

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

**BEFORE : SHRI C.M. GARG, JUDICIAL MEMBER &
 SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**ITA No. 6651/Del./2013
Asstt. Year : 2010-11**

D.C.I.T., Central Circle-19, New Delhi. (Appellant)	vs.	Kesar Enterprises Ltd., 7-Jamshedji Tata Road, Churchgate, Mumbai. [AABCK7328R] (Respondent)
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Appellant by	:	Sh. Shravan Gotru, Sr. DR
Respondent by	:	Sh. G.N. Gupta, I.T.P.

Date of hearing	:	14.03.2016
Date of pronouncement	:	29.04.2016

ORDER

Per L.P. Sahu, Accountant Member:

This is an appeal filed by the Revenue against the order of CIT(A)-XII, New Delhi dated 01.10.2013 for the assessment year 2010-11 on the following grounds :

"1. On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the disallowance of Rs.72,29,469/- made by the AO u/s. 14A read with Rule 8D for income attributable to agricultural activities.

2. On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the disallowance of Rs.25,892/- out of total disallowance of Rs.26,322/- made by the AO u/s. 14A, read with Rule 8D.

3. The order of the CIT(A) is erroneous and is not tenable on facts and in law."

2. The brief facts relevant to the issues under considerations are that the assessee derives income from business of manufacturing of sugar, alcohol, IMFL and from agriculture. During the assessment proceedings, the AO noticed that the assessee has claimed expenses of Rs.34,31,50,525/- which are common to manufacturing of alcohol, IMFL as well as agricultural activities as detailed at page 2 of the assessment order. The AO, therefore, observed that the expenditure attributable to earning of exempt income is not allowable as per section 14A of the IT Act. The assessee was required to furnish the separate details of expenditure incurred towards agricultural income as well as business income. Since the assessee failed to furnish the requisite details, the AO calculated the expenses attributable to agricultural activities on proportionate basis at Rs.72,29,469/- as per following formula:

Gross turnover of agriculture/gross turnover of business x Common expenses claimed =

5,96,91,332 / 2,83,32,80,094 x 34,31,50,525 = Rs.72,29,469/-.

Accordingly, the AO disallowed the expenses of Rs.72,29,469/- u/s. 14A of the IT Act read with Rule 8D.

3. Similarly, the assessee earned dividend income on investment in shares/securities, which is exempt income. Therefore, the AO observed that the expenditure on such income are not allowable expenditure u/s. 14A of the Act and accordingly, as per Rule 8D(iii), $\frac{1}{2}$ % of average of opening and closing balances of investment (i.e., $5248795 + 5243795 / 2 = \text{Rs.}52,46,295$) = Rs.26,232/- was disallowed and added back to the total income of the assessee. The assessee challenged the order of AO in appeal before the Id. CIT(A), who vide impugned order deleted the addition of Rs.72,29,469/- and restricted the addition of Rs.26,232/- to Rs.340/- observing as under :

Ground No. 1:

"I have considered the grounds raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant. This issue has been decided in favour of the appellant in the assessment year 2005-06(a copy of which was submitted for reference) by the CIT(Appeals)-III. As the facts of the case being the same during the instant year and in view of the legal position in the case of Punjab & Haryana High Court in CIT vs. Hero Cycle Limited 323 ITR 518, the decision of the Bombay High Court in the case of Godrej and Boyce Mfg. Co. Ltd. vs. DCIT 328 ITR 81 and the decision of Hon'ble Supreme Court of India in CIT vs. Wallfort Share and Stock Brokers Pvt. Ltd. 326 ITR 1 and in appellant's own case for Assessment Year 1999-2000 decided by ITAT Bench-D Mumbai order dated 11-07-2007, the disallowance is liable to be deleted. Accordingly the amount of Rs.72,29,469/-is directed to be deleted. Ground raised in appeal is allowed."

Ground No.2 :

I have considered the grounds raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant. The AO has computed the disallowance as per Rule 8D (iii) of the IT Rules 1962 by taking $\frac{1}{2}$ % of average of Opening and Closing balances of investment amounted to Rs.5248795/- and Rs.5243795/- respectively. The appellant has stated to have not incurred any expenditure to earn the said income. The appellant has further

submitted that the appellant had earned the said dividend of Rs.74115/-in respect of shares of Walchandnagar Industries Ltd., Sherwani Industrial Syndicate Ltd., Hume Pipe Company Ltd., and Jain Sehkari Bank Ltd. The average of the investments in these companies is Rs.68035/-, ½ % of this amount is Rs.340/-. Keeping in view of the judgment of the REI Agro Ltd. Vs. DCIT reported in 144 ITD 141, the amount of Rs.340/- is confirmed and the remaining amount is directed to be deleted. The appellant gets part relief on this ground.

4. During the course of hearing, the ld. DR submitted that the ld. CIT(A) was not justified in deleting the additions as made by the AO. The assessee failed to give the requisite details before the AO with respect to the expenses incurred towards business income and towards agricultural income, hence, the AO was right to disallow the proportionate expenditure attributable to agricultural income of assessee. It was submitted that the disallowance of expenses incurred on dividend income were also rightly disallowed by AO as per section 8D(iii) of the Act, which need no interference in the facts and circumstances of the case.

5. The ld. AR of the assessee, on the other hand, relied upon the order of the ld. CIT(A) and submitted that expenditure disallowed u/s. 14A of the Act have not been proved to have any nexus with the agricultural income of the assessee and hence, no disallowable. It was also submitted that the issue is the same as was involved in appeal for A.Y. 2005-06 and the ld. CIT(A)-III, vide

order dated 31.05.2011 has deleted the addition considering the same expenses not attributable to the agricultural activities of the assessee. This issue has also been decided by Mumbai Bench of ITAT in assessee's own case for A.Y. 1999-2000 and therefore, the Id. CIT(A) has rightly deleted the addition after following the decisions of P & H High Court in CIT vs. Hero Cycle Ltd., 323 ITR 518, Bombay High in Godrej and Boyce Mft. Co. Ltd. vs. DCIT, 328 ITR 81 and of Hon'ble Supreme Court in CIT vs. Wallfort Share and Stock Brokers Pvt. Ltd., 326 ITR 1. It was also submitted that no expenses have been incurred by assessee during the year under consideration for earning dividend income.

6. We have heard the rival submissions of both the parties and perused the entire material available before us. A perusal of assessment order reveals that the Id. Assessing Officer specifically required the assessee to furnish the details of expenditure attributable to business income as well as agricultural income declared by it. The AO has also mentioned categorically that the assessee failed to furnish any such details. It is no doubt true that the Tribunal, Mumbai Bench vide their order dated 11.07.2007 in appeal for A.Y. 1999-2000 in the case of assessee has considered the legal and professional expenses, director fees etc. as having no nexus with the agricultural activities

of the assessee. The CIT(A)-III, New Delhi vide order dated 31.05.2011 has also has considered legal & professional expenses, directors' fees/auditors' remuneration, out of pocket expenses as not relatable to agricultural income of the assessee. However, in none of the above orders, the issue of expenses incurred by assessee on interest and wages & salary was there for consideration nor is there any decision on this count in favour of the assessee. The assessee has also failed to furnish the details of such expenditure relatable to the agricultural income and business income separately as observed by the ld. Assessing Officer. This aspect of the case has not been considered by the ld. CIT(A) in the impugned order in right perspective. The assessee has filed profit and loss account with respect to agriculture, which does not contain the debit entries regarding wages and interest expenses separately incurred. Regarding dividend income and expenditure incurred thereupon, the assessment order does not enumerate whether the assessee had furnished any details or submissions pertaining to expenditure on dividend income, if incurred. In presence of these facts, we, deem it appropriate to remand the matter for the limited purpose to the file of AO for re-computing the disallowance u/s. 14-A read with Rule 8D on both the issues after considering the order of Tribunal for A.Y. 1999-2000 and of CITA) for A.Y. 2005-06. The assessee is directed to furnish all the details of expenditure

incurred towards business income and exempted income, i.e, income from agriculture or dividend as required by the Assessing Officer. Needless to say the assessee shall be given reasonable opportunity of being heard. Accordingly, the appeal of the Revenue deserves to be allowed for statistical purposes.

7. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 29.04.2016.

Sd/-

(C.M. GARG)
Judicial Member

Sd/-

(L.P. SAHU)
Accountant Member

Dated : 29.04.2016

*aks/-

Copy of order forwarded to:

(1) *The appellant*
(3) *Commissioner*
(5) *Departmental Representative*

(2) *The respondent*
(4) *CIT(A)*
(6) *Guard File*

By order

Assistant. Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi