

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. SANJAY GARG, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 3192/Del/2015
(Assessment Year : 2011-12)

DCIT Circle – 1(2), New Delhi PAN No. AAACG 3351 K (APPELLANT)	Vs.	M/s. Acquire Services Pvt. Ltd., Ground Floor, Central Wing, 124, Janpath Thapar House, Janpath New Delhi-110 001 (RESPONDENT)
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Assessee by	Shri Piyush Kaushik, Adv.
Revenue by	Shri Nidhi Srivastava, CIT-D.R.

Date of hearing:	06.10.2021
Date of Pronouncement:	11.11.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue is directed against the order dated 27.01.2015 of the Commissioner of Income Tax (Appeals) – 4, New Delhi relating to Assessment Year 2011-12.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company which is stated to be engaged in the business of providing contact centre services and renting of immovable properties. Assessee filed its return of income for A.Y. 2011-12 on 20.09.2011 declaring total taxable income of Rs.1,93,24,617/- and income u/s 115JB of the Act at Rs.33,26,25,483/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 28.02.2014 and the total taxable income was determined at Rs.34,12,33,870/- and the total income u/s 115JB of the Act at Rs.34,80,34,740/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 27.01.2015 in Appeal No.405/13-14/CIT(A)-4 granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal before us and has raised the following grounds of appeal:

- “1. *Whether the Learned CIT(A) has erred in restricting the disallowance as per Section 14A by excluding debt oriented growth funds from investments and directing to restrict disallowance only to certain expenditure and that too in the ratio of exempt income to total receipt.*
2. *Whether the Ld CIT(A) has erred in deleting the addition by treating share redemption premium towards full value of consideration and not separately income from other sources.*
3. *The appellant craves leave for reserving the right to amend, modify alter add or forego any ground(s) of appeal at any time before or during the hering of this appeal.”*

4. **Ground No.1** is with respect to disallowance u/s 14A of the Act.

5. During the course of assessment proceedings, AO noticed that assessee had received exempt dividend income of Rs.11,97,18,527/- but had not disallowed any expenditure u/s 14A of the Act though the disallowance u/s 14A r.w.r 8D of the Act was worked out at Rs.1,26,05,150/- in the Tax Audit Report. Assessee was asked to show-cause as to why no disallowance be made u/s 14A of the Act to which assessee *inter alia* submitted that no disallowance was attracted as the entire investment was made out of internal accruals and no expenses have been incurred to earn income from such investments. The submissions of the assessee was not found acceptable to AO, as AO was of the view that the earning of exempt income was not in the nature of a passive activity have not been inbuilt but there were incidental expenditure which are embedded in indirect expenses to earn the income. Thereafter, he by following the methodology prescribed under Rule 8D, worked out the disallowance u/s 14A of the Act at Rs.1,54,09,255/-.

6. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). Before CIT(A), assessee made detailed submissions. After considering the submissions made by assessee, CIT(A) upheld the action of AO in invoking the provisions of Rule 8D in terms of Section 14A(2) of the Act. However he thereafter noted that no financial cost was incurred

by the assessee for making investments in Mutual Funds in earlier years and in the current year. He therefore held that since no financial cost was incurred, no disallowance was warranted under Rule 8D(2)(ii) of the Act. CIT(A) also held that the AO had considered the entire investments in Mutual Funds to work out the “average value of investments”. He observed that since the investments in “growth option” of Mutual Funds does not result in generation of any exempt dividend income but results in taxable capital gains on redemption, it had to be excluded for making disallowance under Clause (iii). Before CIT(A), with respect to the investment in Mutual Funds it was contended that no administrative expenses for investments activity was incurred by the assessee but the same was not found acceptable to CIT(A). However with respect to certain computational issues, CIT(A) noted that as against the exempt income from dividend of Rs.11.97 crore (rounded off), assessee had also earned taxable income from IT Enabled services of Rs.61.84 crore (rounded off), interest income of Rs. 6.81 lakh (rounded off), earning miscellaneous income of Rs.6.51 lakh (rounded off) and profit on sale of non-trade investment of Rs.5.9 lakh (rounded off) against which assessee had shown operating expenses of Rs.87.51 lakh (rounded off) which included personnel expenses, communication expenses, legal and professional expenses, auditor’s remuneration, repairs and rental expenses. CIT(A) noted that AO had taken into account the total amount of expenses claimed by the assessee and has also considered those expenses which were added back by the assessee in the computation of income. He

thereafter noted that the expenses in the nature of rent, auditor's remuneration, travel and conveyance, electricity and water, insurance would anyhow have been incurred by the assessee whether it had earned any income from dividend or not and therefore he held such expenses could not be attributed towards earning of dividend income. He therefore held that AO should have restricted the disallowance to the extent of personnel expenses (Rs.17.50 lakhs), legal expenses (9.43 lakhs) and communication expenses (Rs.24.93 lakh) only towards earning of taxed income to taxable income. He also noted that if the provision of Rule 8D were to be applied the results would turn out to be impractical. He therefore held that disallowance be restricted only to the extent of proportionate personnel, communication and legal & professional expenses in the ratio of total exempt income to total receipts. Aggrieved by the order of CIT(A), Revenue is now before us.

7. Before us, Learned DR took us through the order of AO and supported his order. She further submitted that there was no evidence placed by the assessee to demonstrate that the income earned from Mutual Funds was not exempt and that there was nothing in law to exclude the Mutual Funds while computing the disallowance.

8. Learned AR on the other hand reiterated submissions made before the lower authorities and further submitted that as per formula prescribed under Rule 8D, only the investments which

yield tax exempt income have to be considered for the purpose of disallowance under section 14A r.w.r 8D of the Act. He submitted that investments in Mutual Funds under the 'growth option' does not results in generation of dividend and on the sale/transfer of such Mutual Funds the capital gains on redemption are taxable. He further submitted that investment in 'growth option' mutual fund of Rs.73.80 crore (rounded off) were sold in A.Y. 2012-13 resulting into short term capital gains of Rs.13.25 lakhs (rounded off) which was duly offered to tax in A.Y. 2012-13 and in respect of his contention he pointed to the copy to the return of income placed in the paper book. He also placed reliance on the decision of Hon'ble Delhi High Court in the case of **ACB India Ltd. vs. ACIT 374 ITR 108 (Del.)** for the proposition that investment which do not give tax exempt income have to be excluded for computing the disallowance u/s 14A of the Act. He thereafter submitted that as against the total operating in other expenses of Rs.87,51,000/- incurred by the assessee, the disallowance worked out by AO by invoking section 14A is almost double and that Hon'ble Delhi High Court in the case of **Joint Investments Pvt. Ltd. vs. CIT 372 ITR 694 (Del.)** had held that Section 14A r.w. Rule 8D cannot be interpreted so as to mean that the entire exempt income is to be disallowed. He submitted that the Hon'ble High Court has further held that the disallowance u/s 14A of the Act should be based on the scrutiny of accounts of the assessee. He further submitted that CIT(A) after examining the details of the expenses had identified those expenses which could have been said to have a bearing on earning of exempt income and

directed the computation of the disallowance. He thus supported the order of CIT(A).

9. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the disallowance u/s 14A r.w.s 8D of the Act. Revenue is aggrieved by the directions of CIT(A) wherein he has restricted the disallowance u/s 14A of the Act by excluding debt oriented growth funds for working of the disallowance and directing to restrict disallowance only to certain expenditure and that too in the ratio of exempt income to total receipt. We find that CIT(A) had directed the exclusion of investment in Mutual Fund growth option for the reason that it does not result in generation of tax exempt dividend income but results into taxable capital gain on its redemption. No fallacy in the aforesaid findings of CIT(A) has been pointed out by Revenue. We find that Hon'ble Delhi High Court in the case of Joint Investments Pvt. Ltd. (supra) has held that Section 14A r.w. Rule 8D of the IT Rules 1962 cannot be interpreted so as to mean that the entire tax exempt income is to be disallowed. It is further held that the window for disallowance is indicated in Section 14A, and was only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". The portion of the tax exempt income cannot swallow the entire amount considering the facts of the present case in line with the aforesaid decision of Hon'ble Delhi High Court. We are of the view that no interference with the order of CIT(A) is called on this aspect. As far as the disallowance

of indirect expenses is concerned, we find that CIT(A) after considering the details of the expense has come to a finding that the entire operating expenses of Rs.87,51,000/- shown by the assessee cannot be considered to have been incurred for earning exempt income as there were certain expenses in the nature of rent or its remuneration etc which was assessee was required to incur whether it had earned any income from dividend or not. Before us, no fallacy has been pointed out by the Learned DR in the aforesaid findings of CIT(A). In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

10. **2nd Ground** is with respect to deleting the addition by treating share redemption premium towards full value of consideration and not separately 'income from other sources'.

11. During the course of assessment proceedings, AO noted that assessee had invested in preference shares of M/s. Interglobe Aviation Ltd. The amount of investment was Rs.70 crore. He noticed that the aforesaid preference shares was redeemed on 27.07.2010 at a premium of Rs.295 per share thus assessee had received Rs.90,65,00,000/- on redemption (including premium of Rs.20,65,00,000/-). The total sales consideration received by the assessee from redemption of preference shares including the premium was considered by the assessee under the head "capital gains". AO noticed that the shares had to be estimated at far and the premium had to be received at the time of redemption. AO

was of the view that the assessee had received premium of Rs.295 per share that had decided at the time of issue of shares itself and the premium was as a result of redemption of shares and it cannot be treated as a part of share value. He was of the view that on redemption of the preference shares, preference shares itself stood extinguished by the redemption and it could not be treated as transfer. He thereafter relying on the decision of Hon'ble Apex Court in the case of Vania Silk Mills Ltd. 191 ITR 647 concluded that the premium received on redemption on preference share was liable to be taxed as "income from other sources". He therefore considered the redemption premium received on redemption of preference shares aggregating to Rs.20,65,00,000/- as "income from other sources".

12. Aggrieved by the order of CIT(A), assessee carried the matter before the CIT(A). CIT(A) held that investment in redeemable preference shares was based on the condition that the assessee was entitled to receive redemption fair market value of shares apart from premium amount and therefore the receipt of premium was part of full value of consideration received on redemption of shares and it could not be treated as independent of redemption. He thereafter held the action AO in considering the redemption premium to be taxable income from other sources to be without any basis. He thus decided the issue in favour of the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

13. Before us, Learned DR took us to the findings of AO and CIT(A) and supported the observations of AO.

14. Learned AR on the other hand reiterated the submissions made before the lower authorities and further submitted that in terms of the investment terms and conditions, the preference shares were to be redeemed at a premium of Rs.295/- per share payable at the time of redemption and thus premium payable on redemption was inextricably linked with the redemption of preference shares. He submitted that the total sale consideration received by the assessee from redemption of preference shares including the premium was therefore rightly considered as capital gains in its return of income. He submitted that the case of **Vania Silk Mills Ltd. 191 ITR 647** (supra) relied upon by the AO was on different facts and therefore the ratio of decision would not be applicable as in assessee's case. He submitted that in the case law relied by AO, it was the case of destruction of fixed assets on account of fire and receipt of compensation from insurance company which stood on entirely different factual position. He thereafter submitted that the Hon'ble Apex Court in the case of **Anarkali Sarabhai vs. CIT 224 ITR 422 SC** after noting and distinguishing the decision in the case of Vania Silk Mills (supra) has held that redemption of preference shares will fall within the phrase "sale, exchange or relinquishment of asset" by shareholder and accordingly the same is to be subject to tax under the head capital gains. He further submitted that Hon'ble Bombay High Court in the case of **CIT vs. Enam Securities (P.) Ltd. 345 ITR**

64 (Bom.) by following the decision of Hon'ble Apex Court in the case of **Anarkali Sarabhai (supra)** has held redemption of preference shares amounts to transfer within the meaning of Section 2(47) of the Act. He thus relying on the aforesaid decision of Hon'ble Apex Court and Bombay High Court submitted that no interference to the order of CIT(A) is called for.

15. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the treatment of premium received by assessee on the redemption of preference shares. AO was of the view that premium received on redemption of preference shares was to be taxed as "income from other sources". We find that CIT(A) has given a finding that the investment in redemption of preference shares was clearly based on the condition that the assessee was entitled to receive redemption fair market value of shares apart from premium amount and therefore the receipt of premium was part of full value of consideration received on redemption of shares. Before us, no fallacy in the findings of CIT(A) has been pointed by the Revenue. We further find that Hon'ble Apex Court in the case of **Anarkali Sarabhai (supra)** after considering and distinguishing the decision of **Vania Silk Mills Ltd. (supra)** which has been relied upon by the AO, has held that redemption of preference shares is a sale and is also a transfer by relinquishment of asset by shareholder and accordingly the same is to be subject to tax under the head capital gains. Before us, no contrary binding decision has been placed by the Revenue to

support its case. We therefore find no reason to interfere with the order of CIT(A). **Thus the ground of Revenue is dismissed.**

16. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 11.11.2021

Sd/-

**(SANJAY GARG)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date: 11.11.2021

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI