

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.1119/Del/2014
(Assessment Year: 2009-10)

KLJ Polymers & Chemicals Ltd, 63, Rama Marg, Najafgarh Road, New Delhi PAN:AAACK1314Q (Appellant)	Vs.	ACIT, Central Circle-4, New Delhi (Respondent)
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Assessee by :	Sh. Mohit Parekh, CA
Revenue by:	Sh. Umesh Chand Dubey, Sr. DR
Date of Hearing	09/11/2016
Date of pronouncement	03/02/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order dated 09.10.2013 of the Id CIT(A)-XXXIII, New Delhi for the Assessment Year 2009-10.
2. The assessee has raised the following grounds of appeal:-

- " 1 On the facts and circumstances of the case, the Ld. CIT(A)-XXXIII, New Delhi has erred both in law and facts of the case in confirming the disallowances of Rs.2,22,397/- u/s.4A of the IT Act, 1961 made by the Ld. ACIT in an arbitrary and uncalled for manner which is not only unjustified but contrary to the spirit of the very provisions of law.*
- 2. (a) That the Ld. CIT(A) has erred both in law and facts of the case in not assessing the Capital Gain's income of Rs.9,26,377/- (Gross) which was duly reflected separately in the Computation of Income furnished before him who also fell in error in considering the same under the head "Business Income" as assessed by the AO in utter disregard to the submissions and the evidences furnished before him and also not accepting the prayer of the Appellant to assess the same under the head "Income from Capital Gain" which is contrary to the relevant provisions of law.*
 - (b) That the Ld. CIT(A) erred in law and facts of the case in assessing the Capital Gains Income (Long Term & Short Term) which falls under the Chapter 1 & II of the IT Act and also fell in error in assessing the same as business income rather than income from capital gain on the basis of ITR-6 submitted by the Appellant company.*
 - (c) That the Ld. CIT(A) has erred in law and facts of the case in upholding the decision of ACIT in treating and assessing the long term & short term capital gain income of Rs.9,26,377/- (Gross) under the head*

"Business Income" instead of Capital Gain's Income (long term & short term).

- (d) *That the Ld. Counsel of the Appellant company narrated the factual matrix of the case and contended that the Ld. CIT(A) ought to have accepted the contention and claim of the Appellant with regard to assessing capital gain income separately rather than as business income.*
3. *That the Appellant Company craves to leave, add, amend and/or alter any of the ground(s) of appeal."*
3. The first ground of appeal against confirmation of disallowance of Rs. 223397/- u/s 14A of the Income Tax Act. During the year the assessee has received a dividend income of Rs. 7350/- which is not includable in the total income of the assessee as stated by Id Assessing Officer in para No. 5 of his order dated 28.12.2011. Therefore, on query the assessee explained that the provisions of section 14A does not apply as it has not incurred any direct or indirect expenditure, therefore there is no disallowance. The assessee substantiated this statement by submitting details of own funds as well as free reserve. The Id Assessing Officer disallowed a sum of Rs. 222397/- applying the provisions of Rule 8D read with section 14A. Ld first appellate authority confirmed the disallowance.
4. The Id AR submitted that on the explanation of the assessee no satisfaction recorded by the Assessing Officer and disallowance confirmed by the Id CIT(A) is also incorrect. He submitted that the Id CIT(A) has also confirmed the disallowance without considering the submission.
5. The Id DR relied upon the order of Id AO and Id CIT(A).
6. We have carefully considered the rival contentions and also perused the orders of lower authority. It is apparent here that despite the assessee filing a reply that there is no expenditure incurred by the assessee and substantiating it by availability of surplus fund then the Id Assessing Officer erred in disallowing the above sum by applying provisions of Rule 8D of the Income Tax Rules, 1962 u/s 14A. Hon'ble Delhi High Court in case of CIT Vs. Taikisha Engineering India Ltd. 370 ITR 338 (Del) has held that the Assessing Officer is required to be examined whether the assessee has incurred expenditure by recording his satisfaction where the disallowance or nil disallowance made by the assessee is found to be unsatisfactory on examination of accounts. Then only the Assessing Officer is entitled and authorized to compute the

deduction under Rule 8D. This pre condition and stipulation is also mandated in sub-rule 1 of Rule 8D. Therefore in absence of any satisfaction recorded by the Assessing Officer the disallowance u/s 14A of Rs. 222397/- cannot be sustained. In the result ground No. 1 of the appeal is allowed.

7. Ground No. 2 of the appeal of the assessee is against treating capital gain of Rs. 926377/- as business income.
8. As facts culled out from the order of the Id CIT(A) at the time of filing of the return of income a sum of Rs. 926377/- was not deducted from the business income treating it as income chargeable to tax under other sources which is capital gains income. However, while filing return of income this amount was not reduced from the business income while filing the return of income therefore there was an error in the computation of total income vis-a-vis return filed by the assessee. The Id Assessing Officer need not compute the total income from profit and loss account but went on making addition to the returned income of the assessee which was shown higher by Rs. 926377/-. On appeal before the Id CIT(A) this issue was raised, who dismissed the appeal of the assessee stating that it cannot be raised before the appellate authority without filing revised return.
9. The Id AR contested this ground by relying on para No. 6.2 of the order of the Id CIT(A) where full facts are available. He further stated that amount of Rs. 962/- is shown under the head 'Profit on sale of investment in Schedule 14 of the Annual Accounts. He further referred to computation of total income filed at Page 29 of the compilation.
10. The Id DR relied upon the order of the Id CIT(A).
11. We have carefully considered the rival contentions and perused the order of the Id CIT(A). It is apparent that there is a credit in the profit and loss account in Schedule 14 of the annual account under the head 'Other income' of Rs. 926377/- and this amount is further reduced in the computation of total income vide item No. 4 thereby resulting business income of Rs. 20719960/- as per computation of total income. However, the business income as per ITR was shown at Rs. 21646338/- , therefore there is an exact different of Rs. 926378/- between these two figures whereas the computation of total income shows lesser business income computed on the basis of annual account whereas the returned income is showing higher amount. This is a

clear cut clerical error and therefore the assessee is entitled to rectification of such clerical error. Therefore the assessee is entitled for such relief. As this details are not coming out of the order of the Id Assessing Officer we set aside this ground No. 2 to the file of the AO to rectify this clerical error after verification. In the result ground No. 2 of the appeal of the assessee is allowed for statistical purposes.

12. In the appeal of the assessee is allowed accordingly.

Order pronounced in the open court on 03/02/2017.

-Sd/-

**(H.S.SIDHU)
JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 03/02/2017
A K Keot

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

ASSISTANT REGISTRAR
ITAT, New Delhi