IN THE INCOME TAX APPELLATE TRIBUNAL
[ DELHI BENCH "E": NEW DELHI ]
BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 5147/Del/2016
(Assessment Year: 2010-11)

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| M/s. MMTC Limited,<br>Core: 1, Scope Complex – 7,<br>Industrial Area, Lodhi Road,<br>New Delhi – 110 003.<br>PAN: AAACM1433E | Vs. | Addl. CIT,<br>Special Range : 6,<br>New Delhi. |

AND
ITA No. 5166/Del/2016
(Assessment Year: 2010-11)

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| Addl. CIT,<br>Special Range : 6,<br>New Delhi. | Vs. | M/s. MMTC Limited,<br>Core: 1, Scope Complex – 7,<br>Industrial Area, Lodhi Road,<br>New Delhi – 110 003.<br>PAN: AAACM1433E |
| (Appellants) | | (Respondents) |

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| Assessee by : | Shri Rohit Jain, Advocate; &<br>Ms. Deepashree Rao, C. A.; |
| Department by : | Ms. Paramita M. Biswas;<br>[CIT] – D.R.; |
| Date of Hearing | 01/09/2021 |
| Date of pronouncement | 29/09/2021 |

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. These are the cross appeals filed by the parties against the order passed by ld CIT(A)-19, New Delhi dated 04.07.2015 for Assessment Year 2010-11.
2. ITA No. 5166/Del//2016 is filed by the ld Additional CIT (ld AO) where the ld AO is aggrieved with the order of the learned CIT – A against deletion of the disallowance of Rs. 10,86,07,784/- u/s 14A of the Act.

3. ITA No. 5147/Del/2016 is filed by the assessee wherein the ld CIT(A) has confirmed the certain disallowances.

4. The assessee has raised the following grounds of appeal:-

*"1. That the order dated 04/07/2015 passed by Learned CIT(A)-19, New Delhi u/s 250 of the Act is bad in law, wrong on facts and void-ab-initio.*

*2. That on facts, in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the disallowance of Rs.2,00,00,000/- out of disallowance of Rs. 10,88,07,784/- u/s 14A of the Act*

*3. Without prejudice to Ground No. 2, the disallowance u/s 14A has been confirmed by CIT(A) in the absence of any exempt income earned by the appellant ignoring the judgments of Jurisdictional High Court of Delhi in the case of Cheminvest Limited vs. ITO, duly cited before him.*

*4. That on facts, in the circumstances of the case and in law, the Learned CIT(A) erred in not deleting a sum of Rs.2,00,000/-, initially offered as disallowable u/s 14A of the Act in the return of income which was withdrawn before CIT(A) in the absence of any exempt income.*

*5. That on facts, in the circumstances of the case and in law, the Learned CIT(A) erred in sustaining the disallowance of Rs.5,57,500/- incurred on corporate social responsibility claimed as business expenditure eligible u/s 37(1) of the Act.*

*6. Without prejudice to Ground No. 5, the appellant submits that deduction, if any, eligible u/s 80G of the Act may be allowed on the payment of Rs.5,57,500/- incurred on corporate social responsibility.*

*7. That on facts, in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the disallowance of Rs.7,20,081/- out of Rs.9,50,000/- made by the AO towards sales tax demand for FY 71-1972 raised vide order dated 26/09/1978 which was finalized during the year under reference upon disposal of appeal.*

*8. That on facts, in the circumstances of the case and in law, the Learned C1T(A) erred in confirming the disallowance of Rs.83,755/- out of Rs.1,25,100 paid towards statutory taxes, which got crystallized during the year.*

*9. Without prejudice to Ground No. 8, the appellant is eligible to deduction of Rs.83,755/- considering provisions of section 43B of the Act since the payment of statutory dues was made before the due date of filing of return of income for which the evidences were furnished before the appellate authority.*

*10. The appellant craves to add, delete, alter, amend, modify or substitute any ground of appeal before disposal of this appeal. "*

5. The Revenue has raised the following grounds of appeal:-

*"1. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in not upholding the disallowance amounting to Rs. 10,86,07,784/- u/s 14A read with rule 8D of the Income Tax Act, 1961 without considering legislative intend of introducing section 14A by the Finance Act 2001 as clarified by the CBDT Circular No. 5/2014 dated 10.02.2014?*

*2. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in no' upholding the disallowance u/s 14A read with rule 8D of the Income Tax Act, 1961 amounting to Rs. 10,86,07,784/- without considering legal principles that allowability of expenditure under the Act is not conditional upon the earning of the income as upheld by Hon'ble Supreme Court in case of CIT Vs. Rajendra Prasad Moody (1978) 115 ITR 519?*

*3. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in not upholding the disallowance u/s 14A read with rule 8D of the Income Tax Act, 1961 amounting to Rs. 10,86,07,784/- without considering ratio decidendi as upheld in cases of CIT vs Walfort Share and Stock Brokers P Ltd. [2010] 326 ITR 1 (SC) and Maxopp Investment Vs. CIT [2012] 347 ITR 272 (Delhi) on application of provisions of Section 14A of the Act?*

*4. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the disallowance amounting to Rs. 10,86,07,784/- u/s 14A read with rule 8D of the Income Tax Act, 1961 without appreciating the fact that the assessee itself has made ad-hoc disallowance u/s 14A of the Act to the tune of Rs. 2,00,000/- by identifying various expenses incurred on employees, establishment expenses etc., suo-moto?*

*5. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the disallowance amounting to Rs. 10,86,07,784/- under section 14A read with rule 8D of the Income Tax Act, 1961 even when the Ld. CIT(A) itself rejected the ground of appeal of the assessee for "Withdrawal of Disallowance Rs. 2,00,000/-" by holding that the assessee has accepted the nexus of expenses with the investment?*

*6. That the appellant craves leave to add, amend, alter or forgo any ground/(s) of appeal either before or at the time of hearing of the appeal."*

6. Brief facts of the case is that the assessee is a public limited company and Govt of India Public Sector Enterprises under Ministry of Commerce, which is engaged in import and export of various bulk commodities such as metals/ minerals, non ferrous metal, fertilizers, agro products, general trade, hydrocarbons etc. It is also engaged in import of gold and silver under open general license and also manufacturing of gold and silver items.

7. It filed its return of income for Assessment Year 2010-11 on 01.10.2010 declared income of Rs. 3,15,28,36,237/-. It is further revised on 22.02.2012 at Rs. 3,12,59,16,110/-. The case of the assessee was took up for scrutiny and the total income of the assessee was assessed at Rs. 3,24,99,87,359/-. Mainly, the disallowances u/s 14A of the Act was made at Rs. 10,86,07,784/- and certain other disallowances were made IE (1) disallowance of prior period expenses of ₹ 9,170,000, (2) disallowance on account of provision for forward action losses of ₹ 750,000, (3) disallowance of deduction u/s 80 G of ₹ 2 lakhs, (4) addition u/s 69C of ₹ 557,500/– , (5) disallowance of prepaid expenditure of ₹ 560,000, (6) disallowance of miscellaneous expenditure of ₹ 2,134,882 and disallowance of rate and taxes of ₹ 2,091,083. Accordingly the total disallowance was made of ₹ 124,071,249 and total income of the assessee was assessed at ₹ 3,249,987,360 by the order passed on 13th/3/2014 u/s 143 (3) read with Section 92CA of the income tax act 1961.

8. The assessee preferred appeal before the ld CIT(A) who vide order dated 04.07.2015 partly allowed the appeal of the assessee. The assessee is aggrieved with the addition/ disallowance confirmed by the ld CIT(A) therefore, is in appeal before us on this issues whereas the ld AO is aggrieved with the order of the ld CIT(A) to the extent it deleted the disallowances u/s 14A of the Act. Thus, the appeal of the ld AO is on the single issue of disallowances deleted by the ld CIT(A) u/s 14A of the Act. There are several issues in the appeal of the assessee.

9. Now first coming to the appeal of the ld AO wherein, the deletion of the disallowance of Rs. 10,86,07,784/- u/s 14A is in challenge. Assessee has also challenged the disallowance u/s 14 A the learned CIT – A to the extent of ₹ 2 lakhs which was initially offered is this allowable u/s 14 a of the income tax act in the return of income filed by the assessee as assessee did not have any exempt income as per ground number 2 – 4 of the appeal of the assessee. These are interconnected issue and therefore same are discussed together and decided accordingly.

10. The ld AO noted that the assessee has shown investment of Rs. 2,729,09 million and has not furnished any calculation of disallowances u/s 14A of the Act but has merely made ad hoc disallowance of Rs. 2 lakhs in the computation of income. Therefore, the assessee was asked to explain as to why the disallowances should not be made according to the Rule 8D of the Act. The assessee submitted that the assessee has not incurred any expenditure by way of interest or other expenditure which can be disallowed u/s 14A of the Act. However, out of abandoned caution it has made disallowance of Rs. 2 lakhs. The ld AO rejected the contentions of the assessee and has made a disallowances of Rs. 10,86,07,784/- after reducing the total disallowance by Rs. 2 lakhs.

11. On appeal before the ld CIT(A) assessee says that no exempt income earned during the year and also raised several other contentions. Vide para No. 9 the ld CIT(A) noted that the decision of the Hon'ble Delhi High Court in case of Cheminvest Vs. ITO has held that when there is no exempt income there cannot be any disallowance u/s 14 A of the act and deleted the disallowances. However, with respect to the disallowance offered by the assessee of Rs. 2 lacs was not challenged by the assessee by raising any additional ground, he rejected the requests of the assessee to delete the suo moto addition of Rs. 2 lakhs made by the assessee u/s 14A of the Act. Therefore, the ld AO is aggrieved with the deletion of the addition of Rs. 10,86,07,784/- in its appeal and the assessee is aggrieved as per ground No. 2 to 4 with respect to retention of disallowances of Rs. 2 lacs u/s 14A of the Act.

12. We have heard the ld DR as well as Shri Rohit Jain, Advocate on behalf of the assessee. On careful consideration of the rival contentions we find that as there is no exempt income earned by the assessee there cannot be any disallowance u/s 14A of the Act. Such is the mandate of the Hon'ble Delhi High Court in the appeal of the ld AO and therefore, all the grounds in the appeal in ITA NO. 5166/Del/2016 are dismissed.

13. With respect to the claim of the assessee that even the issue Moto disallowance offered by the assessee of rupees to lakhs u/s 14 A of the act, AO should be directed to delete the above addition also. For this

proposition assessee has relied upon the decision of the honourable Delhi High Court in case of HCL technologies versus ACIT 377 ITR 483. AR has also relied upon several other judicial precedents to support the claim of the assessee that where it has been held that an assessee cannot be stopped from taking a different stand where the income was first returned Under an erroneous impression of law. In the case of HCL technologies (supra) it was a case of claiming extended deduction in the revised return of the assessee. Such is not the case before us. Further the case in CIT versus Bharat general reinsurance Co Ltd 81 ITR 303 was the case where the dividend income was found to be chargeable in different year. Therefore, the judicial precedent cited before us do not apply to the issue before us is there are distinguishable. As the assessee has offered suo moto disallowance of ₹ 2 lakhs, failed to give any breakup of such expenditure, itself said that it has not incurred any expenditure in relation to exempt income, we do not find any infirmity in the order of the learned CIT – A in retention of disallowance of ₹ 2 lakhs. Thus, ground numbers 2 – 4 of the appeal of the assessee are also dismissed.

14. Thus, appeal of the learned assessing officer is dismissed.

15. Now we come to appeal of the assessee. Ground number 1 of the appeal is general in nature, no arguments were advanced, and therefore, we dismiss this ground.

16. Ground number 5 of the appeal of the assessee is with respect to the disallowance sustained of ₹ 557,500 incurred by the assessee on corporate social responsibility claimed as a business expenditure eligible u/s 37 (1) of the income tax act. The ground number 6 is without prejudice to ground number five wherein it is submitted that the deduction if any eligible u/s 80 G of the act may be allowed on the payment of ₹ 557,500 incurred on corporate social responsibility. The fact shows that assessee has donated ₹ 557,500 to 3 organizations. This was claimed as a corporate social responsibility expenditure and assessee's claim is that it is allowable u/s 37 (1) of the act. The learned assessing officer disallowed it. On appeal before the learned CIT – A he held that the donation has been claimed under the head corporate social

responsibility expenditure, which has been identified in the tax audit report. It has been claimed by the assessee as a deductible expenditure and has not added to the total income of the assessee. He also rejected the claim of the assessee for deduction u/s 80 G (5) of the act.

17. On considering the arguments of learned authorised representative and departmental representative, we find that assessee has given donation to three organizations. Assessee has failed to establish that how these expenditure has been incurred by the assessee wholly and exclusively for the purposes of the business. Therefore, we do not find any infirmity in the order of the lower authorities in denying the deduction of the above expenditure u/s 37 (1) of the act. However, assessee has enclosed certificate u/s 80 G as well as the receipts acknowledging the amount paid by the appellant to the extent of ₹ 557,500 we do not find any reason to not to allow the assessee the deduction u/s 80 G of the act of the above expenditure. Accordingly the disallowance of the above expenditure u/s 37 (1) of the act is confirmed and ground number five of the appeal of the assessee is dismissed. However, as assessee has obtained donation receipt from all these three organization, which are registered u/s 80 G of the income tax act, we direct the learned assessing officer to grant the deduction of the above donation under the above Section. Accordingly, ground number six of the appeal of the assessee is allowed.

18. Ground number 7 of the appeal of the assessee is against disallowance confirmed by the learned CIT – A of ₹ 720,081 out of ₹ 950,000 made by the learned assessing officer towards the sale six demand for financial year 1971 – 1972 raised by the order dated 26/9/1978 which was finalized during the year Under reference upon disposal of appeal. The fact shows that assessing officer has disallowed a sum of ₹ 950,000 on account of sales tax liability additionally imposed by the sense tax department Mumbai for the period 1/4/1971 – 31/3/1992. The demand was raised as per the order passed by the sense tax officer on 26/9/1978. Assessee paid a demand of ₹ 943,100 on 20/11/1978 and shown it is a deposit recoverable from the sales tax authority and the same was

challenged before the higher sales tax authorities. The appeal of the assessee against the above sense tax order was disposed of by the order passed u/s 55 (7) of Bombay Sales Tax Act 1959 on 25/9/2008. As per the order out of the above payment made by the appellant company of ₹ 943,100, the appellate authority confirmed the sense tax demand to the tune of ₹ 720,081 and allowed the refund of ₹ 223,019. The claim of the assessee is seized the sense tax order along with refund was received by the appellant after the disposal of the appeal, finally confirming part of the demand out of ₹ 943,100 the same was accounted for in the books of accounts in respect of previous year relevant to assessment year 2000 – 11. The refund amount of ₹ 223,019 was also accounted for as income credited under the head miscellaneous receipt in the previous year relevant to the assessment year 2010 – 11, which has been brought to tax by the learned assessing officer. Thus, the claim of the assessee is that the demand towards sense tax was finally settled on refund of balance amount of ₹ 223,019 was finally received in April 2009, the amount of additional sense tax has been rightly claimed as allowable deduction sees the liability is finally crystallized in the year Under reference.

19. The learned authorised representative reiterated the submission made before the learned lower authorities and the learned departmental representative supported the orders of the lower authorities.

20. We have carefully considered the rival contention and perused the orders of the lower authorities. The facts clearly shows that the demand for sense tax of ₹ 943,100 was pertaining to the FY 1971 – 72 arising out of an order dated 26/9/1978. The about demand was paid by the assessee on 20/11/1978 and considered as a deposit or advance tax recoverable from sales tax authorities challenging the same before the higher tax authorities. The disposal of the grievance of the assessee was made by the appellate authority as per order dated 25/11/2008. Therefore the liability for payment of the above tax arose in the financial year 2008 – 09 and such claims should have been made by the assessee for assessment year 2009 – 10. Merely because the assessee has been

granted a refund arising out of the above appellate order on 19th of March 2009 of ₹ 223,019 it cannot be said that liability for payment of the sum of ₹ 720,081 arose in assessment year 2010 – 11. Therefore, the claim of the assessee is undoubtedly allowable for assessment year 2009 – 10 and correctly disallowable for assessment year 2010 – 11. Therefore, we confirm the disallowance made by the assessing officer for assessment year 2010 – 11 in case of the assessee. Thus we do not find any infirmity in the order of the learned CIT – A.

21. With respect to the allowability of the above claim of the assessee in assessment year 2009 – 10, the learned authorised representative has referred to the special bench decision of joint Commissioner of income tax versus Mukand Ltd 291 ITR 249 (IT) as well as the decision of the coordinate bench in case of perfect equipments versus DCIT 85 ITD 50 (AHD), it has been held that the provisions of Section 153 (3) gives the power to the appellate authority lifting the bar of the time limitation for giving effect to the finding or direction contained in the order of the tribunal regarding bringing to tax the escaped income as well as the claim allowable in different year, we, respectfully following the above judicial precedents, direct the learned assessing officer to grant the above deduction in assessment year 2009 – 10. Accordingly, ground number 7 of the appeal of the assessee is dismissed subject to allowing the above claim in assessment year 2009 – 10.

22. Ground number 8 is with respect to the order of the learned CIT – A confirming the disallowance of ₹ 83,755/– out of ₹ 125,100 paid towards statutory taxes, which were crystallized during the year. The alternative ground number 9 is that the appellant is eligible to deduction of the above sum considering the provisions of Section 43B of the income tax act since the payment of statutory dues was made before the due date of filing of the return of income for which the evidences were furnished before the appellate authority.

23. Facts shows that assessee has claimed a sum of ₹ 125,100 as additional sense tax demanded in municipal taxes levied by the respective authorities as deduction. The learned assessing officer disallowed the

above sum stating that assessee is maintaining its books of account on mercantile basis of accounting and did not make any provision in its books of accounts therefore the above sum of ₹ 125,100 is disallowable. The claim of the assessee is that all the payments/liabilities of been accounted for in the books of account in the financial year 2009 – 2010 and further the tax, duty, cess or fee are allowable as deduction at the time of payment only and not at the time of making provision in the books of accounts. The learned CIT – A considered the claim of the assessee in paragraph number 30.4 by considering the claim of the assessee for deduction of ₹ 125,100 allowing the balance claim but retaining the addition at ₹ 83,755/– the assessee is aggrieved with that. The above amount comprises of two different sums (1) payment of ₹ 67,725 was relating to assessment year 2007 – 08, (2) a sum of ₹ 16,030 sales tax demands for assessment year 2003 – 04. We find that assessee has paid both the sums during the year and claimed as deduction. As the assessee has paid the above sum during the year and there is no finding that such sum were incurred in another year but paid during the year, we direct the learned assessing officer to delete the above disallowance and allow the claim of the assessee. Accordingly, ground number 8 of the appeal of the assessee is allowed. Accordingly, ground number 9 becomes infructuous.

24. In the result, appeal filed by the assessee is partly allowed.

25. Thus the appeal filed by the learned assessing officer is dismissed and appeal of the assessee is partly allowed.

Order pronounced in the open court on 29/09/2021.

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| -Sd/- | -Sd/- |
| (SUCHITRA KAMBLE) | (PRASHANT MAHARISHI) |
| JUDICIAL MEMBER | ACCOUNTANT MEMBER |

Dated: 29/09/2021

*AK KEOT*

Copy forwarded to

1. Appellant;
2. Respondent

3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi