

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6536/Del./2013
(ASSESSMENT YEAR : 2009-10)**

ACIT, Circle 5 (1),
New Delhi. vs. M/s. Mount Everest Mineral
Water Limited,
I – 3, Block B – 1,
Co-Operative Industrial Estate,
Main Mathura Road,
New Delhi – 110 004.
(PAN : AAACM1274F)

**CO No.212/Del./2014
(in ITA No.6536/Del./2013)
(ASSESSMENT YEAR : 2009-10)**

M/s. Mount Everest Mineral vs. ACIT, Circle 5 (1),
Water Limited, New Delhi.
I – 3, Block B – 1,
Co-Operative Industrial Estate,
Main Mathura Road,
New Delhi – 110 004.
(PAN : AAACM1274F)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : S/Shri Ravi Sharma & Rishabh Malhotra,
Advocates**

REVENUE BY : Shri Deepak Garg, Senior DR

Date of Hearing : 29.06.2016

Date of Order : 12.07.2016

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in both the aforesaid appeal and cross objection, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, Assistant Commissioner of Income Tax, Circle 5 (1), New Delhi (hereinafter referred to as 'the revenue') by filing the present appeal, sought to set aside the impugned order dated 30.09.2013 passed by the Commissioner of Income-tax (Appeals)-VIII, New Delhi qua the assessment year 2009-10 on the grounds inter alia that :-

“1. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) is justified in making disallowance of claim of expenses to the extent of Rs.11,49,335/- on estimate basis and not as per Rule 8D r.w.s. 14A was made by the AO?

2. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) is justified in allowing claim of Rs.4,21,087/- provision for supplying free goods?

3. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) is justified in allowing claim of Rs.70,000/- as provisional commission expense?

4. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) is justified in allowing claim of

Rs.3,07,88,306/- as bad debt under the head rebate and discounts?

5. Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) is justified in allowing claim of Rs.19,01,217/- as bad debt in absence of supporting documents?

3. The Objector, by filing the present cross objection, sought to set aside the impugned order dated 30.09.2013 passed by the Commissioner of Income-tax (Appeals)-VIII, New Delhi qua the assessment year 2009-10 on the ground that :-

“That, on the facts and in circumstances of the case, the learned Commissioner of Income-tax (Appeals) erred in sustaining the disallowance u/s 14A to the extent of Rs.500,000/- without any justifiable reasons and without appreciating that the appellant had already identified and suo mottu offered an amount of Rs.260,564/- being expense attributable in earning exempt income.”

4. Briefly stated the facts of this case are : pursuant to the notice under section 143(2) and 142 (1) of the Income Tax Act, 1961 (for short ‘the Act’) issued during scrutiny proceedings, Shri Raj Pal, Assistant Manager (Accounts) of the assessee company put in appearance, filed requisite details/information, books of accounts which have been examined on test check basis. Assessee company is into the business of manufacturing and selling of natural mineral water under the brand name, HIMALYAN, sold to the Five Star category Hotels, Airlines, Embassies etc. During the year under assessment, assessee earned dividend income of

Rs.4,31,81,095/- and claimed the same as exempt income u/s 10(34) of the Act. Assessee was called upon to file the working of disallowance in terms of provisions of Rule 8D on the basis of which Rs.2,60,564/- was disallowed and added back u/s 14A in the computation of income. Finding the explanation furnished by the assessee not tenable, Assessing Officer invoked provisions contained under Rule 8D for determining the expenditure incurred for making investment at Rs.19,09,899/- and further an amount of Rs.16,49,335/- u/s 14A to the income of the assessee.

5. From the details of bottles supplied free of cost (FOC) and complimentary, AO noticed that the assessee has made provisions of Rs.4,21,087/-, Rs.4,90,982/-, Rs.26,16,839/- and Rs.25,69,000/- on 31.07.2008, 31.08.2008, 28.02.2009 and 31.03.2009 respectively. Finding the explanation furnished by the assessee not tenable, AO found the same as unascertainable liability and disallowed the provision of Rs.4,21,087/- and added the same back to the income of the assessee.

