IN THE INCOME TAX APPELLATE TRIBUNAL

"J" BENCH, MUMBAI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER AND

SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA no.6292/Mum./2019
(Assessment Year : 2010–11)

Asstt. Commissioner of Income Tax
Circle–16(1), Mumbai ……. Appellant

v/s

UTV Software Communication Ltd.
1st Floor, Building no.14, Solitaire Corporate
Park, Guru Hargovindji Marg, Chakala ……. Respondent
Andheri (E), Mumbai 400 093
PAN – AAACU4122G

Revenue by : Shri Vatsalya Saxena
Assessee by : Shri Ajit Jain a/w
Shri Siddhesh Chaugule

Date of Hearing – 28.06.2021	Date of Order – 31.08.2021

O R D E R

PER S. RIFAUR RAHMAN, A.M.

The captioned appeal has been filed by the Revenue challenging the order dated 15th July 2019, passed by the learned CIT(A)–58, Mumbai, for the assessment year 2010–11, pertaining to the assessment year 2010–11.

2. In the present appeal, the Revenue has raised inasmuch six grounds of appeal, which we proceed to dispose–off on merit one–by–one.

3. The issue raised in grounds no.1 to 1.5, raised by the Revenue relates to disallowance of ₹ 7,69,10,639, under section 14A of the Income Tax Act, 1961 (for short *"the Act"*) r/w rule 8D of the Income Tax Rules, 1962.

4. During the year under consideration, the assessee company received dividend of ₹ 4,33,649. The Assessing Officer sought explanation from the assessee as to why disallowance under section 14A of the Act r./w rule 8D of the Rules should not be made with reference to the income claimed as exempt. The assessee submitted that no disallowance under rule 8D is warranted as the company has substantial own funds of ₹ 994.37 crore of which the investments made by the company are of ₹ 552.,69 crore only. The assessee submitted that the major investments of the company during the year amounts to ₹ 58.89 crore. The other investments of the company are investments in foreign companies which do not yield any income which is not chargeable to tax. He submitted that similar investments which do not exist being sold out do not yield any exempt income. The Assessing Officer considering the submissions of the assessee noticed that assessee company has made huge investments of ₹ 3,39,52,80,000 and held that it is inconceivable that such a huge investment profile is managed without it services of an accountant keeping track of investment made or communicating with the mutual

fund investment intermediaries, or without utilizing printing and stationery or telephone, etc. Consequently, the Assessing Officer made disallowance under section 14A r/w rule 8D and worked out at ₹ 7,69,10,639, which was added back to the income of the assessee. The assessee being dissatisfied with the order so passed by the Assessing Officer, carried the matter before the first appellate authority.

5. The learned CIT(A) relied upon the decisions of the Hon'ble Jurisdictional High Court in CIT v/s HDFC Bank Ltd. [2014] 366 ITR 505 (Bom.) and HDFC Bank Ltd. v/s DCIT, [2016] W.P. no.1735 of 2016, judgment dated 25th February 2016, holding that the assessee has sufficient own fund and hence directed the Assessing Officer to delete the addition on account of rule 8D(ii). He held that since the assessee has earned dividend income and provisions of rule 8D(ii) cannot be invoked, the learned CIT(A) held that provisions of rule 8D(iii) comes to force, but the disallowance under section 14A of the Act should not exceed the amount of exempt income earned (Future Corporate Resource Ltd. v/s DCIT, [2017] 85 taxmann.com 190 (Mum.). The learned CIT(A) further held that the disallowance under section 14A of the Act should not affect computation under section 115JB of the Act. Aggrieved, the Revenue is in appeal before the Tribunal.

6. The learned Departmental Representative relied upon the observations made by the Assessing Officer.

7. The learned Counsel for the assessee submitted that the issue is covered by the decision of the Tribunal rendered in assessee's own case for the assessment year 2009–10. He submitted that without prejudice to this, the disallowance under section 14A cannot exceed the amount of exempt income. For this proposition, the learned Counsel relied upon the decision of the Tribunal, Mumbai Bench, in Future Corporate Resources Ltd. (supra) and Global Tech Park Pvt. Ltd. v/s ACIT, [2020] 118 taxmann.com 419 (Bang.). The learned Counsel for the assessee further relied upon the decision of the Hon'ble Jurisdictional High Court in CIT Bengal Finance & Investments Pvt. Ltd., ITA no.337 of 2013, judgment dated 10th February 2015, wherein it was held that no disallowance under section 14A of the Act can be made while computing book profits as per section 115JB of the Act.

8. Having considered the rival submissions and having perused the material on record in the light of the decisions relied upon, before us, both the learned Counsel appearing for the parties agreed that this issue is now settled by the decision of the Tribunal, Mumbai Bench, rendered in assessee's own case for the assessment year 2009–10 in UTV Software Communications Ltd. v/s ACIT, ITA no.1258/Mum./

2015, order dated 11th December 2018, wherein the Tribunal decided the issue in favour of the assessee by observing as follows:–

> *"6. After hearing both the sides, we have gone through the assessment order and noted that the AO has simply invoked the provisions of section 14A of the Act read with Rule 8D(2)(ii). Even there is no whisper that how the administrative expenses are linked to these exempt incomes. We find that this issue is squarely covered in favour of assessee and against the Revenue by the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra), wherein Supreme Court held as under: -*
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> > *"41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/ making the investment in shares is to be examined by the AO."*
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> *7. Further, we find that the assessee's own funds are more than the investment as explained above in Para 4 of this order. We have gone through the entire facts regarding available of funds and noticed that the presumptions as held by Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom) is in favour of assessee because the Revenue could not establish any nexus with the expenses claimed by assessee vis-à-vis exempt income. In the absence of the same, the presumptions in favour of assessee and hence, we delete the addition. We also delete the addition on the issue of satisfaction. Once, the addition is deleted on the issue of satisfaction, nothing will remain even on administrative expenses. This issue of assessee's appeal is allowed."*

9. Since the issue for our consideration is covered by the aforesaid decision of the Tribunal in assessee's own case cited supra, consistent with the view taken therein, we do not find any cogent reason to

disturb the order of the learned CIT(A) on this issue which is hereby upheld. Grounds no.1 to 1.5, are thus dismissed.

10. The issue raised in grounds no.2 to 2.11, raised by the Revenue relates to the issue of guarantee commission.

11. The Transfer Pricing Officer held that the assessee should have charged to its A.E. in respect of providing guarantee, taking into consideration all kinds of risk. He applied 3% as adjustment of corporate guarantee fee. The Assessing Officer followed the recommendations of the Transfer Pricing Officer.

12. The learned CIT(A) was of the view that the assessee's case is similar to the decision of the Hon'ble Jurisdictional High Court in CIT v/s Everest Kanto Cylinders Ltd., [2015] 378 ITR 57 (Bom.) and restricted the transfer pricing adjustment of corporate guarantee fee to 0.5%.

13. The learned Departmental Representative submitted that application of 3% as adjustment of corporate guarantee fee by the Transfer Pricing Officer is justified.

14. The learned Counsel for the assessee submitted that the issue is covered in favour of the assessee by the decision of the Tribunal rendered in assessee's own case for the assessment year 2009–10,

wherein the commission on guarantee fee was restricted to 0.5%. The learned Counsel also relied upon the decision of the Hon'ble Jurisdictional High Court in Everest Kanto Cylinders Ltd. (supra).

15. Considered the rival submissions and perused the material on record. We find that this issue is covered by the decision of the Co–ordinate Bench of the Tribunal rendered in assessee's own case for the assessment year 2009–10 in UTV Software Communications Ltd. v/s ACIT, ITA no.1258/Mum./2015, order dated 11th December 2018, wherein the commission on guarantee fee was restricted to 0.5%.

> *"10. At the outset, the learned Counsel for the assessee stated that the Hon'ble Bombay High Court in the case of Everest Kento Cylinder Ltd. (Supra) has upheld the guarantee commission at 0.5%, which is already declared by assessee while bench marked the commission rate for workout ALP. Hon'ble Bombay High Court in Everest Kento Cylinder Ltd. (supra) held as under: -*
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> *"10. Having considered submissions of Mr. Malhotra for the revenue and Mr. Pardiwalla for the assessee, we are of the view that the order of the Tribunal as regards disallowance under section 14A and restricting the same to Rs. 1 lac was justified in view of the material before the*
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> *Tribunal. Furthermore, having considered the fact that a sum of Rs. 4,47,649/- was not conceded in the return but was adhoc acceptance during the course of assessment, the assessee could not be bound by it. The Tribunal as the second fact finding authority had gone into factual aspects in great detail and therefore having interpreted the law as it stood on the relevant date the order passed cannot be faulted. In the matter of guarantee commission, the adjustment made by the TPO were based on instances restricted to the commercial banks providing guarantees and did not contemplate the issue of a Corporate Guarantee. No doubt these are contracts of guarantee, however, when they are Commercial banks that issue bank guarantees which are treated as the blood of commerce being easily encashable in the event of default, and if the bank guarantee*

had to be obtained from Commercial Banks, the higher commission could have been justified. In the present case, it is assessee company that is issuing Corporate Guarantee to the effect that if the subsidiary AE does not repay loan availed of it from ICICI, then in such event, the assessee would make good the amount and repay the loan. The considerations which applied for issuance of a Corporate guarantee are distinct and separate from that of bank guarantee and accordingly we are of the view that commission charged cannot be called in question, in the manner TPO has done. In our view the comparison is not as between like transactions but the comparisons are between guarantees issued by the commercial banks as against a Corporate Guarantee issued by holding company for the benefit of its AE, a subsidiary company.

In view of the above discussion we are of the view that the appeal does not raise any substantial question of law and it is dismissed. There will be no order as to costs."

11. As the issue is squarely covered in favour of assessee, wherein guarantee commission is to be charged at 0.5% as bench mark by the assessee, we are of the view that no further adjustment to determine the ALP is to be made. This issue of assessee's appeal is allowed."

16. Since the Tribunal has been maintaining consistent view in restricting the commission on guarantee fees @ 0.5%, similar directions are also issued in the year under consideration by restricting the commission on guarantee fee @ 0.5%. Consequently, we uphold the order passed by the learned CIT(A) by dismissing the ground no. 2 to 2.11, raised by the Revenue.

17. The issue raised in grounds no.3 to 3.8, relates to charging of interest on share application money.

18. The Transfer Pricing Officer held that since the shares are not allotted within a reasonable period, the share application money is in

the nature of temporary funding till the allotment is made. The Transfer Pricing Officer proposed interest rate @ 14% and calculated the adjustment of ₹ 3,47,57,513. The Assessing Officer followed the directions of the Transfer Pricing Officer.

19. The learned CIT(A) held that the transfer pricing adjustment cannot be made on such capital account transactions in view of the decision of the Hon'ble Jurisdictional High Court in Vodafone India Services Pvt. Ltd. v/s Union Of India, ITA no.871 of 2014, judgment dated 10th October 2014.

20. The learned Departmental Representative relied upon the order of the Transfer Pricing Officer and the Assessing Officer.

21. The learned Counsel for the assessee while supporting the observations of the learned CIT(A) relied upon the following decisions:–

i) *ACIT v/s Reliance Life Science Pvt. Ltd., ITA no.4957 & 6434/ Mum./2018, order dated 16.02.2021;*

ii) *PCIT v/s Sterling Oil Resources Ltd., ITA no.341 of 2017, order dated 01.07.2019;*

iii) *M/s. Allcargo Global Logistics Ltd. v/s ACIT, ITA no.4909/ Mum./2012, order dated 11.06.2014;*

iv) *Voltas Ltd. v/s ACIT, ITA no.6612/Mum./2018, etc., order dated 30.06.2020; and*

v) *PCIT v/s Concentrix Services India P. Ltd., ITA no.303 of 2016, order dated 04.09.2018.*

22. We have considered the rival submissions and perused the material on record in the light of the decisions relied upon. We find that the issue for our adjudication is squarely covered by the decision of the Hon'ble Jurisdictional High Court in Vodafone India Service Pvt. Ltd. (supra), wherein identical issue has been decided in favour of the assessee and against the Revenue. For better appreciation of facts, we reproduced the relevant findings of the Hon'ble Jurisdictional High Court as under:–

> *"Findings:*
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> *43. It was contended by the revenue that income becomes taxable no sooner it accrues or arises or when it is deemed to accrue or arise and not only when it was received. It is submitted that even though the Petitioner did not receive the ALP value/consideration for the issue of its shares to its holding company, the difference between the ALP and the contract price is an income, as it arises even if not received and the same must be subjected to tax. There can be no dispute with the proposition that income under the Act is taxable when it accrues or arises or is received or when it is deemed to accrue, arise or received. The charge-ability to tax is when right to receive an income becomes vested in the assessee. However, the issue under consideration is different viz: whether the amount said to accrue, arise or receive is at all income. The issue of shares to the holding company is a capital account transaction, therefore, has nothing to do with income. We, thus do not find substance in the above submission.*
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> *44. It was also contended that Chapter X of the Act is a complete code by itself and not merely a machinery provision to compute the ALP. It is a hidden benefit of the transaction which is being charged to tax and the charging Section is inherent in Chapter X of the Act. It is well settled position in law that a charge to tax must be found specifically mentioned in the Act. In the absence of there being a charging Section in Chapter X of the Act, it is not possible to read a charging provision into Chapter X of the Act. We can do no better than refer to the following observations of*

the five Member Bench of the Apex Court in CIT v. Vatika Township (P.) Ltd. [2011] 49 taxmann.com 249:—

'Tax laws are clearly in derogation of personal rights and property interests and are, therefore, subject to strict construction, and any ambiguity must be resolved against imposition of the tax. In Billings v. U. S, the Supreme Court clearly acknowledged this basic and long-standing rule of statutory construction:

Tax Statutes …. should be construed, and, if any ambiguity be found to exist, it must be resolved in favour of the citizen. Eidman v. Martinez 184 U.S. 578, 583; …
Again in Unites States v. Merriam, the Supreme Court clearly stated at pages 187-88:

"On behalf of the Government it is urged that taxation is a practical matter and concerns itself with the substance of the thing upon which the tax is imposed, rather than with legal forms or expressions. But, in statutes levying taxes, the literal meaning of the words employed is most important, for such statutes are not to be extended by implication beyond the clear import of the language used. If the words are doubtful, the doubt must be resolved against the Government and in favour of the taxpayer. Gould v. Gould 245 U.S. 151, 153."

As Lord Cairns said many years ago in Partington v. Attorney-General: As I understand the principle of all fiscal legislation it is this: If the person sought to be taxed comes within the letter of the law he must be taxed, however, great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.'

In this case, we are not in the zone of uncertainty referred to above. There is no charge express or implied, in letter or in spirit to tax issue of shares at a premium as income.

45. Chapter X of the Act is a machinery provision to arrive at the ALP of a transaction between AEs. The substantive charging provisions are found in Sections 4, 5, 15 (Salaries), 22 (Income from house property), 28 (Profits and gains of business), 45 (Capital gain) and 56 (Income from other Sources). Even Income arising from International Transaction between A.E. must satisfy the test of Income under the Act and must find its home in one of the above heads i.e. charging provisions. This the revenue has not been able to show.

> *46. It was next submitted that the machinery Section of the Act cannot be read de-hors charging Section. The Act has to be read as an integrated whole. On the aforesaid submission also, there can be no dispute. However, as observed by the Supreme Court in CIT v. B.C. Srinivasa Shetti [1981] 128 ITR 294/5 taxmann. com 1, "there is a qualitative difference between the charging provisions and computation provisions and ordinarily the operation of the charging provisions cannot be affected by the construction of computation provisions." In the present case, there is no charging provision to tax capital account transaction in respect of issue of shares at a premium. Computation provisions cannot replace/ substitute the charging provisions. In fact, in B.C. Srinivasa Shetti (supra), there was charging provision but the computation provision failed and in such a case the Court held that the transaction cannot be brought to tax. The present facts are on a higher pedestal as there is no charging provision to tax issue of shares at premium to a non-resident, then the occasion to invoke the computation provisions does not arise. We, therefore, find no substance in the aforesaid submission made on behalf of the Revenue."*

23. In view of the above, we are of the opinion that share application money being capital account transaction is outside the purview of section 92 of the Act and the transfer pricing adjustment cannot be made on capital account transactions as per the decision of the Hon'ble Jurisdictional High Court in Vodafone India Service Pvt. Ltd. (supra). Since the issue for our adjudication is squarely covered by the aforesaid decision of the Hon'ble Jurisdictional High Court cited supra, wherein the issue has been decided in favour of the assessee and against the Revenue for the reasons stated therein, respectfully following the same, we do not find any reason much less cogent reason warranting interference in the order of the learned CIT(A) in granting relief to the assessee. Accordingly, upholding the order of the

learned CIT(A), grounds no.3 to 3.8, raised by the Revenue is dismissed.

24. The issue arising out of grounds no.4 to 4.2, relates to 40 (a)(ia) of the Act.

25. The Assessing Officer held that the payments aggregating to ₹ 55,20,774, relating to processing charges, photo guard coating and subtitling charges to be subject to TDS @ 10% under section 194J of the Act, as against 2% under section 194C of the Act, as done by the assessee. On account of short deduction of TDS, the Assessing Officer disallowed the said expenses was under section 40(a)(ia) of the Act.

