

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : E : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.1976/Del/2015
Assessment Year: 2011-12

Mahagun India Pvt. Ltd.,
C/o Prakash K. Prakash,
B-1, Sagar Apartments,
6, Tilak Marg,
New Delhi.

Vs. DCIT,
Central Circle-13,
New Delhi.

PAN: AAACM6572A

(Appellant)

(Respondent)

Assessee by	:	Shri Saubhagya Agarwal, Advocate Ms Suman Jain, CA
Revenue by	:	Ms Rinku Singh, Sr. DR
Date of Hearing	:	14.03.2019
Date of Pronouncement	:	28.03.2019

ORDER

PER R.K. PANDA, AM:

This appeal by the assessee is directed against the order dated 19th January, 2015 of the CIT(A)-26, New Delhi, relating to Assessment Year 2011-12.

2. The first issue raised by the assessee in the grounds of appeal relates to the part relief granted by the CIT(A) on the disallowance made by the Assessing Officer u/s 14A of the Act read with Rule 8D of IT Rules, 1962.

3. Facts of the case, in brief, are that the assessee is a private limited company engaged in real estate developing. The assessee filed its return of income declaring the total income at Rs.13,41,32,900/-. During the assessment proceedings, the Assessing Officer observed that the assessee has shown exempt income of Rs.16,83,923/- u/s 10(38) of the Act as per computation of income filed along with the income-tax return. The Assessing Officer asked the assessee to explain as to why the provisions of section 14A read with Rule 8D should not be applied. It was explained by the assessee that no amount of borrowed funds have been utilized for making investment generating tax free income. It was further contended that the assessee has not incurred any expenditure directly or indirectly for earning any tax free income.

4. However, the Assessing Officer was not satisfied with the explanation given by the assessee. According to him, had the company not made such investment, the funds could have been utilized for reducing its loan liability in the context of financial charges. Rejecting the various explanations given by the assessee and invoking the provisions of section 14A read with Rule 8D, the Assessing Officer made disallowance of Rs.51,00,215/- and accordingly made addition of the same to the total income of the assessee.

5. In appeal, the ld.CIT(A) directed the Assessing Officer to reduce the investment in share application money to the extent of Rs.1 crore from the figure of investment

yielding tax free income while computing the disallowance under Rule 8D(2). He, however, in principle upheld the action of the Assessing Officer.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. The ld. counsel for the assessee, at the outset, referred to the computation of income and submitted that the assessee has received only Rs.2,19,536/- as dividend income which has been claimed as exempt. Relying on various decisions, it was submitted that the disallowance u/s 14A could not exceed the actual dividend income received. He accordingly submitted that he has no objection if the same is restricted to the actual dividend income received.

8. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

9. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. A perusal of the computation of income filed by the assessee during the course of hearing shows that the actual dividend income received by the assessee during the year is only Rs.2,19,536/- The coordinate Benches of the Tribunal, following the decisions of the Hon'ble Delhi High Court in the case of *Joint Investments Pvt. Ltd. vs. CIT reported in 372 ITR 694 (Del)* and in the case of *CIT vs. Holcim (India) Pvt. Ltd. reported in 272 CTR 282 (Del)* are consistently taking the view that the disallowance u/s 14A read with Rule 8D cannot exceed the actual dividend income received by the assessee which is claimed as exempt. Since the

assessee in the instant case has received only an amount of Rs.2,19,536/- which has been claimed as exempt, therefore, we are of the considered opinion that the disallowance u/s 14A read with Rule 8D cannot exceed the actual exempt income received by the assessee during the year. We, therefore, set aside the order of the CIT(A) and direct the Assessing Officer to restrict the disallowance to the actual exempt income received by the assessee amounting to Rs.2,19,536/- subject to verification. The first issue raised by the assessee in the grounds of appeal is accordingly allowed.

10. The second issue raised by the assessee relates to *ad hoc* disallowance of 10% out of vehicle repair and maintenance and depreciation on motor car.

11. Facts of the case, in brief, are that the Assessing Officer, during the course of assessment proceedings, observed that the assessee has debited an amount of Rs.18,45,361/- and Rs.36,51,155/- on account of repair & maintenance expenses and depreciation on motor car, respectively. Rejecting the various explanations given by the assessee and observing that personal use of vehicles by the directors cannot be ruled out, the Assessing Officer disallowed an amount of Rs.5,49,651/- being 10% of the vehicle repair and maintenance expenses and depreciation on estimate basis. In appeal, the Id.CIT(A) upheld the action of the Assessing Officer.

12. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

13. The ld. counsel for the assessee, at the outset, submitted that identical issue has been decided in favour of the assessee by the Tribunal in the assessee's own case for assessment year 2012-13 vide ITA No.1977/Del/2015, order dated 16.07.2018. Therefore, this being a covered matter in favour of the assessee, the ground raised by the assessee should be allowed.

14. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

15. After hearing both the sides, we find the Assessing Officer, in the instant case, has disallowed 10% of the vehicle repair and maintenance expenses and depreciation on *ad hoc* basis on the ground that personal use of vehicles by the directors cannot be ruled out since the directors do not own any vehicles. We find, the ld.CIT(A) upheld the action of the Assessing Officer for which the assessee is in appeal before the Tribunal. We find an identical issue had come up before the Tribunal in assessee's own case in the subsequent year. The Tribunal vide ITA No.1977/Del/2015, order dated 16.07.2018 for A.Y. 2012-13 at para 6 of the order has decided the issue in favour of the assessee by observing as under:-

“6. Ground No. 3 of the appeal is with respect to disallowance of 10% of vehicle repair maintenance and depreciation expenditure. We have noted that the assessee is a company and, therefore, it cannot have any personal expenditure. Though the Directors do not own any vehicle and if the same is used by them for their personal purposes, same is chargeable to tax in the hands of those ITA. 1977 (Del) of 2015. Mahagun India P. Ltd. 5 Directors under the head 'salary'. The disallowance made by the learned Assessing Officer is an ad-hoc disallowance without pointing out any instances or use of those vehicles for personal purposes of the directors. The provisions of section 37(1) bars the allowance of any expenditure which is personal expenses of the assessee. In the present case, the assessee is a company which does not have any personal identity. Furthermore, with respect to the disallowance of the depreciation on

motor car, it could not be said by the learned Assessing Officer that same are not used for the purposes of the business of the assessee. In view of this, we reverse the finding of the lower authorities in disallowing the vehicle expenditure. Accordingly, ground No. 3 of the appeal is allowed.”

16. Since the issue has already been decided by the Tribunal in assessee’s own case in the subsequent year, therefore, in absence of any distinguishable feature brought before us by the Revenue, we set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition. The second issue raised by the assessee is accordingly allowed.

17. In the result, the appeal filed by the assessee is allowed.

Pronounced in the open court on 28.03.2019.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Dated: 28th March, 2019

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Copy forwarded to

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

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Asstt. Registrar, ITAT, New Delhi