6. AO also noticed from the details of commission sales that the assessee made debits of the provisions of Rs.7,95,912/-, Rs.7,95,912/-, Rs.12,73,355/- Rs.16,97,855/-, Rs.19,75,355/- Rs.17,56,573/-, Rs.14,38,899/-, Rs.14,27,946/-, Rs.1,46,695/- and Rs.70,000/- on 31.07.2008, 31.08.2008, 30.09.2008, 31.10.2008,

and again on 31.03.2009. Assessee has reversed all other provisions but Rs.70,000/- provided for commission was neither reversed nor added back by the assessee and disallowed the same as unascertained liability and thereby made an addition of Rs.70,000/-.

7. As per Annexure 6 of Form 3CD, the assessee shown the amounts of profit chargeable to tax u/s 41 of the Act at Rs.14,49,165/- as on 31.03.2004 on account of sundry balance written back and Rs.3,07,88,306/- as on 31.03.2004 on account of provision for discount and rebate written back and out of the said amount, the assessee has declared Rs.14,49,165/- being sundry balances written back as its income under other income but not shown the provisions for discount and rebate written back as its income for the year under consideration. Finding the explanation furnished by the assessee not tenable, the AO came to the conclusion that assessee company had recovered Rs.5,00,00,000/- in FY 2007-08 relevant to AY 2008-09 from promoters against disputable claims by debtors for discount and rebate and thus Rs.5,00,00,000/- were kept by the assessee for provision in its books of account for discount and rebate and has not claimed any expenses, discount and rebate during FY 2007-08 relevant to AY 2008-09 except expenses incurred after takeover. So, the provision

for discount and rebate written back out of Rs.5,00,00,000/- which was received in the hands of assessee in FY 2007-08 and kept as provision, is the profit of previous year relevant to AY under consideration chargeable to tax u/s 41 of the Act and thereby made an addition of Rs.3,07,88,306/-.

8. AO further noticed from profit & loss account that assessee has debited a sum of Rs.19,01,217/- as bad debts written off. Assessee was called upon to file the details and justification of bad debts written off which he has filed but finding the explanation not tenable, the claim of the assessee of bad debts has been disallowed and thereby made an addition of Rs.19,01,217/-.

9. Assessee carried the matter before the Id. CIT (A) who has partly allowed the appeal. Feeling aggrieved, the revenue as well as assessee has come up before the Tribunal by challenging the impugned order passed by the Id. CIT (A) by way of filing the present appeal and cross objection respectively.

10. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

**GROUND NO.1 OF ITA No.6536/DEL./2013 &
GROUND NO.1 OF CROSS OBJECTION**

11. The Id. DR challenging the impugned order contended that the Id. CIT (A) has arbitrarily made disallowance of claim of expenses to the extent of Rs.11,49,335/- on estimated basis and not as per Rule 8D read with section 14A and relied upon the order passed by the AO. However, on the other hand, Id. AR to repel this argument contended that the AO has illegally invoked the Rule 8D(2)(iii) for disallowance of the indirect expenditure without recording his dis-satisfaction of the claim and CIT (A) has also erred in sustaining the disallowance u/s 14A to the extent of Rs.5,00,000/- without any justification and relied upon the judgments cited as **Maxopp Investments Limited vs. CIT (2012) 347 ITR 272 (Delhi)** and order passed by the ITAT, Bangalore Bench 'B' in **DCIT vs. M/s. Subramanya Constructions & Development Co. Ltd. in ITA No.404/Bang/2013** order dated **20.02.2015**.

12. The ratio of the judgment cited as **Maxopp Investments Limited** (supra) passed by the Hon'ble jurisdictional High Court is that *“under section 14A(2,) it is a condition precedent for Assessing Officer to determine amount of expenditure incurred in relation to exempt income; that he must record his dis-satisfaction with correctness of claim of expenditure made by the*

assessee or with correctness of the claim made by the assessee that no expenditure has been incurred and that determination of amount of expenditure in relation to exempt income under Rule 8D only come into play when AO rejects claim of assessee in this regard.”

13. Undisputedly, assessee company earned dividend income to the tune of Rs.4,31,81,095/- and claimed the same as exempt income u/s 10(35) of the Act and suo motu disallowed the amount of Rs.2,60,564/- u/s 14A being the expenses incurred for earning exempt dividend income.

12. Before invoking provisions contained under Rule 8D(2)(iii), the AO has not recorded his dis-satisfaction of the correctness of the claim of expenditure made by the assessee nor AO came to the conclusions that, “the claim of the assessee that no expenditure has been incurred” is incorrect. Assessee has come up with a categorical plea that except for incurring expenditure of Rs.2,60,564/- on account of salary paid to Executive (Finance), no other expenditure has been incurred for earning of the said dividend income. AO has not disputed the audited books of account maintained by the assessee in respect of investing and earning dividend income along with expenditure incurred thereon, lying at page 65 of the paper

book. From the books of account, the AO has not identified any other expenditure incurred by the assessee for earning the aforesaid dividend income but proceeded to invoke the provisions contained under Rule 8D (2)(iii) merely on the basis of guesswork, that too without recording his dis-satisfaction as to how the claim of the assessee, “that no other expenditure has been incurred”, in earning the dividend income. At the same time, CIT (A) has also proceeded on the basis of guesswork in sustaining the disallowance u/s 14A to the extent of Rs.5,00,000/-.

14. When the AO has not recorded his dis-satisfaction nor disputed the audited books of account, he was not justified in invoking the provisions contained under Rule 8D. So, in these circumstances, we are of the considered view that CIT (A) has erred in sustaining the disallowance u/s 14A to the extent of Rs.5,00,000/- In face of the fact that the assessee has suo motu made a disallowance u/s 14A to the extent of Rs.2,60,564/- being the salary paid to the Executive (Finance) employed for managing the investment for mutual funds and dividend income, no disallowance can be made. Consequently, ground no.1 of ITA No.6536/Del/2013 is determined against the revenue and ground no.1 of cross objection is determined in favour of the assessee.

GROUND NO.2 OF ITA No.6536/DEL./2013

15. Ld. CIT (A) deleted the addition of Rs.4,21,087/- made by the AO, by making following observations :-

“The company bottles mineral water and distributed it to various place in the India in the brand name of ‘Himalayan Mineral Water’. The company has to give complimentary bottles free of cost. The turnover of the company is Rs.21.99 crores i.e. 22 crores in this financial year. On such a turn over, the free of cost complimentary bottles given in the market as samples all over India is not a very big figure. Considering the submissions of the AR and the ledger account, I find it a reasonable expenditure for marketing of the mineral water bottles. Hence, this expenditure of Rs.4,21,087 is allowed in full. The additions of Rs.4,21,0071- is deleted. In the result this ground of appeal is allowed.”

16. From the copy of ledger account available at page 104 of the paper book, it is apparently clear that the amount of Rs.4,21,087/- treated as unascertained liability by the AO includes an amount of Rs.3,64,453/- on account of expenses actually incurred in respect of cost of raw material, packing material, electricity, power & fuel, wages, repair and maintenance expenses and amount transferred from general expense ledger to specific ledger for FOC and complimentary and as such, an amount of Rs.4,21,087/- is actually incurred as expenses on account of FOC and complimentary bottles given in the market as samples all over India. Ld. CIT (A), after

noticing the factual mistake committed by the AO in treating the amount of Rs.4,21,087/- as unascertained liability, has rightly deleted the same. So, finding no illegality or perversity in the order passed by the Id. CIT (A), we hereby decide ground no.2 against the revenue.

GROUND NO.3 OF ITA No.6536/DEL./2013

17. The CIT (A) deleted the addition of Rs.70,000/- made by the AO on the ground that the assessee has paid the commission to M/s. Paras Commercial Corporation, Cuttack, a consignment agent on 02.09.2008 on a monthly commission of Rs.10,000/- per month and the assessee company has raised the bill and paid it after deducting TDS. From the perusal of agreement and Form 16A available at page 77 of the paper book, it is apparently clear that since the agent has not raised any bill since March 2009, the assessee on the basis of agreement provided an amount of Rs.70,000/- from September, 2008 to March, 2009 after deducting the tax at source i.e during the relevant financial year. So, the mistake committed by the AO has been rectified by the CIT (A) and the findings returned by CIT (A) need no interference. Hence, ground no.3 is determined against the revenue.

GROUND NO.4 OF ITA No.6536/DEL./2013

18. Ld. CIT (A) deleted the addition of Rs.3,07,88,306/- made by the AO by invoking the provisions contained under section 41 of the Act by making following observations :-

“The appellant had claimed provision for discount and rebate return back of Rs.3,07,88,306/-. This return back of bad debts is disclosed in schedule 18 of the tax audit report of Rs.5,24,10,339/-. The provision of discount and rebate return back is Rs.5,05,09,122/- and net bad debts of return was Rs. 19,01,217/- in the P&L Account. As per the section 36(i)(vii) the company can write off any amount of bad debts as irrecoverable in the accounts of the assessee in any year including first year of business without any proof that the debts has actually gone bad. This is the freedom given to the businessman today to account as per his wish. Whenever the bad debts are recovered from the parties, he has to take into account the receivable in the P&L Account on the credit side. Thus the AD should make .a watch of this figure in his order or assessment record so that he can keep a watch on the activities of the appellant in future. Hence, in the present case the claim of discount and return back of Rs. 3,07,88,306/- provision as bad debts return off of Rs. 5,24,10,339/- is allowed. In the result, this ground of appeal is allowed. The addition of Rs.3,07,88,306/- is deleted.”

19. It is settled principle of law that a company can write off any bad debts in its account in any year including the first year of business without proving the fact that the debt has actually become bad. Assessee has rightly claimed provision for discount and rebate written back of Rs.3,07,88,306/- duly disclosed in Schedule 18 of the tax audit report of the composite amount of

Rs.5,24,10,339/-. When the write back of Rs.5,05,09,122/-, which includes the amount of Rs.3,07,88,306/-, was duly credited in profit & loss account in the form of adjustment of bad debt expenses in Schedule 18, question does not arise to invoke the provisions of section 41 of the Act. So, finding no illegality or perversity in the findings returned by the CIT (A), we hereby determine ground no.4 against the revenue.

GROUND NO.5 OF ITA No.6536/DEL./2013

20. AO by disallowing the bad debt written off to the tune of Rs.19,01,217/- made an addition thereof to the income of the assessee which has been deleted by the CIT (A) by making following observations :-

“Ground no. 5 is part of ground no 4 the case of debts return off Rs.19,01,217/- was shown in the schedule 18 of Tax Audit Report. This is again minimum of the payment to write off of bad debts as much as he selects U/S 36(i)(vii) read with section 36(ii) as irrecoverable in the accounts of the assessee. The AO should make a watch of these figures in subsequent years to know business activities of the appellant and tax it properly in due course. Hence, this addition of Rs.19,01,217/- is deleted. This ground of appeal is allowed.”

21. For the sake of repetition, it is reiterated that the assessee needs not to bring on record any material or evidence to write off

any amount of bad debt as irrecoverable to prove the fact that the debt has actually become bad. When the AO has not disputed the books of account and the assessee has duly recorded the written off amount of debt of Rs.19,01,217/- in the profit & loss account and after complying with the conditions contained u/s 36(1)(vii) read with section 36(2), the addition made by the AO has been rightly deleted by the Id. CIT (A). So, this ground is also determined against the revenue.

22. In view of what has been discussed above, appearing bearing ITA No.6536/Del/2013 filed by the revenue is hereby dismissed and cross objections filed by the assessee are hereby allowed and disallowance of Rs.5,00,000/- made by the Id. CIT (A) is not sustainable.

Order pronounced in open court on this 12th day of July, 2016.

**Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 12th day of July, 2016
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-VIII, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**