26. The learned CIT(A) relied upon the decision of the Tribunal, Mumbai Bench, in Hindustan Unilever Ltd., ITA no.7868/Mum./2010, wherein it has been held that if there is any shortfall in TDS due to difference of opinion as to taxability of any items or nature of payment falling under TDS provision, the assessee can be declared as assessee in default but no disallowance can be made by invoking the provisions of section 40(a)(ia) of the Act. Relying on such proposition of law, the issue was decided in favour of the assessee and against the Revenue.

27. The learned Departmental Representative relied upon the observations of the Assessing Officer on the issue. He submitted that the learned CIT(A) was not justified in directing to delete the

disallowance under section 40(a)(ia) of the Act holding that the short deduction of tax will not result into disallowance under section 40(a)(ia) of the Act without appreciating the fact that the Hon'ble Kerala High Court in is judgment dated 20th July 2015, in CIT v/s PVS Memorial Hospital Ltd., [2015] 60 taxmann.com 69 (Ker.) wherein it has been clearly laid down that the disallowance under section 40(a)(ia) of the Act would be made even in the cases of short deduction of tax.

28. The learned Counsel for the assessee supporting the observations of the learned CIT(A) submitted that in case of short deduction of TDS, no disallowance can be made by invoking provisions of section 40(a)(ia) of the Act and in support of this argument, the learned Counsel relied upon the decision of the Hon'ble Calcutta High Court in CIT v/s S.K. Tekriwal, [2014] 361 ITR 432 (Cal.) and the decision of the Co–ordinate Bench of the Tribunal, Mumbai Bench, in ACIT v/s UTV Entertainment Television Ltd., ITA no.6784/Mum./2016, dated 11th December 2020.

29. We have considered the rival submissions of the learned Counsel appearing for the parties and perused the material on record. Insofar as disallowance under section 40(a)(ia) of the Act is concerned, we find that provisions of section 40(a)(ia) of the Act are applicable in case of non–deduction of TDS. Provisions of section 40(a)(ia) of the

Act are not applicable in case of short deduction of TDS and for this proposition, in our considered opinion, the learned CIT(A) has perfectly relied upon the findings given by the Hon'ble Jurisdictional High Court in Vodafone India Services Pvt. Ltd. (supra). In the present case, the assessee has deduction TDS under section 194C of the Act and deposited the same with the Government. Since the conditions of section 40(a)(ia) of the Act are fulfilled, provisions of section 40(a)(ia) of the Act in not applicable. Consequently, the order of the learned CIT(A) is hereby upheld by dismissing the grounds no.4 to 4.2, raised by the Revenue.

30. The issue arose out of grounds no.5 to 5.2, relates to excess claim of expenses due to write–off at ₹ 15,04,60,771.

31. The Assessing Officer was of the opinion that there is no doubt that the said expense has been debited to the Profit & Loss Account. However, as this expenditure does not move under any special section / rule, whereby it can be considered as an allowable claim, it has to be examined on its own merits. According to the Assessing Officer, the expenditure is an excess claim. The Assessing Officer further noted from Schedule–20 of the financial statements that the assessee amortizes the discount on commercial paper. It is also noted from Schedule–5 of the financial statements that commercial paper was repayable within the next one year and thus, the claim of expense on

an amortization basis would have been made by the assessee in the subsequent year and not in the current year. It is pertinent to note that the assessee has already claimed a discount of ₹ 5.89 crore on an amortization basis. The claim of ₹ 15.05 crore is, therefore, made only because of the scheme of arrangement which allowed a utilization of a reserve to write off certain expenditure. Thus, according to the Assessing Officer, as per the accounting practice consistently followed by the assessee, the claim of ₹ 15.05 crore should be in the next year and not in the current year even if the same is debited in the Profit & Loss Account. Accordingly, the Assessing Officer added back an amount of ₹ 15,04,60,771, to the income of the assessee as excess claim.

32. The learned CIT(A) held that since the income on account of withdrawal from business restructuring reserve is recorded in current year, corresponding expenses i.e., discount on commercial paper the Assessing Officer should have allowed as deduction in current year. He held that if income is recognized then corresponding deduction is to be granted unless statute provides a different method and there cannot be a situation where income is recognized in one year and expenses in subsequent year. He held that income is recognized and expenses are not considered which is patently incorrect. In view of these aspects, he

held that the addition made by the Assessing Officer is not sustainable and allowed the ground raised by the assessee.

33. The learned Departmental Representative relied upon the order of the Assessing Officer and submitted that the learned CIT(A) was not justified in ignoring that such claim is not as per the accounting practice consistently followed by the assessee and thus, the learned CIT(A) was not correct in deleting the addition on account of excess claim of ₹ 15,04,60,771.

34. The learned Counsel for the assessee relied upon the observations of the learned CIT(A). He submitted that the discount on the issue of commercial paper is an allowable as revenue expenditure and is allowed in the first year when the liability is actually incurred i.e., discount given. In support of his arguments, the learned Counsel relied upon the following case laws:–

i) Taparia Tools Ltd. v/s JCIT, [2015] 55 taxmann.com 361 (SC);

ii) JCIT v/s Mukund Ltd., [2007] 291 ITR 249 (SB) (Mum.); and

iii) CIT v/s Amar Ujala Publication Ltd., [2016] 72 taxmann.com 159 (Del.).

35. We have considered the rival submissions of the learned Counsel appearing for the parties and perused the material on record in the light of the decisions relied upon. There is no dispute that the expenses claimed by the assessee are revenue in nature. In our

considered opinion, since the income on account of withdrawal from business restructuring reserve is recorded in the current year, the corresponding expense on account of discount on commercial paper cannot be allowed in the subsequent year, as held by the Assessing Officer, and the Assessing Officer ought to have allowed the expenses in the current year itself. Consequently, we see no legal infirmity in the impugned decision of the learned CIT(A) warranting us to interference with his order at the instance of the Revenue. Thus, grounds no.5 to 5.2, raised by the Revenue are dismissed.

36. The issue arose out of grounds no.6 to 6.2, relates to debenture issue expenses.

37. The Assessing Officer held that since the assessee has not debited the debenture issue expenses in the Profit & Loss Account but debited it to the securities premium account, it is capital in nature and cannot be considered as revenue expenditure claimable under section 37 of the Act.

38. The learned CIT(A) observed that a total of ₹ 3,15,97,469, was debited to Securities Premium A/c for shares / debentures issue expenses. He held that debenture has character of loan unlike share capital and hence the debenture issue expenses are permissible deduction.

39. The learned Departmental Representative relied upon the observations of the Assessing Officer.

40. The learned Counsel for the assessee submitted that debenture issue expenses are incurred for raising debt for the company and not capital and hence, allowable deduction. In support of his arguments, he relied upon the decision of the Hon'ble Supreme Court in India Cement v/s CIT, [1966] 60 ITR 52 (sc) and the decision of the Hon'ble Rajasthan High Court in CIT v/s Secure Meters Ltd., [2008] 175 Taxman 567 (Raj.). He further relied upon the decision of the Hon'ble Supreme Court in Kedarnath Jute Mfg. Co. Ltd. v/s CIT, [1979] 82 ITR 363 (SC) for the proposition that deduction cannot be denied merely because expenses were not debited to Profit & Loss Account.

41. Considered the rival submissions and perused the material on record. Insofar as debenture issue expenses is concerned, we find the Assessing Officer has disallowed the claim on the ground that the assessee has not debited the debenture issue expenses in the Profit & Loss Account but debited it to the securities premium account which is capital in nature and cannot be considered as revenue expenditure claimable under section 37 of the Act. Contrary to this view of the Assessing Officer, the learned Counsel for the assessee relied upon the decision of the Hon'ble Supreme Court in Kedarnath Jute Mfg. Co. Ltd.

(supra), wherein it has been held that deduction cannot be denied merely because such expenses were not debited to the books of account. In our view, the learned CIT(A) has perfectly held that the debenture has character of loan unlike share capital and hence the debenture issue expenses are permissible deduction. The learned Departmental Representative has not brought anything on record contrary to the submission of the learned Counsel and the decision of the learned CIT(A) to enable us to take a view other than the view taken by the learned CIT(A). Consequently, the order of the learned CIT(A) is hereby upheld by dismissing the grounds no.6 to 6.2, raised by the Revenue.

42. In the result, Revenue's appeal is dismissed.

Order pronounced open court on 31.08.2021

Sd/-	**Sd/-**
RAVISH SOOD	**S. RIFAUR RAHMAN,**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

MUMBAI, DATED: 31.08.2021

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The CIT(A);
(4) The CIT, Mumbai City concerned;
(5) The DR, ITAT, Mumbai;
(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai