



M/s. Tolani Shipping Company Limited
Assessment Years: 2011-12 & 2012-13

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.4136/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2011-12)
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आयकर अपील सं./ I.T.A. No.4137/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Tolani Shipping Co. Ltd. 10-A, Bakhtawar Nariman Point Mumbai-400021.	बनाम/ Vs.	DCIT–Circle-5(3)(2) Room No.518, 5 th Floor Aaykar Bhavan, M.K. Road Mumbai-400 020.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AACT-4127-C		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ I.T.A. No.4743/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2011-12)
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आयकर अपील सं./ I.T.A. No.4742/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT–Circle-5(3)(2) Room No.518, 5 th Floor Aaykar Bhavan, M.K. Road Mumbai-400 020.	बनाम/ Vs.	M/s. Tolani Shipping Co. Ltd. 10-A, Bakhtawar Nariman Point Mumbai-400021.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AACT-4127-C		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Rajiv Khandelwal-Ld. AR
Revenue by	:	Shri Amit Pratap Singh-Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	10/01/2010
घोषणा की तारीख / Date of Pronouncement	:	13/03/2020



आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 The captioned cross-appeals for Assessment Years (AY) 2011-12 and 2012-13 contest common order of Ld. Commissioner of Income Tax (Appeals)-10 [in short CIT(A)], Mumbai, Appeal Nos. CIT(A)-10/DCIT-5(3)(2)/278 & 279/2015-16 dated 10/04/2017. It is admitted position that adjudication in any one year shall apply to other years also. First, we take up cross-appeals for AY 2011-12.

Cross-Appeals for AY 2011-12

1.2 The grounds raised by the assessee read as under: -

1. **DISALLOWANCE UNDER RULE 8D(2)(iii) READ WITH SECTION 14A**

The Learned CIT(A) has erred in confirming addition of the sum of Rs.97,26,004/- under Rule 8D(2)(iii) read with Section 14A overlooking that Assessee is covered by Tonnage Tax Scheme where Shipping Business Income is computed on the basis of deemed income under Chapter XIIG and no expense has been claimed nor allowed while computing TONNAGE TAX INCOME as BUSINESS INCOME of shipping business.

2. The Learned CIT(A) erred in not following the judgement of Hon'ble MUMBAI ITAT in the case of VARUN SHIPPING CO. LTD. VS. ADDL. CIT (2012) 17 ITR (TRIB.) 587 MUMBAI 'F' BENCH wherein it is held that "if at all the Assessee has claimed any such expenditure in computation of profit of business of shipping the same are to be taken as disallowed when the income of the said business is finally computed in accordance with the provisions of Chapter XII-G and no separate disallowance on account of such expenditure u/s 14A can be made " (Page 592 Para 7 last 8 lines) and the judgement of jurisdictional ITAT is binding on lower authorities till the judgement is overruled by higher authorities, and, not following the same, amounts to CONTEMPT OF THE HON'BLE ITAT.

3. The Learned CIT(A) has erred in making addition of Rs.97,26,004/- applying provisions of Section 14A overlooking that no expense has been claimed as a deduction while computing Taxable Income under any heads of Income and therefore when no expense has been claimed as deduction under any heads of Income, the question of disallowing the expenses u/s.14A does not arise.

4. The Learned CIT(A) erred in not following the judgement of Hon'ble MUMBAI ITAT in the case of TAG OFFSHORE LTD. VS. ASST. CIT (2014) 49 TAXMANN.COM 209 wherein it is held that "no disallowance under section 14A is warranted in his case when the assessee has admittedly not claimed any expenditure, towards taxable income i.e. it has not claimed any deduction of expenditure debited in the Profit & Loss account while computing the total income " (Page 7 Para 13 last 5 lines) and the judgement of jurisdictional ITAT is binding on lower authorities till the judgement is overruled by higher authorities, and, not following the same, amounts to CONTEMPT OF THE HON'BLE ITAT.

