



IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.1568/Mum./2014
(Assessment Year : 2008-09)

Pinebridge Investment Asset
Management Company India Pvt. Ltd.
(Formerly known as AIG Global Asset
Management Company India Pvt. Ltd.)
Ground Floor, FCH House
Peninsula Corporate Park
G.K. Marg, Lower Parel, Mumbai 400 013
PAN – AAGCA0084P

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-6(1), Aayakar Bhawan
101, M.K. Road, Mumbai 400 020

..... Respondent

Assessee by : Shri Nitesh Joshi a/w
Shri Nishit Kumar
Revenue by : Shri C.S. Sharma

Date of Hearing – 20.09.2016

Date of Order – 30.09.2016

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal by the assessee is directed against the order dated 13th December 2013, passed by the learned Commissioner (Appeals)-14, Mumbai, for the assessment year 2008-09.

Grounds raised by the assessee are as follows:-

"1(a) The learned Commissioner of Income tax (Appeals) erred in upholding the action of the Assistant Commissioner of Income tax

(herein after referred to as "the Assessing officer") in disallowing a sum of Rs.13,83,064/under section 14A.

(b) Without prejudice to what is stated above the appellant submits that the Assessing officer erred in considering investment not generating exempt income while computing disallowance under section 14A read with Rule 8D(2)(iii) of the Income tax Rules, 1962 (the Rules).

2. The learned Commissioner of Income tax (Appeals) erred in upholding the action of the Assessing officer in disallowing a sum of Rs. 4,93,100/- based on the AIR information on the ground that no proper reconciliation was given for related hotel expenditure incurred.

3. The appellant submits that the Assessing officer be directed:-

a. to delete the disallowance of Rs. 13,86,064/- under section 14A and to restrict the disallowance under section 14A to the extent offered by the appellant.

b. to delete the disallowance of Rs. 4,93,100/- being Hotel Expenses;"

and to modify the assessment in accordance with the provisions of the Act.

4. Each of the above grounds of appeal are independent & without prejudice to each other.

5. The Appellant craves liberty to add, to alter and /or amend the grounds of appeal as and when given."

2. Ground no.1, relates to disallowance of ₹ 13,83,064 under section 14A of the Income Tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee a company formerly known as AIG Global Asset Management (India) Pvt. Ltd., is engaged in the business of asset management of mutual fund. For the assessment year under consideration, the assessee filed its return of income on 26th

September 2008, declaring loss of ₹ 34,96,43,845. During the assessment proceedings, the Assessing Officer observed, the assessee had earned exempt income by way of dividend, however, it has not disallowed any expenditure incurred for earning exempt income. He, therefore, proceeded to compute disallowance under section 14A, by applying rule 8D(2)(iii) of the Income Tax Rules, 1962, @ 0.5% of the average value of investment of ₹ 27,66,12,719, which worked out to ₹ 13,83,064. The assessee challenged the disallowance in an appeal preferred before the learned Commissioner (Appeals).

4. The learned Commissioner (Appeals) also sustained disallowance by observing that as the assessee has earned exempt income disallowance under section 14A, has to be made.

5. Learned Authorised Representative submitted, in the relevant previous year, assessee had earned dividend income of ₹ 12,677, and in the computation of income, assessee itself has worked out disallowance under section 14A r/w rule 8D(2)(iii), for an amount of ₹ 1,035. The learned Authorised Representative submitted, the Assessing Officer without recording any satisfaction in terms of provisions of section 14A(2) r/w rule 8D(2), with regard to correctness of assessee's claim having reference to the books of account has proceeded to disallow an amount of ₹ 13,83,064. He submitted, both,

the Assessing Officer and the learned Commissioner (Appeals) have proceeded on a grossly erroneous presumption that assessee had not made any disallowance under section 14A. The learned Authorised Representative drawing attention to Annexure–A of statement of facts forming part of Form no.35, filed before the learned Commissioner (Appeals) submitted, assessee's entire investment is in mutual funds only and out of the total investments in mutual funds, the major part is in growth funds which do not yield any exempt income. The learned Authorised Representative submitted, out of the closing balance of investment amounting to ₹ 49,56,13,750, investment not generating exempt income amounted to ₹ 49,51,99,866. Thus, the average value of investment yielding exempt income is ₹ 2,06,942, only and in terms of rule 8D(2)(iii), disallowance @ 0.5% works out to ₹ 1,035 only. He, therefore, submitted the disallowance made by the Assessing Officer and sustained by the learned Commissioner (Appeals) is not sustainable.

6. The learned Departmental Representative on the other hand relied upon the order of the authorities below.

7. We have considered the submissions of the parties and perused the material available on record. It is an uncontroverted fact that the assessee in the computation of income has disallowed an amount of ₹

1,035, under section 14A r/w rule 8D(2)(iii). However, a bare perusal of the assessment order certainly gives an impression that the Assessing Officer has proceeded on an assumption that the assessee has not made any disallowance under section 14A, though, it had earned exempt income during the relevant previous year. As per section 14A(2) r/w rule 8D(1), if the Assessing Officer having regard to the account of the assessee is not satisfied with the correctness of the claim of expenditure in relation to exempt income, then he can proceed to make disallowance under section 14A r/w rule 8D(2). However, in the instant case, prima-facie, it appears the Assessing Officer has not recorded any satisfaction. On the contrary he has proceeded on erroneous footing that the assessee has not disallowed any expenditure under section 14A. Therefore, disallowance under section 14A made by the Assessing Officer and sustained by the learned Commissioner (Appeals) is legally unsustainable. Moreover, the assessee has demonstrated before us that out of the total investment appearing closing balance amounting to ₹ 49,56,13,750, an amount of ₹ 49,51,99,866 are in growth fund which do not yield any exempt income. Though, this fact was also placed before the learned Commissioner (Appeals) he has failed to examine this aspect. Thus, on a perusal of statutory provision, as contained under section 14A r/w rule 8D(2)(iii) it is clear, disallowance has to be computed

only on the average value of investment giving rise to exempt income, as growth fund do not yield exempt income, they have to be excluded from the average value of investment for computing disallowance under rule 8D(2)(iii). In this connection, we refer to the following decisions relied upon by the learned Authorised Representative.

- i) Everest Kanto Cylinder Ltd. v/s ACIT, ITA no.7073/Mum./2012, dated 25.9.2014; and*
- ii) Manugraph India Ltd. v/s DCIT, ITA no.476/Mum./2013, dated 29.3.2015.*

8. In view of the aforesaid, the disallowance made under section 14A by the Assessing Officer and sustained by the learned Commissioner (Appeals) deserves to be deleted. Thus, ground no.1, is allowed.

9. In ground no.2, assessee has challenged disallowance of an amount of ₹ 4,93,100.

10. Brief facts are, as per AIR information available on record, certain expenditure claimed by the assessee required reconciliation. It is alleged by the Assessing Officer that the assessee could not reconcile expenditure incurred at Hotels exceeding ₹ 10,000 aggregating to ₹ 11,15,009. Accordingly, he disallowed the said amount. Being aggrieved of such disallowance, assessee preferred appeal before the learned Commissioner (Appeals).

11. Learned Departmental Representative relied upon the observations of the Assessing Officer and the learned Commissioner (Appeals).

12. We have considered the submissions of the parties and perused the material available on record. As could be seen, while the Assessing Officer disallowed an amount of ₹ 11,15,009, alleging that it remained un-reconciled by the assessee. Before the first appellate authority, the assessee could produced evidence with regard to expenditure of ₹ 4,93,100, incurred towards a banquet held in Hotel Lila Palace, Bangalore. However, the learned Commissioner (Appeals) rejected assessee's claim solely on the ground that assessee could not prove that it is in connection with assessee's business. Before us, it is the submission of the assessee that such expenditure incurred was towards a meeting of the investors held in the said Hotel. Considering the aforesaid submissions of the assessee, we are inclined to restore the matter back to the file of the Assessing Officer for enabling the assessee to justifying its claim. If the assessee is able to substantiate its claim that such expenditure was incurred towards investors meet certainly, it has to be considered to be for the purpose of assessee's business, hence, to be allowed. With the aforesaid observations, we set aside the issue to the file of the Assessing Officer.

13. In the result, appeal is partly allowed.

Order pronounced in the open Court on 30.09.2016

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 30.09.2016

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai