

**INCOME TAX APPELLATE TRIBUNAL**  
**DELHI BENCH "F": NEW DELHI**  
**BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER**

**AND**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.1035/Del/2013

(Assessment Year: 2009-10)

Relaxo Footwear Ltd., 316-319, Allied House, Inderlok, Delhi PAN:AAACR0259D	Vs.	Addl. CIT, Range-15, New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by :	Sh. Sanjeev Sabharwal, Sr. Adv
Revenue by:	Sh. Shravan Gotru, Sr. DR
Date of Hearing	12/04/2016
Date of pronouncement	24/05/2016

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. This is appeal filed by the assessee against the order of the Id CIT(A)-XVIII, New Delhi dated 05.12.2012 for the Assessment Year 2009-10.
2. The assessee has raised the following grounds of appeal:-
  - “1. That the Ld. CIT(A) has erred in disallowance of Rs.30,138/- under section 14A r.w.r. 8D when order of Hon.ble Income Tax Appellate Tribunal, Delhi for the Assessment Year 2008-09 was produced before her. The items remained the same. To the query of Ld. CIT(A), she was informed that payment of NSC has been made in cash in the financial year 2003-2004 and payment for acquiring shares in M/s. Relaxo Rubbers Pvt. Ltd. has been made through bank account of the Company in the financial year 1996-1997. The Ld. CIT(A) has given no reason to deviate from the order of the Hon'ble Income Tax Appellate Tribunal.
  2. That the Ld. CIT(A) has erred in confirming the disallowance of Rs.15,78,831/- on account of provision made under gift scheme & advertisement payable. It is clarified that it is only the gift schemes for which provision has been made. It was submitted that this system is being followed in earlier years and the doctrine of consistency has

*been accepted with reference to quantity discount, the Ld. CIT(A) has given no basis to deviate from this principle of consistency. The Ld. CIT(A) has wrongly disallowed on the ground that the appellant's one scheme was in existence in the month of March. It is a matter of fact that information under the scheme of Retailers' Scratch & Win Scheme on Hawai/ Flite Chappals is supplied late to the Distributors who in turn communicates to the Company. Further the entry of Rs.15,78,831/- was reversed in the next year and tax paid on the same."*

3. The brief facts of the case is that the assessee is a limited company engaged in the business of manufacturing and trading of footwear. It filed its return of income on 29.09.2009 showing income of Rs. 221260858/-.
4. The first ground of appeal is against disallowance of Rs. 30138/- u/s 14A of the Income Tax Act. Ld AO disallowed this sum working out disallowance as per Rule 8D of the Income Tax Rules. On appeal, Id CIT(A) confirmed disallowance therefore the assessee is in appeal before us.
5. Before us the Id AR submitted that Id AO has not recorded any satisfaction about the correctness of the claim of the assessee that no expenditure has been incurred in relation to exempt income. He further submitted that there could not be any presumption about the existence of expenditure in relation to the earning exempt income. He relied on the decision of the coordinate bench in assessee's own case for AY 2008-09.
6. The Id DR relied on the orders of the lower authorities.
7. We have carefully considered the rival contentions. The assessee has not made any disallowance in relation to earning of exempt income. Ld Assessing Officer without recording any satisfaction about the correctness of the claim of the assessee made disallowance by invoking provisions of Rule 8D of the Income Tax Rules. Hon'ble Delhi High Court in case of CIT Vs. Taikisah Engineering India Ltd. [370 ITR 338] has held that no disallowance can be made if the Assessing Officer does not record satisfaction with reference to the books of accounts that the claim of the assessee is improper. On reading of the assessment order we did not find any satisfaction recorded by the Id. AO. In view of the decision of the Hon'ble Delhi High Court we are of the view that as no satisfaction has been recorded by the Id Assessing Officer before invoking Rule 8D in the present case disallowance of Rs. 30138/- made by the Assessing Officer u/s 14A of the Income Tax Act cannot be sustained. Therefore, we reverse the finding of the Id CIT(A) in confirming the disallowance u/s 14A of the Act. In the result ground No.1 of the appeal is allowed.
8. Ground No.2 of the appeal is against the disallowance of Rs. 1578831/- on account of provision made under gift scheme & advertisement. During the year assessee has made a provision of gift scheme and advertisement expenditure of Rs. 12757000/- and assessee has

made payment out of this scheme expenses to dealers on claim of Rs. 11178169/- and therefore according to the Assessing Officer there was an excess provision of Rs. 1578831/- which is disallowed. On appeal before the Id CIT(A), assessee submitted that the excess provision made has already been reversed in the next year, it is regular system of provisioning and therefore the disallowance may be deleted. Ld CIT(A) rejected the contention of the assessee and confirmed the disallowance. Therefore the assessee is in appeal before us.

9. The Id AR of the appellant submitted that the assessee is making provision of various expenditure on account of various schemes, gift expenditure, and advertisement expenditure for promotion of sales through its dealers. Subsequently the dealers make claim by adducing the supporting evidences of such expenses and amount is credited to the dealers account by the assessee on by issuing credit notes. Assessee submitted that provisions is based on best estimate made by the assessee, subsequently when the expenditure is actually claimed by the dealers, then excess or shortage is adjusted in the next year's profit and loss account. Similarly he stated that during the year assessee has made a provision of Rs. 12757000/- and out of which the expenditure incurred is Rs. 11178169/- and the balance amount of Rs. 1578831/- is reversed in AY 2010-11 which has been offered for taxation by the assessee and taxed by the AO. He submitted the details of various expenditure on account of gift scheme and advertisement in the form of paper book at page No. 51 to 72. Therefore he submitted that the provision is made on the basis of best estimate and subsequently, the provisions are reversed to the extent it remained unspent. Therefore, disallowance may be deleted.
10. Ld DR relied on the orders of lower authorities.
11. We have carefully considered the rival contentions. The facts noted above remains uncontroverted that the assessee has already reversed the amount of excess provision in subsequent years has been offered to tax in subsequent year. We have carefully perused the method of provisioning and provision made by the assessee on account of gift scheme. The assessee has made a provision with respect to each of the dealers based on various gift scheme as well as scratch card win scheme payable to them on sales made by them. As on 31.03.2009 the total provision made of Rs. 12757000/- and out of that payment have been made or credits have been given to various dealers of Rs 11178169/-. In the financial year 2009-10 the assessee determined what has not been claimed by the dealers or payable to the dealers amounts to Rs. 1578831/- and same amount was reversed in the books of assessee on 20.11.2009 and offered for taxation. Similarly as on 31.03.2010 assessee made a provision for the gift scheme of Rs. 335,00,000/-. Therefore, it is the regular method followed by the assessee by which provision of the expenditure is made in the end of the year which is payable to the dealer in subsequent years based on their claim. Subsequently excess or

shortage is charged or credited to profit and loss account. In the past years or in the subsequent years the Id DR has not pointed out that such disallowance by the revenue has been made. In the consumer durable business this kind of provisioning on account of various incentives schemes are provided for boosting sales through dealers and it is booked on accrual basis. Subsequently on receipt of claim through sales outlet such claim amount is disbursed and excess/ shortage is adjusted. It is not the case of the revenue that provision of Rs. 12757000/- was made without any basis. In view of this according to us the claim of the assessee cannot be disallowed if it is the best estimate made at the time of provisioning and such method of provisioning is followed year to year basis and not challenged by revenue earlier. The reason given by the Id CIT(A) that in mercantile system of accounting the excess provision cannot be claim and allowed. We find that such an observation of the Id CIT(A) is not in accordance with the mercantile system of accounting which itself suggests that provision of expenses has to be made on accrual basis and which has to be based on the accounting principles of prudence and therefore according to this principles the reliable estimate of such expenditure is required to be made. If there is excess or shortage of actual expenditure compared to the provisioning the same would be reversed in the subsequent years. Further, the rate of taxation for both the years i.e. 2009-10 and AY 2010-11 are same, therefore, even otherwise the exercise made by the Id AO is tax neutral. Therefore we reverse the finding of the Id CIT(A) in confirming the disallowance of Rs. 1578831/- on account of excess provision of gift scheme. In the result ground No.2 of the appeal is allowed.

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

**Order pronounced in the open court on 24/05/2016.**

**-Sd/-  
(H.S.SIDHU)  
JUDICIAL MEMBER**

Dated: 24/05/2016

*A K Keot*

Copy forwarded to

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

**-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT, New Delhi