**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' MUMBAI**

**BEFORE: SHRI SAKTIJIT DEY, JM**
**&**
**SHRI M.BALAGANESH, AM**

**ITA No.4224/Mum/2012**
(**Assessment Year :2008-09**)
&
**ITA No.3134/Mum/2013**
(**Assessment Year :2009-10**)

| | | |
|---|---|---|
| M/s. Bajaj Holdings & Investment Ltd.,<br>Bajaj Bhavan<br>226, Nariman Point<br>Mumbai – 400 001 | Vs. | DCIT / Asst. CIT - Large Taxpayer Unit<br>Mumbai<br>28th Large Tax Payer Unit,<br>28th Floor, Centre-1<br>World Trade Centre,<br>Cuffe Parade,<br>Mumbai-400006 |
| **PAN/GIR No. AAACB3370K** | | |
| **(Appellant**) | .. | **(Respondent**) |

| | |
|---|---|
| Assessee by | Shri P.J. Pardiwala / Shri Sukh Sagar Syal |
| Revenue by | Shri Tharian Oommen |
| **Date of Hearing** | **03/05/2021** |
| **Date of Pronouncement** | **12/05/2021** |
| | |

## आदेश / O R D E R

***PER M.BALAGANESH (A.M.):***

These appeals in ITA Nos.4224/Mum/2012 & 3134/Mum/2013 for A.Yrs.2008-09 & 2009-10 arise out of the order by the ld. Commissioner of Income Tax (Appeals)-24, Mumbai in appeal No. CIT(A)-24/LTU/Dy.CIT.LTU/81/2010-11 & CIT(A)-LTU/ACIT.LTU/210/2011-12 dated 02/03/2012 & 07/11/2012 respectively (ld. CIT(A) in short) against the order of assessment passed u/s.143(3)of the Income Tax Act, 1961

(hereinafter referred to as Act) dated 31/12/2010 & 12/12/2011 respectively by the ld. Dy. Commissioner of Income Tax/Asst. Commissioner of Income Tax, Large Taxpayer Unit, Mumbai (hereinafter referred to as ld. AO).

**First let us take up ITA No.4224/Mum/2012 for A.Y.2008-09**

2. The ground Nos. 1(a) to 1(e) raised by the assessee are with regard to disallowance made u/s.14A of the Act r.w.r. 8D(2) of the Rules.

2.1. We have heard rival submissions and perused the materials available on record. We find that assessee is primarily an investment company with focus on new business opportunities. Vide order dated 18/12/2007 of Hon'ble Bombay High Court, the assessee company, BHIL in short (earlier known as M/s. Bajaj Auto Ltd., (BAL)) was demerged with effect from closing hours of 31/03/2007 (the appointed date). As per the scheme of demerger, approved by Hon'ble High Court, the manufacturing undertaking was demerged into Bajaj Holding & Investment Ltd (Now known as Bajaj Auto Ltd), the strategic business undertaking (including financial services & wind mills) was demerged into Bajaj Finserve Ltd. The Erstwhile Bajaj Auto Ltd i.e. the present assessee company, was renamed as Bajaj Holdings & Investment Ltd and it retained the investment activities.

2.2. We find that during the relevant assessment year, the assessee had earned Rs.51,85,31,679/- as dividend from domestic companies and Rs.1,50,49,575/- as dividend from mutual funds which was claimed as exempt u/s.10(34) and 10(35) of the Act respectively. We find that assessee had made suo-moto disallowance of Rs.10 lakhs u/s.14A of the Act towards expenses incurred for the purpose of earning aforesaid

exempt income. We find that the ld. AO ignored the workings made by the assessee and directly proceeded to invoke the computation mechanism provided in Rule 8D(2) of the Rules for working out the disallowance as under:-

| | | | |
|---|---|---|---|
| i) | Disallowance under Rule 8D(2)(i) | - | Rs. 10,00,000/- |
| ii) | Disallowance under Rule 8D(2)(iii) | - | Rs.9,98,23,459/- |

2.3. The ld. AO added the sum of Rs.9,98,23,459/- both under normal provisions of the Act as well as in computation of book profits u/s.115JB of the Act.

2.4. Before the ld. CIT(A), we find that the assessee pleaded that out of total expenditure debited to profit and loss account amounting to Rs.5,75,97,446/-, an amount of Rs.2,30,81,533/- was not claimed as deduction in the return of income. Further, the expenditure not related with investment activities such as Auditor's remuneration, Annual report printing and CD expenses, listing fees etc., were excluded since such expenditure were not related to earning of exempt income and balance expenditure of Rs.60,54,154/- was apportioned in the ratio of exempt income to total income. The assessee pleaded that the ld. AO had not recorded any satisfaction in terms of Section 14A(2) r.w.r. 8D(1) of the Rules as to how suomoto disallowance worked out by the assessee is incorrect. It was pleaded that the ld. AO has only remarked that percentage of investment in shares and mutual funds to total assets is 39.57% and that the percentage of income from dividend, income from mutual funds and profit on sale of investments to the total income credited to profit and loss account is 74.90%. Based on the above, the ld. AO had concluded that disallowance made by the assessee to the extent

of Rs.10 lakhs out of the total expenses of Rs.5.75 Crores cannot be accepted. It was also pleaded before the ld. CIT(A) that the total disallowance u/s.14A of the Act made by the ld. AO was much more than even the expenditure claimed as deduction in the return of income.

2.5. We find that the ld. CIT(A) had directed the ld. AO to consider only those investments which have actually yielded exempt income and also observed that since the expenditure claimed by the assessee is only Rs.3,89,63,187/- in the return of income, the disallowance u/s.14A of the Act r.w.r.8D(2) of the rules should be restricted to Rs.3,89,63,187/-. Aggrieved, the assessee alone is in appeal before us.

2.6. We find that the assessee had made suo-moto disallowance of Rs.10 lakhs in the return of income u/s.14A of the Act. The basis of working out the said disallowance is as under:-

| **Statement showing disallowance u/s.14A on a reasonable basis** | | **Amount (Rs.)** |
|---|---|---|
| Total Expenditure | | 57,597,446.38 |
| Less Expenditure not connected with investment activity | | |
| Auditors Remuneration | 1,300,000.00 | |
| KPMG International audit fees and expenses | 1,009,965.00 | |
| Other consultancy and certification fees | 190,779.00 | |
| Demerger Expenses Account | 17,368,276.90 | |
| Annual report printing and CD expenses | 13,161,796.02 | |
| Advt- financial results | 8,829,766.00 | |
| Shareholders and board meeting expenses | 114,838.12 | |

| | | |
|---|---|---|
| Listing fees | 176,900.00 | |
| Charges paid for Maintenance of Bajaj Bhawan i.e Air Conditioning, Service Charges Board Room | 1,750,372.00 | |
| Loss on Sale of Assets | 68,207.47 | |
| Lease hold land write off | 191,883.00 | |
| 50% Salary of CEO & Company Secretary | 3,998,407.17 | |
| Amortisation disallowed in the return | 3,382,101.09 | |
| | | 51,543,291.77[ |
| | Balance Expenditure | 6,054,154.61 |
| Income claimed Exempt | | 533,581,254.32 |
| Total Income | | 3,553,423,222.90 |
| | | 909,090.53 |
| | SAY | 1,000,000.00 |

2.7. We find from the profit and loss account of the assessee that assessee, being an investment company had earned income as under:-

| | **Rs.in Million** | **Rs.in Million** |
|---|---|---|
| **Income from Operations** | | |
| Dividends | | |
| From Trade Investments | - | |
| Other | 518.5 | |
| Interest(Gross-Tax Deducted Rs.27.8 million) | | 518.5 |
| On Government Securities | 580.6 | |
| On Debentures and Bonds | 239.6 | |
| On Loans | - | |
| Other | 1.7 | |
| | 821.9 | |
| Less: Amortisation of | 3.4 | |

| | | |
|---|---|---|
| premium /discount on acquisition of fixed income securities | | |
| | | 818.5 |
| Income From Units of Mutual Funds | | 15.0 |
| Leasing Business | | |
| Lease Rent (Rs.1,000-Previous Year Rs.3,000) | | - |
| Profit on Sale of Investments, net* | | 2,128.0 |
| Surplus on redemption of Securities* | | 26.1 |
| Provision for Diminution in value of investments written back, net | | 44.8 |
| **Other Income** | | |
| **Rent** | | 2.4 |
| | **Total** | **3,553.3** |

*Including on Current Investments Rs.163.3 million

2.8. From the above, it could be seen that exempt income earned by the assessee is only Rs.51.85 Crores and taxable income is Rs.303.48 Crores, hence it would be totally unfair to disallow the entire expenses debited in the profit and loss account as was done by the ld CIT(A). We find that assessee had already disallowed a sum of Rs.185,36,813/- in the return of income out of the total expenditure to the extent of Rs.5,75,97,446/- in the profit and loss account. Certainly, the remaining expenditure of Rs.3,89,63,187/- would be attributed for the purpose of earning taxable income of Rs.303.48 Crores as well as exempt income of Rs 51.85 crores. Hence it would be just and fair to identify the specific expenditure that had been attributed for the purpose of earning exempt income by some rational basis. Accordingly, we summarily disregard the disallowance made by the ld. CIT(A) in the instant case. As seen from the aforesaid table of incurrence of expenditure, the total suomoto

disallowance made by the assessee was Rs.10 lakhs. But we find that the assessee had left out certain common expenses which, in our considered opinion, should be included for the purpose of working out the disallowance. These common expenses are as under:-

| Sr.No. | Particulars | Amount (in Rs.) |
|---|---|---|
| A | Auditors Remuneration | 1,300,000.00 |
| B | KPMG International audit fees and expenses | 1,009,965.00 |
| C | Other consultancy and certification fees | 190,779.00 |
| D | Annual report printing and CD expenses | 13,161,796.02 |
| E | Shareholders and board meeting expenses | 114,838.12 |
| F | Listing fees | 176,900.00 |

2.9. These expenses should also be considered in the total expenditure considered by the assessee for working out the disallowance in the ratio of exempt income to total income. We hold that the computation mechanism provided in Rule 8D(2) of the Rules results in absurdity in the peculiar facts of the instant case. Accordingly, we direct the ld. AO to re-compute the disallowance by taking suo-moto disallowance made by the assessee and include the aforesaid six expenses (Sr. Nos. A to F above) in the ratio of exempt income to total income and workout the disallowance u/s.14A of the Act accordingly under normal provisions of the Act. Accordingly, the ground Nos. 1(a) to 1(e) raised by the assessee are partly allowed for statistical purposes.

3. The ground No.2 raised by the assessee is challenging the chargeability of interest u/s.234D of the Act.

3.1. We have heard rival submissions and perused the materials available on record. We find that return of income for the A.Y.2008-09 was filed by the assessee company on 30/09/2006. This return was duly processed u/s.143(1) of the Act determining tax payable at Rs.31,59,99,089/- on 24/07/2009. Later, this intimation was sought to be rectified by order passed u/s.154 of the Act on 11/12/2009 by the ld. AO wherein the ld. AO determined refund of Rs.2,23,92,800/-. This refund was subsequently withdrawn when order was passed u/s. 143(3) of the Act by the ld. AO as ultimately pursuant to completion of scrutiny assessment had resulted in tax payable. Consequently, interest u/s.234D of the Act was charged. We find that the ld. AR before us argued that interest u/s.234D of the Act could be charged only when refund has been granted to the assessee u/s.143(1) of the Act. In the instant case, he argued that refund was not granted u/s.143(1) of the Act but instead granted vide order u/s.154 of the Act dated 11/12/2009. Accordingly, it was the submission of the ld. AR that the charging provision u/s.234D of the Act itself fails and hence, cannot be levied. We are unable to accept to this proposition made by the ld. AR for the reason that the section 154 order dated 11/12/2009 was only rectification of intimation u/s.143(1) of the Act. Hence, effectively refund is granted to the assessee only u/s. 143(1). Hence, we hold that interest u/s.234D of the Act is leviable. In our opinion, the order passed u/s.143(1) and 154 of the Act are to be read together. Accordingly, the ground No.2 raised by the assessee is dismissed.

4. We find that assessee has raised an additional ground of appeal vide letter dated 09/08/2017 and 04/10/2018. All these additional grounds were never raised before lower authorities and are raised for the first time before us. The facts relevant for adjudication of these additional

grounds are already on record. Moreover these are legal issues and hence, they are admitted by us and taken up for adjudication.

5. The first additional ground raised by the assessee vide letter dated 09/08/2017 is with regard to disallowance u/s.14A of the Act r.w.r. 8D(2) of the Rules while computing book profits u/s.115JB of the Act.

5.1. We have heard rival submissions and perused the materials available on record. We find that the Special Bench of Delhi Tribunal in the case of ACIT vs. Vireet Investments reported in 165 ITD 27 had held that the computation mechanism provided under Rule 8D(2) of the Rules cannot be made applicable for working out the disallowance under Clause(f) of Explanation 1 to Section 115JB (2) of the Act. However, the actual expenses incurred thereon which are attributable to earning of exempt income need to be disallowed under the same clause (f). While deciding the issue of disallowance u/s.14A of the Act under normal provisions of the Act, we have already given certain directions to the ld. AO to re-compute the disallowance based on actual expenses. Since, we have tinkered with the identification of actual expenses incurred by the assessee for the purpose of earning exempt income by including few more expenses, while giving directions to ld. AO to recompute disallowance under normal provisions of the Act, the same disallowance so re-computed should be made under Clause(f) of Explanation 1 to Section 115JB(2) of the Act. Accordingly, the additional ground No.1 raised by the assessee vide letter dated 09/08/2017 is partly allowed for statistical purposes.

6. The additional ground No.2 raised by the assessee vide letter dated 09/08/2017 is with regard to claim of deduction u/s.35DD of the Act.

6.1. We have heard rival submissions and perused the materials available on record. We find that the ld. AR argued that demerger took in A.Y.2008-09 but expenditure on demerger took place in A.Y.2009-10. He argued that since the 'appointed date' is always given retrospective effect by the Hon'ble High Court while approving the scheme of demerger, the expenses though incurred in A.Y.2009-10 would be eligible for deduction from the year of demerger on amortization basis @20% in each year. He also placed reliance on the decision of the Co-ordinate Bench of this Tribunal in the case of Excel Industries Ltd., vs. DCIT in ITA No.2825, 2841/Mum/2007, ITA No.532,671 & 1622/Mum/2009 dated 15/06/2012 in support of his argument. We find that this decision is directly applicable in favour of the assessee, but the quantum of allowability of expenses u/s.35DD need to be determined factually by the ld. AO. Infact, the ld. CIT(A) in para 2.3.2 of his order had also recorded the fact that assessee had incurred expenditure towards demerger to the tune of Rs.148,94,622/- and had disallowed the same voluntarily in the return of income. Hence, this goes to prove that facts are already in record. Hence, with the consent of both the parties, we deem it fit to remand this issue to the file of the ld. AO to determine the quantum of expenses eligible for deduction u/s.35DD of the Act in the year under consideration. At the cost of repetition, we hold in principle that assessee is eligible for deduction u/s.35DD of the Act commencing from the A.Y.2008-09 for a total period of five assessment years. Accordingly, the additional ground No.2 raised by the assessee vide letter dated 09/08/2017 is allowed for statistical purposes.

7. The additional ground No.3 raised by the assessee vide letter dated 09/08/2017 was stated to be not pressed by the ld. AR at the time of

hearing. The same is reckoned as a statement made from the Bar and accordingly dismissed as not pressed.

8. The additional ground raised by the assessee vide letter dated 04/10/2018 is with regard to claim of deduction in respect of education cess paid by the assessee.

8.1. We have heard rival submissions and perused the materials available on record. We find that this issue is no longer res-integra in view of the decision of the Hon'ble Jurisdictional High Court in the case of Sesa-Goa Ltd., vs. JCIT reported in 117 Taxmann.com 96 dated 28/02/2020 wherein, the Hon'ble Jurisdictional High Court had allowed deduction towards payment of education cess to the assessee. Respectfully following the same, the additional ground raised by the assessee vide letter dated 04/10/2018 is allowed.

9. In the result, the appeal of the assessee for A.Y.2008-09 in ITA No.4224/Mum/2012 is partly allowed for statistical purposes.

**ITA No.3134/Mum/2013 (A.Y.2009-10)**

10. At the outset we find that there is a delay of 30 days in filing of appeal by the assessee. The condonation application together with the affidavit stating the reasons for the delay is on record and on going through the same, we are inclined to condone the delay and admit the appeal for adjudication.

11. The ground Nos.1-8 raised by the assessee are with regard to disallowance made u/s.14A of the Act r.w.Rule 8D(2) of the Rules under normal provisions of the Act, which are identical to Ground Nos 1(a) to

1(e ) already adjudicated by us hereinabove for A.Y.2008-09. The decision rendered by us for A.Y.2008-09 shall apply with equal force for A.Y.2009-10 also except with variance in figures.

12. We find that assessee has raised additional grounds of appeal. All these additional grounds were never raised before lower authorities and are raised for the first time before us. The facts relevant for adjudication of these additional grounds are already on record. Moreover, these are legal issues and hence, they are admitted by us and taken up for adjudication.

13. The first additional ground raised by the assessee vide letter dated 09/08/2017 is with regard to disallowance made under rule 8D(2) of the Rules while computing book profits u/s.115JB of the Act. This is similar to additional ground No.1 raised by the assessee for A.Y.2008-09 and the decision rendered for A.Y.2008-09 shall apply with equal force for this assessment year also except with variance in figures.

14. The additional ground No.2 raised by the assessee vide letter dated 09/08/2017 is with regard to taxability of interest on refund u/s.244A of the Act.

14.1. We have heard rival submissions and perused the materials available on record. We find that for the A.Y.1992-1993, originally the interest on refund u/s 244A of the Act was determined at Rs.4,91,08,102/-. This sum was duly offered to tax by the assessee in A.Y.1999-2000. The interest on refund for A.Y.1992-1993 subsequently got enhanced to Rs.6,36,99,274/- vide order dated 03/03/2009. The assessee offered a sum of Rs.1,45,91,172/- (Rs.6,36,99,274-

Rs.4,91,08,102) to tax in the A.Y.2009-10, since the sum of Rs.4,91,08,102/- was already offered to tax by the assessee in A.Y.1999-2000. However, we find that the lower authorities ignoring the amount already offered to tax by the assessee in the A.Y.1999-2000 had proceeded to tax the entire sum of Rs.6,36,99,274/- in A.Y.2009-10, thereby, leading to double taxation. We find that the additional ground No.2 raised by the assessee itself provides all the facts, however, in the interest of justice and fair play, we deem it fit to remand this issue to the file of the ld. AO only for the limited purpose of verification of offer made by the assessee in the A.Y.1999-2000 in the sum of Rs.4,91,08,102/-. If it is found that this sum has already been offered by the assessee in A.Y.1999-2000, then only differential sum of Rs.1,45,91,172/- (which is already offered tax by the assessee in the A.Y.2009-10) becomes taxable in A.Y.2009-10 and hence no addition is required to be made in that scenario. The ld. AO is directed to decide this after due verification.

15. The additional ground No.4 raised by the assessee vide letter dated 09/08/2017 was stated to be not pressed by the ld. AR at the time of hearing. The same is reckoned as a statement made from the Bar and accordingly dismissed as not pressed.

16. The additional ground No.3 raised by the assessee vide letter dated 09/8/2017 is similar to additional ground No.2 raised by the assessee for A.Y.2008-09 and the decision rendered thereon would apply with equal force for this assessment year also except with variance in figures.

17. The additional ground raised by the assessee vide letter dated 04/10/2018 is with regard to claim of deduction in respect of education cess paid by the assessee.

17.1. We have heard rival submissions and perused the materials available on record. We find that this issue is no longer res-integra in view of the decision of the Hon'ble Jurisdictional High Court in the case of Sesa-Goa vs. JCIT reported in 117 Taxmann.com 96 dated 28/02/2020 wherein, the Hon'ble Jurisdictional High Court had allowed deduction towards payment of education cess to the assessee. Respectfully following the same, the additional ground raised by the assessee vide letter dated 04/10/2018 is allowed.

**18. In the result, both the appeals of the assessee are partly allowed for statistical purposes.**

Order pronounced on 12/05/2021 by way of proper mentioning in the notice board.

| **Sd/-** | **Sd/-** |
|---|---|
| **(SAKTIJIT DEY)** | **(M.BALAGANESH)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Mumbai; Dated 12/05/2021
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
**ITAT, Mumbai**