5. The Learned CIT(A) erred in confirming addition of Rs.97,26,004/- in Taxable Income u/s.14A overlooking the PROVISIONS of Section 14A(1) which provides that for the



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purposes of computing Total Income under Chapter IV no deduction shall be allowed in respect of expenditure incurred by the Assessee in relation to income which does not form part of the Total Income under this Act OVERLOOKING that CHAPTER IV {Section 14 to 59} is not applicable to Assessee Company which is a TONNAGE TAX COMPANY and therefore income is COMPUTED UNDER CHAPTER XIIG (Section 115V to 115VZB) and hence question of disallowance of EXPENDITURE u/s.14A under Chapter IV does not arise.

6. The Learned CIT(A) erred in confirming the addition u/s.14A to the TONNAGE TAX INCOME computed by Appellant in Return of Income under Chapter XIIG of the Act overlooking that TONNAGE TAX INCOME is computed on deemed income basis on the TONNAGE CAPACITY of the SHIP irrespective of the shipping income earned or the shipping expenditure incurred and therefore while making computation of Tonnage Income no expenses have been claimed and therefore the question of disallowance of expenditure u/s.14A (Chapter IV) does not arise.

7. ALTERNATIVELY, without prejudice, the Learned CIT(A) erred in considering investments yielding taxable income i.e. (a) Debentures (Unquoted) of Rs.5,000/- (b) investment in Immovable Properties of Rs.2,06,78,520/- (c) investment in Mutual Funds (Growth) of Rs. 1,10,45,954/- for the purpose of computation of disallowance u/s.14A. (Ref: Hon'ble Mumbai ITAT judgement in the case of Manugraph India Ltd. vs. DCIT (ITA No.4761/Mum / 2013 dated 25.3.2015 and Delhi High Court in the case of ACB India Pvt. Ltd. vs. ACIT, ITA 615/2014 dated 24.3.2015 have held that while computing the "average value of investment" for the purpose of for Section 14A & Rule 8D(2)(iii), only investments yielding non-taxable income have to be considered and not all investments).

8. ALTERNATIVELY, without prejudice, the Learned CIT(A) erred in considering investment in shares of SUBSIDIARY companies amounting to Rs.25,85,83,446/- which made by the Appellant as strategic investments and accordingly no expenditure was incurred for the same and therefore the same cannot should not have been included while computing disallowance of expenditure @ 0.5% of the average cost of investment under Rule 8D (Ref: Mumbai ITAT in the case of J.M. Financial Ltd. – ITA No. 4521/Mumbai/2012 dated 26.3.2014).

9. The Learned CIT(A) erred in confirming addition of Rs.97,26,0047/- being disallowance u/s.14A while computing Book Profit u/s.115JB.

10. The Learned CIT(A) has erred in not considering the claim of the Appellant in the revised statement of income filed vide letter dated 23.2.2015 claiming that INCOME FROM HOUSE PROPERTY of Rs.1,66,400/- on account of rent received from Managing Director should be considered as shipping business income and cannot be taxed separately as Income from House Property u/s.22 of the Act.

11. The Learned CIT(A) has erred in not considering the claim of the Appellant in the revised statement of income vide letter dated 23.2.2015 that interest received on INCOME-TAX REFUND u/s.244A amounting to Rs.2,26,98,013/- for A.Y.2008-09 allowed vide Intimation Order dated 17.3.2010 passed u/s. 143(1) and rectification Order u/s.154 dated 10.5.2010 which were later withdrawn vide Assessment Order dated 31.1.2012 passed u/s.143(3) and therefore interest of Rs.2,26,98,013/- cannot be considered as taxable income under Income from Other Sources.

12. The Learned CIT(A) has erred in not considering the claim of the Appellant in the revised statement of income vide letter dated 23.2.2015 that total interest of Rs.3,96,34,147/- taken as Interest Income included tax-free interest income of Rs.13,70,000/- received from 6.85% IIFCL Tax-free Bonds which is exempt u/s.10(15)(iv)(h) of the Income-tax Act, 1961 and therefore the same is not taxable.

13. The Learned CIT(A) has erred in not considering the claim of the Appellant in the revised statement of total income vide letter dated 23.2.2015 that interest income of Rs.24,505/- received from Fixed Deposits placed with Corporation Bank on account of Bank Guarantees provided to Custom Authorities in connection with shipping business and



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therefore, the same cannot be included as Taxable income under Income from Other Sources.

14. The Learned CIT(A) has erred in not considering the claim of the Appellant in the revised statement of total income vide letter dated 23.2.2015 that interest income of Rs.5,2287/- received from Fixed Deposits placed with ICICI Bank (on account of fractional payments to be made to shareholders of Tolani Bulk Carriers Ltd. due to restriction of Companies Act w.e.f. 1.7.2003, pursuant to the scheme of demerger approved by Hon'ble Bombay High Court) and since the Fixed deposits placed are on account of business expediency, the interest income earned on account of such Fixed Deposits is income from shipping business and therefore the same cannot be included as Taxable income under Income from Other Sources.

15. The Learned CIT(A) has erred in not considering the claim of the Appellant in the revised statement of total income vide letter dated 23.2.2015 that interest of Rs.3,68,234/- on account of loans advanced to staff for purchase of house as business income as held by Hon'ble Mumbai ITAT in the case of Shipping Corp. of India vs. Addl. CIT (2012) 20 ITR (Trib.) 332 (Para 10 Page 338 & Para 32 and 33 of Page 349).

16. The Learned CIT(A) has erred in not considering the claim of the Appellant in the revised statement of total income vide letter dated 23.2.2015 that interest of Rs.55,29,200/- (on account of delayed payment by M/s. SURYA PAPER UDYOG to TOLANI BULK CARRIERS LTD., the Company whose shipping division is merged with the Assessee Company) is business income and the same cannot be included as taxable income under Income from Other Sources.

17. The Learned CIT(A) has erred in not considering the claim of the Appellant in the revised statement of total income that letter dated 23.2.2015 that bad debt of Rs.34,73,324/- written off in earlier years as business expenditure which is received during the Assessment Year 2011-12 under consideration is shipping business income and the same cannot be included as taxable income under Income from Other Sources.

18. The Learned CIT(A) has erred in not considering the claim of the Appellant in the revised statement of total income that letter dated 23.2.2015 that the amount received on account of sale of Old Magazines and Old Newspapers amounting to Rs.2,377/- is business income and the same cannot be included as taxable income under Income from Other Sources.

1.3 The assessee, vide letter dated 03/10/2019 has filed additional ground of appeal and pleaded for admission of the same in terms of decision of Hon'ble Supreme Court in **National Thermal Power Corporation (229 ITR 383)**. The said ground read as under: -

The Deputy Commissioner of Income-tax, Circle - 5(3)(2) (hereinafter referred to as the Assessing Officer) erred in applying the provisions of section 115JB to the incomes mentioned below -

Sr. No.	Particulars	Amount (in Rs.)	Grounds of Appeal
1.	Income from house property	1,66,400	Ground No. 10
2.	Interest received on Tax-free bonds	13,70,000	Ground No. 12
3.	Interest on Fixed Deposit (Rs 24,505 + Rs 5,228)	29,733	Ground No. 13 and 14
4.	Interest on staff loans	3,68,234	Ground No. 15



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5.	Interest on delayed payment of bill discounting	55,29,200	Ground No. 16
6.	Write back of bad debts	34,73,324	Ground No. 17
7.	Miscellaneous receipts	2,377	Ground No. 18

The appellants contend that on the facts and circumstances of case and in law, the Assessing Officer ought not to have applied the provisions of section 115JB to the incomes mentioned in the original grounds of appeal nos. 10 to 18 inasmuch as section 115VO specifically excludes the applicability of provisions of section 115JB in respect of incomes covered under section 115V-I(1)

Since the additional grounds were connected with main grounds of appeal, the same were taken on record in terms of cited decision of Hon'ble Apex Court.

1.4 The grounds raised by the revenue read as under: -

Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance made by the AO under limb (ii) of Rule 8D for AY:2012-13, without considering the fact that Ld. Dispute Resolution Panel has confirmed the disallowance made by the AO under 14A read with rule 8D for AY :2010-11."

As evident, the sole subject matter of revenue's appeal is disallowance u/s 14A.

1.5 The Ld. Authorized Representative for Assessee (AR), at the outset, placed on record the decision of this Tribunal in assessee's case for AYs 2003-04, 2005-06 to 2010-11, ITA Nos.2582/Mum/2010 & ors., common order dated 28/02/2019 to submit that substantial issues have already been adjudicated by the Tribunal and therefore, same view may be taken in the matter. We have carefully perused the same. Our adjudication to the subject matter of cross-appeals would be as given in succeeding paragraphs.

2.1 Briefly stated, the assessee being resident corporate assessee stated to be engaged in shipping business was assessed for year under consideration u/s 143(3) on 23/03/2015 wherein the income of the



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assessee was determined at Rs.821.19 Lacs after sole disallowance u/s 14A for Rs.206.94 Lacs as against returned income of Rs.614.25 Lacs filed by the assessee on 30/11/2011. The said disallowance u/s. 14A was added back while computing Book Profits u/s. 115JB also. The assessment order records a finding that there was no material change in the business of the assessee as compared to earlier years. The assessee has exercised option for *Tonnage Tax Scheme* in accordance with provisions of Sec. 115VP(1) with effect from AY 2005-06.

2.2 During assessment proceedings, it transpired that assessee earned exempt dividend income of Rs.1341.71 Lacs which led Ld.AO to make disallowance u/s 14A. The assessee submitted that the provisions of Sec. 14A were not applicable and the investments were made out of own funds and not out of loan taken by the assessee company. However, disregarding the same, Ld. AO, applying Rule 8D, computed aggregate disallowance of Rs.206.94 Lacs which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.109.68 Lacs and expense disallowance u/r 8D(2)(iii) for Rs.97.26 Lacs.

2.3 During the course of assessment proceedings, the assessee sought to revise its total income at Rs.278.43 Lacs primarily in view of the fact that the assessee was covered by the provision of *Tonnage Tax Scheme* under Chapter XIIG and its income was computed on deemed basis. Since income from House Property and Other Sources arose from shipping business, the same was required to be excluded while computing income under normal provisions as well as while computing Book Profits u/s 115JB. However, Ld. AO refused to consider the same in view of the decision of Hon'ble Apex Court rendered in **Goetz India**



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Ltd. V/s CIT 284 ITR 323 which mandate the assessee to claim deduction by filing a revised return only.

3.1 Aggrieved, the assessee contested the action of Ld.AO before Ld. CIT(A) vide impugned order dated 10/04/2017 which is common order for AYs 2011-12 & 2012-13. Regarding submissions that no disallowance could be made u/s 14A when the income was computed on deemed basis in accordance with Chapter-XII-G, it was noted that the income earned by the assessee fall under 4 distinct heads viz. income from shipping business, income from capital gains, income from house property and income from other sources. Since dividend received by the assessee would have no relevant with shipping business activity of the assessee and therefore the decision of this Tribunal rendered in **Varun Shipping Co. Ltd. (17 ITR-Trib. 587)** as cited by the assessee would not be applicable.

3.2 Proceeding further, noting the ratio of Hon'ble Bombay High Court rendered in **HDFC Bank Ltd. 383 ITR 529** which raises presumption in assessee's favor that the investment may be presumed to be sourced from own capital, it was noted that own funds of Rs.4115.09 Lacs far exceeded investments of Rs.1336.71 Lacs held by the assessee and therefore, interest disallowance u/r 8D(2)(ii) was not justified. However, disallowance u/r 8D(2)(iii) was confirmed.

3.3 Regarding assessee's plea that income from house property and income from other sources was to be considered as business income, the same was also rejected by observing that such claims could not be entertained except by way of revising return of income.



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3.4 The aforesaid adjudication by Ld. CIT(A) has given rise to cross-appeals before us.

3.5 We have carefully perused the material on record and carefully considered the arguments advanced by both the representatives.

4. So far as the disallowance u/s 14A is concerned, we find that this issue has already been adjudicated by the Tribunal in assessee's own case for various years vide ITA Nos.2582/Mum/2010 & ors., common order dated 28/02/2019. The co-ordinate bench, relying upon the decisions of this Tribunal in **Varun Shipping Co. Ltd.(17 ITR-Trib. 587)**, **Tag Offshore Ltd. (49 Taxmann.com 209)**, **Raj Shipping Agencies Ltd. (38 Taxmann.com 345)**, at para 4.5 of the order, held that once the department has allowed the option to the assessee under Clause (i) of sub-section (3) of Section 115VP, the disallowance u/s 14A would not be attracted. Respectfully following the same, taking the same view, we delete the disallowance u/s 14A as sustained by Ld. CIT(A). Consequentially, the adjustment of the same while computing Book Profits u/s 115JB would not be arise. Ground Nos. 1 to 6 & 9 of assessee's appeal stand allowed which makes alternative ground nos.7 & 8 *infructuous*. Since this is the only ground of revenue's appeal, the appeal stands dismissed.

5. In Ground No.10, the assessee has pleaded that Income from House Property is from core activity of the assessee and therefore, the same should be considered as business income from core activities. In Ground No.11, the assessee has sought exclusion of interest on Income Tax refund for Rs.226.98 Lacs which has later been withdrawn in regular assessment. In Ground No.12, the assessee has pleaded that interest



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income includes tax free income of Rs.13.70 Lacs and therefore, the same should be excluded. In Ground No 13 & 14, the assessee has pleaded that interest on certain Bank fixed deposits should be considered as business income. In ground Nos.15 & 16, the assessee has pleaded that interest on staff loan and interest on delayed payment should be considered as business income. In ground no. 17, the assessee is claiming that bad debts recovered should be considered as business income. In Ground No. 18, the assessee has pleaded that sale of old magazines should be considered as business income. In additional grounds of appeal, the assessee is seeking exclusion of all the above stated items while computing book profits u/s 115JB. So far as all these grounds are concerned, we find that lower authorities refused to admit the assessee's revised computation of income in terms of ratio of Hon'ble Apex Court rendered in **Goetz India Ltd. V/s CIT 284 ITR 323** which mandate the assessee to claim deduction by filing a revised return only. No findings on merits have been rendered by lower authorities on any of these issues. It is settled law that there is no bar on the appellate authorities to entertain the same. Further, equity demands that correct income of the assessee be ascertained. Therefore, without delving much deeper, keeping all the issues open, we direct Ld.AO to consider all these claims and remit the matter back to the file of Ld. AO. The Ld. AO is directed to adjudicate the same in the light of the submissions made by the assessee that the aforesaid items would constitute business income for the assessee and secondly, these arises out of shipping business being carried out by the assessee. These grounds stand allowed for statistical purposes.



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6. The revenue's appeal stands dismissed whereas the assessee's appeal stands partly allowed.

Cross-Appeals for AY 2012-13

7. Facts are pari-materia the same in this year. The assessment was similarly framed u/s 143(3) on 23/03/2015 wherein the assessee was saddled with disallowance u/s 14A for Rs.141.89 Lacs. The Ld. CIT(A) deleted interest disallowance but confirmed expense disallowance. The revised return filed by the assessee was ignored on the same reasoning. Aggrieved, the assessee as well as revenue is in further appeal before us.

8. Facts and circumstances being identical, our adjudication as for AY 2011-12 shall *mutatis mutandis* apply to this year also. Accordingly, the revenue's appeal stands dismissed. Ground Nos. 1 to 6 & 9 of assessee's appeal stand allowed which makes alternative ground nos.7 & 8 *infructuous*. Since this is the only ground of revenue's appeal, the appeal stands dismissed. The assessee's remaining grounds as well as additional ground stand restored back to the file of Ld.AO on similar lines. The appeal stands partly allowed.

Conclusion

9. The assessee's appeal stands partly allowed for both the years whereas the revenue's appeals stand dismissed.

Order pronounced in the open court on 13th March, 2020

Sd/-

(C.N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 13/03/2020
Sr.PS, Jaisy Varghese



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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

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**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**