

IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH : BANGALORE

BEFORE SMT ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER  
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA No.1800/Bang/2013
(Assessment year: 2006-07)

**Assessee's Appeal**

M/s. United Breweries (Holdings) Limited, UB Towers, Level 14, UB City Floor, 24, Vittal Mallya Road, Bangalore – 560 001. <b>PAN : AAACU2307D</b>	Vs.	Dy. Commissioner of Income Tax, Circle 12(5), 14/3, 4 <sup>th</sup> Floor, R. P. Bhavan, Nrupathunga Road, Bangalore-560001.
Appellant		Respondent

**Revenue's Appeal**

ITA No.1732/Bang/2013
(Assessment year: 2006-07)

Dy. Commissioner of Income Tax, Circle 12(5), Bangalore.	Vs.	M/s. United Breweries (Holdings) Limited, Bangalore – 560 001. <b>PAN : AAACU2307D</b>
Appellant		Respondent

Assessee by	:	Shri. K. R. Pradeep, CA
Revenue by	:	Shri. G. R. Reddy, CIT-DR-I

Date of hearing	:	06.09.2016
Date of Pronouncement	:	05.12.2016

## **ORDER**

### ***Per INTURI RAMA RAO, AM :***

These are the cross appeals filed by the assessee company as well as the revenue, directed against the order of learned CIT(A)-III, Bangalore dated 03.09.2013 for the assessment year 2006-07.

2. Briefly the facts of the case are as under:

i. The assessee is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacture and sale of beer. The return of income for the assessment year 2006-07 was filed on 30.11.2006 declaring loss of Rs.25,57,39,022/-. After issuing notice under section 142, the assessment under section 143(3) was completed vide order dated 19.12.2008 at total income of Rs.2,25,40,768/-. While doing so, the learned AO made the disallowances under section 14A of Rs.26,37,28,791/-.

3. Being aggrieved, an appeal was preferred before the CIT(A)-III, Bangalore, who vide impugned order had partly allowed the appeal. The learned CIT(A) confirmed the

addition on account of writing off of several advances to various parties on the ground that such write off cannot be allowed as bad debts under section 36(2) of the Act as the advance does not constitute debts which never formed part of the income of the assessee before. As regards the disallowances under section 14A, the learned CIT(A) held that no disallowance under section 14A can be made before the insertion of the rule read with 8D i.e., with effect from assessment year 2008-09 and accordingly he deleted the addition under section 14A of the Act. As regards the disallowances of depreciation on aircraft, he confirmed the disallowance that in the absence of passenger details who traveled on aircraft, the depreciation cannot be allowed.

4. Being aggrieved with that part of the order which is against it, the revenue is in appeal in ITA No.1732/Bangalore/2013 and the assessee is in appeal in ITA No. 1800/Bangalore/2013.

5. We shall now first take up the assessee's appeal. The assessee raised the following 12 grounds of appeal:

1. That the order of the authorities below in so far as it is against the appellant is against the law, facts, circumstances, natural justice, equity, without jurisdiction, bad in law and all other known principles of law.
2. That the total income computed and the total tax computed is hereby disputed.

3. That the authorities below erred in not allowing bad debts written off amounting to Rs.62,39,649/-.
4. That the authorities below grossly erred in disallowing the bad debts written off in the books of the appellant without appreciating that the appellant had satisfied the conditions laid down u/s 36(1)(vii) of the Act.
5. That without prejudice, the authorities below ought to have appreciated that the debts were written off as the same had become bad and irrecoverable and allowed the claim of the appellant.
6. That the authorities below erred in disallowing a sum of Rs.83,11,350/- on account of depreciation on aircraft.
7. That the authorities below ought to have appreciated that the appellant had satisfied the conditions of section 32 and also had established that the Aircraft was used exclusively for the purpose of the appellant's business, no disallowance of depreciation was called for.
8. That without prejudice, the authorities below ought to have appreciated that generally no log book would contain the purpose of travel and that the list of passengers would not be maintained in any aircraft beyond 48 hours and allowed the claim of depreciation.
9. That the appellant denies liability for interest u/s 234B of the Act. Further prays that interest if any should be levied only on the returned income.
10. No opportunity has been given before levy of interest u/s 234B of the I T Act.
11. That without prejudice to the appellant's right of seeking waiver before appropriate authority the appellant begs for consequential relief in the levy of interest u/s. 234B of the Act.
12. For the above and other grounds and reasons which may be submitted during the course of hearing of this appeal, the assessee requests that the appeal be allowed as prayed and justice be rendered.

6. Ground Nos. 1, 2, 11 and 12 are general in nature do not require any adjudication. Ground Nos.3, 4 and 5 relates to confirming the addition on account of write off advances to various parties by the CIT(A). The AO had made addition on account of write off of advances to M/s. UB Transit Systems Ltd., of Rs.60,000/- and M/s. GSTAAD ofRs.6,15,856/- for want of details as to the true nature of the transaction and whether such advances were made during the course of business of the assessee. Even before the CIT(A), the assessee had not made any attempt to prove that these advances are made during the course of the business of the assessee company nor assessee had

demonstrated that the conditions which are necessary for the allowance as a bad debt under the provisions of the section 36(2) are fulfilled. Even before us, the assessee had made no effort to demonstrate that the conditions necessary for allowances under section 36(2) are fulfilled nor the advances were made during the course of business out of commercial expediency. In the circumstances, we have no option but to confirm the addition of the CIT(A). Thus the grounds of appeal Nos. 3, 4 and 5 are dismissed.

7. Ground Nos. 6, 7 and 8 challenges the confirmation of disallowances of depreciation on aircraft. We find that the issue in these grounds of appeal are covered against the assessee in the assessee's own case for the assessment years 1997-98, 2001-02 & 2002-03 in ITA No. 1583-1585/B/2013 dated 27.11.2015 wherein it was held as follows:

09. Reading of the question framed by the Hon'ble jurisdictional High Court, reproduced at para 6 above would clearly show that assessee had, during the previous year relevant to A. Y. 2000-01 claimed Rs.5.57 crores on maintenance of aircraft, overhauling and refurbishing of the aircraft and depreciation of Rs.12,75,507/-, which was disallowed by the lower authorities but allowed by the Tribunal. It is thus clear that for that year assessee had debited to its account maintenance and refurbishing charges of

the aircraft. However, for all the impugned assessment years now before us, there is a clear finding which remains uncontroverted that the maintenance and related expenditure of the aircraft was borne by M/s. McDowell & Co. Ltd., The matter was remitted back to the AO by this Tribunal in the earlier round of proceedings so that assessee could prove the use of the aircraft in its business. AO had given more than enough opportunity to the assessee to show the business purpose. It is not disputed the fact that there was no debit of running and maintenance charges of the aircraft in its P & L account for the relevant previous years. AO has specifically noted that the log-book produced by the assessee proved, the majority of the journeys as private purposes. Assessee had received no lease rent from M/s. McDwoell & Co. Ltd during the relevant previous years for the use of aircraft. Thus it is a fact that the aircraft was not used for the purpose of assessee's business during the relevant previous years and despite the remand of the matter to the AO, assessee was unable to show or prove that it was used for its business. Private use of an aircraft by persons at the helm of affairs for their private junkets cannot be considered as a business purpose for which the aircraft has been used. As already mentioned by us, question for the impugned assessment years was different from that raised before the Hon'ble jurisdictional High Court in ITA.356/2007, for A. Y. 2000-01. We

are of the opinion that the judgment relied on by the Ld. AR would not aid the assessee in any manner. Assessee was unable to show the business purpose for which the aircraft was used. There is no claim by the Ld. AR that the aircraft formed a part of any block of assets on which depreciation was claimed and allowed. In such a situation, we are of the opinion that the lower authorities were justified in denying the claim of depreciation on aircraft. We do not find any reason to interfere.

8. Respectfully following the same decision, we hold that the assessee is not entitled to depreciation on the aircraft. Accordingly, the grounds of appeal are dismissed.

9. Ground Nos. 9 and 10 are only consequential, does not require any adjudication and are dismissed as such.

10. In the result, the appeal filed by the assessee is dismissed.

**Revenue's appeal:** The revenue raised 6 grounds of appeal as follows:

1. The order of the learned CIT(A) is opposed to law and facts of the case.
2. On the facts and in the circumstances of the case the learned CIT(A) erred in law in deleting the addition made u/s 14A without appreciating the fact that the AO is entitled to make disallowance u/s 14A for AY 2006-07 and it is only the method of calculation of disallowance under Rule 8D which is applicable AY 08-09 onwards.
3. On the facts and in the circumstances of the case the learned CIT(A) erred in law in deleting the addition made u/s 14A by placing reliance on the order of Godrej & Boyce Mfg Co. Ltd 328 ITR 81 without appreciating the fact that in the same order, Hon'ble Bombay High Court has held that even prior to AY 08-09, when Rule 8D was not applicable, the AO has to enforce the provisions of Sub-section (i) of Section 14A of the IT Act. For that purpose, AO must adopt a reasonable basis or method consistent with all the relevant facts and circumstances. In this case, the AO has adopted a method which happens to be method prescribed under Rule 8D as a reasonable method for determining the disallowance u/s 14A of the Act.
5. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.
6. The appellant craves leave to add, alter, amend and / or delete any of the grounds mentioned above.

11. Ground Nos. 1 and 6 are general in nature. Do not require any adjudication. Ground Nos. 2 and 3 only challenges the directions of the CIT(A) to delete addition of Rs.26,37,28,791/- on account of investment in equity shares. During the course of the proceedings, the AO noticed that the assessee company earned dividend income of Rs.16,80,42,761/- and he further noticed that the assessee made an investment in equity shares for Rs.601,39,63,000/-, out of which paid up capital of the assessee is only Rs.591,90,94,000/-. Therefore the AO

assumed that interest bearing funds have been utilized for the purpose of investing in the group companies and therefore invoked the provisions of section 14A and disallowed a sum of Rs.26,37,28,791/- applying the provisions of rule 8D, on appeal before the CIT(A), the addition was deleted holding that no disallowance under section 14A can be made prior to insertion of rule 8D.

12. Being aggrieved, the revenue is in appeal. We are informed at the bar that this issue was restored to the file of AO for fresh adjudication in the earlier years by the Hon'ble High Court for assessment year 2003-04 and by the Hon'ble tribunal for the assessment year 2004-05 and therefore on the parity of the same, we also remit this issue back to the file of AO for fresh adjudication in accordance with the law.

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

*Order pronounced in the open court on this 5<sup>th</sup> day of  
December, 2016*

Sd/-  
**(ASHA VIJAYARAGHAVAN)**  
**JUDICIAL MEMBER**

Sd/-  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Place : Bangalore  
Dated : 05/12/2016  
/NS/

Copy to :

1. Appellant
2. Respondent
3. CIT(A)-II Bangalore
4. CIT
5. DR, ITAT, Bangalore
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore