INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI
BEFORE SHRI I.C.SUDHIR, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No.2979/Del/2010
(Assessment Year: 2006-07)

U. K. Paints (India) Pvt. Ltd., 19, DDA Commercial Complex, Zamrudpur, Kailash Colony Extension, New Delhi	Vs.	Addl. CIT, Range-18, New Delhi
(Appellant)		**(Respondent)**

ITA No. 985/Del/2011
(Assessment Year: 2007-08)

Addl. CIT, Range-18, Room No.211A, C.R.Building New Delhi	Vs.	U.K.Paints (India) Pvt. Ltd., 19, DDA Commercial Complex, Zamrudpur, Kailash Colony Extension, New Delhi
(Appellant)		**(Respondent)**

Assessee by :Sh.Anil Bhalla, FCA
Respondent by:Sh. Anshu Prakash, Sr. DR

Date of Hearing	11/12/2015
Date of pronouncement	10/02/2016

<u>O R D E R</u>

<u>PER PRASHANT MAHARISHI, A. M.</u>

1. These are the cross appeals filed by the assessee and the revenue against the order of the learned Commissioner of Income-tax (Appeals)-XXI, Delhi dated 29.03.2010and 14.12.2010 for the Assessment Year 2006-07 and 2007-08.
2. The assessee has raised the following grounds:

    1. *The learned Commissioner of Income Tax (Appeals) has erred both of facts and in law in upholding the action of the learned Assessing Officer in wrongly applying the provision of section 2(22)(e) of the Income Tax Act, 1961 and thereby holding a sum of Rs.l,966,043/- tobe deemed dividend in terms of the said section.*
    2. *The learned Commissioner of Income Tax (Appeals) has further erred both of facts and in law in not accepting the fact that M/s. Citiland*

Commercial Credits Limited has made the advance or loan of Rs.1,225,055/- and M/s Bigg Investment has made the advance or loan of Rs.740,988/- to the appellant company in the ordinary course of its business, where lending of money is a substantial part of the business of the said company and accordingly the provisions of Section 2(22)(e) were not applicable in terms of clause (ii) of Section 2(22)(e) of the Act.

3. *The learned Commissioner of Income Tax (Appeals) has erred both on facts and in law in upholding the action of the learned Assessing Officer in disallowing expenses u/s 14A of the Act and has further erred in directing the learned Assessing Officer to compute the disallowance as per Rule 8D of the Income Tax Rules, 1962.*

3. The revenue has raised the following grounds:-

1. *" On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting addition amounting to Rs.97,989/- being interest paid by the assessee company on borrowed funds diverted to associate concerns for non-business purposes."*
2. *"The Ld. CIT(A) has erred on facts and in law by deleting disallowance of Rs. 6,21,676/- out of disallowance of foreign traveling expenses of Rs. 12,43,3527- by holding that such expenditure incurred on the Chairman and Vice Chairman was allowable and that incurred on their wives was not allowable, ignoring that:*
   (i) The foreign visits by the Chairman, Vice Chairman and their wives were in the nature of pleasure trips not connected with the business of the assessee company as brought out in assessment order.
   (ii) No supporting evidence for the actual work done during the foreign visits was brought on record by the assessee as cited in the assessment order.

   (iii) The foreign travelling expenses to the extent disallowed by the AO wereevidently not expended wholly and exclusively for the purpose of business of the assessee.

3. *"The Ld. CIT(A) has erred on facts and in law by setting aside the issue of disallowance of Rs. 73,38, 264/- u/s 14A to the file of the AO, with direction to verity the working of disallowance u/s 14A furnished by the assessee during the appellate proceedings, ignoring that:*

   (i) The powers of the Ld. CIT(A) to set aside issues decided in scrutiny assessment have been curtailed with effect from 1.6.2001.

   (ii) By not calling for a remand report from the AO on the issues set aside for verification, the Ld. CIT(A) has not decided the appeal in accordance with the Board's Circular No.14 dated 12.12.2001 on the issue.

   (iii) The conditions laid down for admitting additional evidence under Rule 46A are not satisfied in this case."

4. Firstly, we take the appeal of the revenue in ITA No.2979/Del/2010. The first ground of appeal is regarding taxation of loan received from two companies amounting in total Rs.19,66,043/- during the course of assessment proceedings the AO was intimated by the AO of the lending companies that assessee is holding of 61% in case of City Land Commercial credits Ltd and it has also accumulated profit of Rs.8.47 crores. From these companies the assessee has received loan of Rs.1225055/- In case of other companies M/s. Big Investments the assessee has also received an advance of Rs.740988/- and therefore the AO asked the assessee about taxation of deemed dividend in the hands of assessee. Before the AO the assessee replied that the lender company ies are non banking finance companies and are in the business of investment and finance having their main source of income from investment and finance and hence as the lending provided to assessee is in ordinary course of business same is not chargeable to tax u/s 2(22)(e) as deemed dividend. The AO rejected the contention and made the addition. The assessee preferred appeal before learned Commissioner of Income-tax (Appeals) wherein he upheld the action of AO. Therefore assessee is in appeal before us.

5. Heard the rival contentions. The ld AR relied on the contention raised before learned Commissioner of Income-tax (Appeals) and has also paced reliance on the decision of 318 ITR 462, 318 ITR 476, 313 ITR 538 of jurisdictional High Court wherein it is held that business advance cannot be taxed as deemed dividend. Against the ld AR relied on the orders of lower authorities. We have carefully considered the rival contention. Before us the assessee has submitted that the transactions with this parties are running account as loan and there is no interest charged on either side. It was submitted that charging of interest and non charging of interest does not make any difference so far as taxability u/s 2(22)(e) of the Act is concerned. It was further submitted that both the companies are non banking financial companies and they are registered with RBI. It was also submitted that as these NBFC are carrying on business of advancing of loan and investment and money advance to the assessee was in the original course of its business and therefore relying on the decision on Delhi High Court, it was submitted that business advance are non hit provision 2(22)(e) of the Act. To buttress this claim on question from Bench the assessee has further

submitted certificate of registration of both the companies stating that they are non banking financial companies, therefore it is evident that this companies are engaged in the business of lending asNBFC. The loan also advanced are supported by memorandum and article of association of both the companies based on this it is apparent that money have been advanced to the assessee - shareholders in the ordinary course of its business and both the companies have also shown that lending of money is substantial part of the business of the company. In view of the above we reverse the order of learned Commissioner of Income-tax (Appeals) and hold that advance given by Big Investments and City Land Commercial Ltd. amounting to Rs.740988/- and Rs.1225055/- cannot be taxed as dividend u/s 2(22)(e) of the Act. In the result grounds No.1 of the appeal is allowed.

6. Ground No.2 of the appeal is against disallowance u/s 14A of the Act. The ld AO has made a disallowance of Rs.25502152/- u/s 14A of the Act. The AO has complied with the provision of section 14A read with Rule 8D of the Act. The disallowance has been made by the AO in the proportion of increase seen in other income as compared to last year which is Rs.120987586/- and increase in expenditure of Rs.25502142/-. Therefore whatever is the increase in the amount of expenditure same have been disallowed u/s 14A on lumpsum basis. Aggrieved by this the assessee preferred an appeal before learned Commissioner of Income-tax (Appeals) where it is stated that the assessee has made suo motto disallowance of Rs.750,000/- and there is no satisfaction recorded by the AO. learned Commissioner of Income-tax (Appeals) has set aside this issue to the file of AO to compute disallowance in accordance with Rule 8D. Therefore assessee is in appeal before us.

7. We have heard the rival contention and we are the opinion that the assessee himself has disallowed of Rs.750,0000/- U/S 14A of the Act. Further the AO has not recorded any satisfaction relating to the books of account of amount of disallowance made. 77% of the dividend income is received from one company Berger Paints Ltd and AO has made only lump sum disallowance.

8. Hon'ble Delhi High Court in the case of 370 ITR 338 has held if no satisfaction is recorded by the AO as provided u/s 14A(2) of the Act the non disallowance can be made. Hon'ble Delhi High Court in CIT V Taikisha Engineering India Limited 370 ITR 338 (Del) has held that Under sub-

section (2) of section 14A of the Income-tax Act, 1961, the Assessing Officer is required to examine the accounts of the assessee and only when he is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to exempt income, can he determine the amount of expenditure which should be disallowed in accordance with such method as prescribed, i.e., rule 8D of the Income-tax Rules, 1962. Therefore, the Assessing Officer at the first instance must examine the disallowance made by the assessee or the claim of the assessee that no expenditure was incurred to earn the exempt income. This is not done by AO in this case. Therefore respectfully following the decision of Hon'ble Delhi High Court the disallowance of Rs.255 lacs is deleted. Furthermore the direction of learned Commissioner of Income-tax (Appeals) is also erroneous as assessment order involved is Assessment Year 2006-07 to which the provision of Rule 8D does not apply has held by Hon'ble Bombay High Court in the case of Godrej and Boyce Manufacturing Ltd. In view the above we reverse the order of learned Commissioner of Income-tax (Appeals) and allow ground No.2 of the appeal of the assessee.

9. In the result the appeal of the assessee in ITA No.2979/Del/2007 is allowed.

10. Now we come to the appeal of the revenue in ITA No.985/Del/2011 for Assessment Year 2007-08.

11. First ground of appeal against disallowance of interest of Rs.97789/- the AO has disallowed this sum as it is paid on overdraft amount and it has made advance to sister concern amounting to Rs.2037416/- and therefore the assessee computed interest @ 12% on the amount given to associated concern and disallowed the whole of interest paid to the assessee of Rs.97989/-. The assessee carried the matter before learned Commissioner of Income-tax (Appeals) who in turn deleted the addition and therefore revenue is in appeal before us.

12. Ld AR of the Appellant submitted that this issue is covered in favour of the assessee in its own case ITAT has held in favour of assessee from 1996-97 to 2000-08, which is further upheld by Hon'ble Delhi High Court and SLP against that order has been dismissed by honorable Supreme court. Therefore it has reached finality. LD DR also confirmed the same. In view of the above we confirm the order of learned Commissioner of Income-tax

(Appeals) on this ground in deleting the addition of Rs.97989/- on account of interest expenditure.

13. The second ground of appeal is against the disallowance of Rs.621676/- deleted by learned Commissioner of Income-tax (Appeals) on account of foreign travel expenses. Before the AO it was submitted that total expenses incurred on foreign travel is amounting to Rs.2201558/- and during the year on its own the company has debited part of travelling expenses to the account of the directors. The AO noted that wives of the Directors travelled to the foreign countries wherein he noted that Bangkok and Istanbul are in the nature of pleasure trips and it does not have any business connection therefore same was disallowed. The learned Commissioner of Income-tax (Appeals) deleted the addition to the extent of 50% of the total amount on the said visit. Against this the revenue is in appeal. Before us the AR relied on the order of the learned Commissioner of Income-tax (Appeals) and the ld DR relied on the order of AO.

14. We have carefully considered the rival contention it was mentioned by learned Commissioner of Income-tax (Appeals) in his order that assessee has failed to establish with proof regarding the purpose of journey of wives of Chairman and Chairman and therefore disallowance of the expenditure is required to be made. Before the learned Commissioner of Income-tax (Appeals) the explanation of the AO was not only on account of the wives but also about chairman and Vice Chairman and explanation was not specific but general in nature. Ld. AO has himself stated that these are pleasure trips in the form of visit to Bangkok and Istanbul. The assessee has given very general explanation without showing any business purpose in specific therefore the) learned Commissioner of Income-tax (Appeals) has confirmed ½ of the expenditure also. In fact it is not the case of the assessee that expenditure incurred on foreign travel of director is wholly and exclusively incurred for the purposes of the business and therefore has not fulfilled the condition of section 37(1) of the act therefore disallowance is rightly made by the AO. Therefore we reverse the order of learned Commissioner of Income-tax (Appeals) and confirm the disallowance of Rs.1243352/-. In the result ground No.2 of the appeal is allowed.

15. Ground No.3 is against the order of learned Commissioner of Income-tax (Appeals) is regarding sending the issue back to the file of AO for

verification of working of disallowance u/s 14A in accordance with Rule 14A of the Act. The learned Commissioner of Income-tax (Appeals) just directed AO to verify the disallowance u/s 14A of the Act which is based on the decision of Hon'ble High Court in the case of Godrej Boyce Manufacturing Company Vs. DCIT 234 CTR 7. We do not find any infirmity in the order of learned Commissioner of Income-tax (Appeals) when the whole issue is set aside to the file of AO for verification AO. It is also fact that the learned Commissioner of Income-tax (Appeals) has given full freedom to AO to satisfy himself with the explanation given by the AR of the assessee. In view of above this ground of appeal is dismissed.

16. In the result appeal of the revenue is partly allowed.

Order pronounced in the open court on 10/02/2016.

-Sd/-	**-Sd/-**
(I.C.SUDHIR)	**(PRASHANT MAHARISHI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated:10/02/2016
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi