that insurance receipts have to be treated as part of business income and lease rent on car of Rs.1,20,000/- have been rightly treated by the AO as not forming part of the business income for computing book profit u/s 40(b)(v) of the IT Act. Hence, disallowance of partner's remuneration to the extent of Rs.1,20,000/- is confirmed out of the total disallowance of Rs.4,70,926 made by the AO under this head."

9. The Coordinate Bench for AY 2011-12 vide its order dated 21.10.2016 has allowed the necessary relief to the assessee. Following the same reasoning, the ground taken by the assessee is allowed.

In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 17/03/2017.

Sd/-
(कुल भारत)
(Kul Bharat)

न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 17/03/2017.

*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Vijay Industries, Cinema Road, Khairthal, Alwar.
2. प्रत्यर्थी / The Respondent- ACIT, Circle-1 Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 778/JP/2016}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar