

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: C , NEW DELHI

BEFORE SHRI RS SYAL, VICE PRESIDENT
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER

ITA No. 1857/Del/2015

A.Y. 20 08 -09

Galgotia Publication (P) Ltd. 4405/6, Prakash Apartments 5, Ansari Road, Daryaganj New Delhi 110 0 92 PAN: AAACG1557F	II	vs.	ACIT, Central Circle, Noida U.P.
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ITA 1862/Del/2015

A.Y. 2008 -09

ITA 186 3/Del/2015

A.Y. 200 9-10

ITA 186 4/Del/2015

A.Y. 20 10 -11

ITA 186 5/Del/2015

A.Y. 20 11 -12

Galgotia (HUF). 4405/6, Prakash Apartments 5, Ansari Road, Daryaganj New Delhi 110 092 PAN: AACHG0635D	II	vs.	ACIT, Central Circle, Noida U.P.
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(Appellant)

(Respondent)

Appellant by	Shri P.K.Mishra, C.A. & Sh. Neeraj Jain, C.A.
Respondent by	Smt.Deepali Chandra, CIT, D.R.
Date of Hearing	17/09/ 2018
Date of Pronouncement	20/ 09/2 018

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeals have been filed by assesseees against separate orders dated 29/01/15 passed by Ld. CIT (A) -1, for assessment years under consideration on the following grounds of appeal:

ITA 1857/Del/2015 A.Y. 2008 -09

1. That the order of Ld.CIT(Appeals) is bad in law and on facts and in the circumstances of the case.
2. That the Ld.CIT(A) erred in treating the ground no.2 agitating the issuing of notice u/s 153A as general and thereby not adjudicating upon the same.
3. That the Ld.CIT(A) erred in sustaining the ad hoc disallowance @ 10% on account of personal use amounting to Rs.97,351/ - out of following expenses: -

(a) Telephone expenses	Rs. 4,43,440/ -
(b) Car running and maintenance	Rs. 2,72,628/ -
(c) Depreciation on car	Rs. 2,57,445/ -

Total:	Rs. 9,73,513/ -
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- 4.(i) That the Ld.CIT(A) erred in sustaining the addition of Rs.12,54,853/ - on account of disallowance u/s 14A of the Act read with Rule 8D of Income Tax Rules.
- (ii) That the Ld.CIT(A) erred in considering the share application money of Rs.1,66,46,000/ - for the purpose of calculation of disallowance u/s 14A of the Income Tax Act, 1961 (the Act) ignoring the fact that share application money is not capable of earning exempt income.
5. The above grounds of appeal are without prejudice to each other.
6. The Appellant craves leave to add, alter, amend and/or modify the above grounds of appeal.

ITA 1862/Del/2015 A.Y. 2008 -09

1. That the order of Ld.CIT(Appeals) is bad in law and on facts and in the circumstances of the case.
2. That the Ld.CIT(A) erred in treating the ground no.2 agitating the issuing of notice u/s 153A as general and thereby not adjudicating upon the same.
3. That the Ld.CIT(A) erred in sustaining the ad hoc disallowance @ 10% on account of personal use amounting to Rs. 1,33,616 / - out of following expenses: -

(a) Telephone expenses	Rs. 1,98,150 / -
(b) Car running and maintenance	Rs. 50,491 / -
(c) Depreciation on car	Rs. 6,79,573 / -

T o t a l :	Rs. 13,36,155 / -
	=====
- 4.(i) That the Ld.CIT(A) erred in sustaining the addition of Rs.7,85,600 / - on account of disallowance u/s 14A of the Act read with Rule 8D of Income Tax Rules.
- (ii) That the Ld.CIT(A) erred in considering the share application money of Rs.79,60,375 / - for the purpose of calculation of disallowance u/s 14A of the Income Tax Act, 1961 (the Act) ignoring the fact that share application money is not capable of earning exempt income.
5. The above grounds of appeal are without prejudice to each other.
6. The Appellant craves leave to add, alter, amend and/or modify the above grounds of appeal.

ITA 1863/Del/2015 A.Y. 2009 -10

1. That the order of Ld.CIT(Appeals) is bad in law and on facts and in the circumstances of the case.
2. That the Ld.CIT(A) erred in treating the ground no.2 agitating the issuing of notice u/s 153A as general and thereby not adjudicating upon the same.

3. That the Ld.CIT(A) erred in sustaining the ad hoc disallowance @ 10% on account of personal use amounting to Rs.1,28,730/ - out of following expenses: -

(a) Telephone expenses	Rs. 2,68,189/ -
(b) Conveyance	Rs. 46,152/ -
(c) Car running and maintenance	Rs. 28,625/ -
(d) Interest on car loan	Rs. 3,66,694/ -
(e) Depreciation on car	Rs. 5,77,636 / -

Total:	Rs. 12,87,296 / -
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4.(i) That the Ld.CIT(A) erred in sustaining the addition of Rs.12,96,616 / - on account of disallowance u/s 14A of the Act read with Rule 8D of Income Tax Rules.

(ii) That the Ld.CIT(A) erred in considering the share application money of Rs.79,60,375/ - for the purpose of calculation of disallowance u/s 14A of the Income Tax Act, 1961 (the Act) ignoring the fact that share application money is not capable of earning exempt income.

ITA 1864/Del/2015 A.Y. 2010 -11

1. That the order of Ld.CIT(Appeals) is bad in law and on facts and in the circumstances of the case.

2. That the Ld.CIT(A) erred in treating the ground no.2 agitating the issuing of notice u/s 153A as general and thereby not adjudicating upon the same.

3. That the Ld.CIT(A) erred in sustaining the ad hoc disallowance @ 10% on account of personal use amounting to Rs.2,68,488/ - out of following expenses: -

(a) Telephone expenses	Rs. 2,84,591/ -
(b) Conveyance	Rs. 74,358/ -
(c) Interest on car loan	Rs. 7,62,764/ -
(e) Depreciation on car	Rs.15,63,165/ -

Total:	Rs. 26,84,878/ -
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4.(i) That the Ld.CIT(A) erred in sustaining the addition of Rs.13,07,963/ - on account of disallowance u/s 14A of the Act read with Rule 8D of Income Tax Rules.

(ii) That the Ld.CIT(A) erred in considering the share application money of Rs.1,01,95,375/ - for the purpose of calculation of disallowance u/s 14A of the Income Tax Act, 1961 (the Act) ignoring the fact that share application money is not capable of earning exempt income.

ITA 1865/Del/2015 A.Y. 2011 -12

1. That the order of Ld.CIT(Appeals) is bad in law and on facts and in the circumstances of the case.

2. That the Ld.CIT(A) erred in treating the ground no.2 agitating the issuing of notice u/s 153A as general and thereby not adjudicating upon the same.

3. That the Ld.CIT(A) erred in sustaining the ad hoc disallowance @ 10% on account of personal use amounting to Rs.2,30,458/ - out of following expenses: -

(a) Telephone expenses	Rs. 2,90,648/ -
(b) Conveyance	Rs. 63,304/ -
(c) Car running and maintenance	Rs. 46,540/ -
(d) Interest on car loan	Rs. 5,75,398/ -
(e) Depreciation on car	Rs.13,28,689/ -

T o t a l :	Rs. 23,04,579/ -
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4.(i) That the Ld.CIT(A) erred in sustaining the addition of Rs.17,93,431/ - on account of disallowance u/s 14A of the Act read with Rule 8D of Income Tax Rules.

(ii) That the Ld.CIT(A) erred in considering the share application money of Rs.1,16,15,375/ - for the purpose of calculation of disallowance u/s 14A of the Income Tax Act, 1961 (the Act) ignoring the fact that share application money is not capable of earning exempt income.

2. Brief facts of the case are as under:

A search and seizure operation was carried out on 17/ 09/10. Notice under section 15 3A of the Income Tax Act, 1961 (the Act) was issued in response to which assessee filed return of income on 19/10/11. Subsequently notice under section 142 (1) and 143 (2) of the Act was issued along with questionnaire, in response to which representative of assessee attended from time to time and filed details and produced books of accounts, vouchers and bank statements and original s which were checked on random basis.

2.1. Ld.AO during the assessment proceedings observed that assessee made investments in share application money with its sister concerns and also paid interest. The Ld.AO after considering the details filed by assessee disallowed proportionate expenses under section 14 A of the Act read with rule 8D, made an ad-hoc disallowance of expenses to an extent of 10% which includes telephone expenses, conveyance, car maintenance and repair expenses and depreciation on car.

2.2. Aggrieved by the order of Ld. AO, assessee preferred appeal before Ld. CIT (A) who upheld the additions made by Ld. AO.

3. Aggrieved by the order of Ld. CIT (A) assessee is in appeal before us now.

3.1. The Ld.AR submitted that issues raised by assessee in all the appeals are similar on identical facts. We are , therefore , inclined to dispose of all the appeals by way of common order.

4. For sake of convenience ITA No. 1857/ Del/2015 in case of M/s Galgotia Publications Pvt. Ltd., for assessment year 2008 -09 is taken up first .

4.1. Ld.AR submitted that Ground No.1 is general in nature and, therefore, do not require any adjudication.

4.2. He submitted that Ground No. 2 to be considered as not pressed. Accordingly ground No. 2 stands dismissed as not pressed.

5. Ground No. 3 is in respect of sustaining the ad-hoc disallowance at 10% on account of personal use amounting to Rs. 97,351/- out of telephone expenses, car running and maintenance expenses and depreciation on car. Ld.AR submitted that assessee is a company and is an entity recognised by law, as a legal person, that exist in eyes of law independently with rights and liabilities. Thus no element of personal expenses by Directors/Office bearers can be attributed, without, there being sufficient evidence in support. He submitted that assessee filed all requisite details, vouchers, as has been observed by Ld.AO in assessment order, regarding expenses claimed and Ld.AO has not pointed out any instances/fault in the same. Ld.AR submitted that Ld.AO has, without any basis, disallowed expenses at 10%. It has been submitted by Ld.AR that telephones are installed at office premises of assessee and vehicles are used for conducting day-to-day affairs of assessee. Regarding depreciation on car, it is submitted that, it cannot be disallowed in hands of assessee, as it is genuine claim.

5.1. Ld.DR placed reliance upon orders passed by authorities below.

5.2. We have perused submissions advanced by both sides in the light of records placed before us.

5.3. The present assessee before us is a company and is an entity recognised by law, as a legal person, that exist in eyes of law independently with rights and liabilities. Thus no element of personal expenses by the Directors/Office bearers can be attributed, without, there being sufficient evidence in support. Admittedly, Ld.AO neither pointed out any instance of inflation in expenditure claimed by assessee, nor has given any finding regarding expenditure claimed by assessee being capital in nature, for purposes of disallowance. It is further observed that Ld.CIT(A) made general observation for sustaining addition made by Ld.AO. It is observed from assessment order that assessee filed books of accounts, vouchers and bank statements before Ld.AO. If Ld.AO was not satisfied with details filed by assessee, he could have pointed out at assessment stage itself. Under such circumstances we are not inclined to sustain the addition made by Ld.AO.

5.4. Accordingly this ground raised by assessee stands allowed.

6. Ground No. 4 is in respect of disallowance computed by Ld.AO under section 14 A read with Rule 8D of the Act.

6.1. It has been submitted by Ld.AR that, admittedly there is no dividend income earned by assessee during year under consideration, in order to invoke provisions of section 14 A. He referred to observations of Ld.CIT (A) wherein, finding has been recorded regarding no exempt income been earned by assessee. It has been submitted that Ld.CIT(A), relied upon Circular 5, dated

11/02/14 for computing disallowance under section 14 A of the Act.

6.2 . Placing reliance upon decision of Hon ble Madras High Court in the case of CIT vs. Chettinad Logistic s Pvt.Ltd ., reported in (2017) 80 Taxmann.com 221 , wherein Hon ble Court followed the decision of its Co-Ordinate Bench in case of Redington (India) Ltd vs ACIT reported in (2017) 77 Taxmann.com 257 , wherein Hon ble Court rejected argument of revenue that, whether or not exempt income was earned in a concerned assessment year, expenditure under section 14 A could be disallowed against anticipated income.

6.3 . It has been submitted by Ld.AR that his decision of Hon ble Madras High Court stands approved by Hon ble Supreme Court wherein SLP filed by revenue stands dismissed in case of CIT vs. Chettinad Logistic s Pvt.Ltd., reported in (2018) 95 Taxmann.com 250 .

6.4. Ld. DR though supported orde r passed by authorities below, could not controvert the afore stated view taken by Hon ble Madras High Court .

6.5 . We have perused submissions advanced by both the sides in light of the records placed before us.

6.6. It is observed that view taken by Hon ble Delhi High Court in case of Cheminvest Ltd vs . CIT, reported in (2009) 121 ITD 318 supports the view taken by Hon ble Madras High Court . Further admittedly assessee has not earned any exempt income during relevant assessment year under consideration and accordingly the issue stands squarely covered by afore stated decisions of Hon ble Delhi High Court as well as Hon ble Madras High Court .

6.7. In view of above we allow ground raised by assessee and delete disallowance computed by Ld.AO under section 14A read with Rule 8D for year under consideration.

7. In the result appeal filed by assessee in ITA No. 1857/Del/2015 for assessment year 2008-09 stands partly allowed.

8. ITA No. 1862 -1865 / Del/2015 (assessment year 2008 -09 to 2011 -12)

8.1. Ld.AR submitted that the issues raised by assessee in these appeals are similar and identical. He also submitted that the issues are commonly raised with ITA No. 1857/ Del/2015 which has already been decided here in above.

8.2. Ld.AR accordingly submitted that, Ground No. 1 in all the appeals are general in nature .

8.3. He submitted that Ground No. 2 to be considered as not pressed . Accordingly ground No. 2 stands dismissed as not pressed .

9. Ground No. 3 is in respect of sustaining ad -hoc disallowance at 10% on account of personal use.

10. Ld.AR submitted that in present appeals assessee is a HUF and is engaged in similar business of trading in books etc. He submitted that expenses that have been considered for ad -hoc disallowance include telephone expenses, conveyance, interest on car loan and depreciation on car that has been claimed by assessee for relevant Assessment Year in the Profit and Loss account. He placed reliance upon submissions advanced by him in ITA No. 1857/D el/2015.

10.1 . Ld. DR placed reliance upon orders of authorities below.

11. We have perused submissions advanced by both sides in the light of the records placed before us.

12. In the present case assessee is a HUF. A HUF can not be independently considered without its Karta. Though some amount of personal use of the telephones, cars etc. can be attributed, however, no assumptions could be made in a generalised manner. Admittedly, Ld.AO neither pointed out any instance of inflation in expenditure claimed by assessee, nor has given any finding regarding expenditure claimed by assessee being capital in nature, for purposes of disallowance. It is further observed that Ld.CIT(A) made general observation for sustaining addition made by Ld.AO. It is observed from assessment order that assessee filed books of accounts, vouchers and bank statements before Ld.AO. If Ld.AO was not satisfied with details filed by assessee, he could have pointed out at assessment stage itself. Under such circumstances we are not inclined to sustain the addition made by Ld.AO.

12.1. Accordingly this ground raised by assessee for all assessment years stands allowed .

13. Ground No. 4 is in respect of disallowance computed by Ld.AO under section 14 A read with Rule 8D of the Act.

13.1 . It has been submitted by Ld.AR that, admittedly there is no dividend income earned by assessee during year under consideration, in order to invoke provisions of section 14 A. He referred to observations of Ld.CIT (A) wherein, finding has been recorded regarding no exempt income been earned by assessee. It has been submitted that Ld.CIT(A), relied upon Circular 5, dated

11/02/14 for computing disallowance under section 14 A of the Act.

13.2. Placing reliance upon decision of Hon ble Madras High Court in the case of CIT vs. Chettinad Logistic s Pvt.Ltd ., reported in (2017) 80 Taxmann.com 221 , wherein Hon ble Court followed the decision of its Coordinate Bench in case of Redington (India) Ltd vs ACIT reported in (2017) 77 Taxmann.com 257 , wherein Hon ble Court rejected argument of revenue that, whether or not exempt income was earned in a concerned Assessment Year, expenditure under section 14 A could be disallowed against anticipated income.

13.3. It has been submitted by Ld.AR that this decision of Hon ble Madras High Court stands approved by Hon ble Supreme Court wherein SLP filed by revenue has been dismissed in case of CIT vs. Chettinad Logistic s Pvt.Ltd ., reported in (2018) 95 Taxmann.com 250 .

13.4 . Ld.DR though supported order passed by authorities below , could not controvert afore stated view taken by Hon ble Madras High Court .

14. We have perused submissions advanced by both the sides in light of records placed before us.

14.1. It is observed that view taken by Hon ble Delhi High Court in case of Cheminvest Ltd vs . CIT, reported in (2009) 121 ITD 318 supports the view taken by Hon ble Madras High Court . Further admittedly assessee has not earned any exempt income during relevant assessment year under consideration and accordingly the issue stands squarely covered by afore stated decisions of Hon ble Delhi High Court as well as Hon ble Madras High Court .

15. In view of above we allow this ground raised by assessee for all assessment years and delete disallowance computed by Ld.AO under section 14A read with Rule 8D for years under consideration.

16. In the result , appeals filed by assessee for all assessment years stand partly allowed .

Order pronounced in the Open Court on 20th September , 2018.

Sd/ -
(R.S.SYAL)
VICE PRESIDENT
Dt. 20th September, 2018

Sd/ -
(BEENA A PILLAI)
JUDICIAL MEMBER

*Gmv

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

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By Order,

ASSISTANT REGISTRAR

ITAT Delhi Benches

Details	Date
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Date on which file goes to A.R.	
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