

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH : 'G ' NEW DELHI)
BEFORE SHRI A.D. JAIN, JUDICIAL MEMBER AND
SHRI B.C. MEENA, ACCOUNTANT MEMBER**

**I.T.A. No.4539/Del./2010
(Assessment Year : 2007-08)**

**DCIT, Circle 4(1),
New Delhi.**

Vs.

**Jindal Photo Limited,
11/5-B, Basement,
Opp. Telephone Exchange,
Pusa Road, New Delhi.
(PAN/GIR No.AACCC3508Q)**

(Appellant)

(Respondent)

**Assessee by : Shri Gaurav Jain, CA
Revenue by : Shri K. Ravi Rama Chandran, DR**

ORDER

PER A.D. JAIN, JM

This is department's appeal for assessment year 2007-08, against the order passed by the CIT(A)-VII, New Delhi dated 30.8.10. The following grounds have been taken in this appeal:

- "1. The order of the CIT(A) is erroneous and contrary to facts and law.
2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in directing the AO to include sums of Rs.1,67,967 pertaining to Dadra Unit and Rs.9,90,873 pertaining to Samba Jammu Unit received as insurance for calculating the deduction u/s 80IB of the I.T. Act.
- 2.1 The Ld.CIT(A) ignored the fact that insurance receipt is not business receipt and does not qualify for deduction u/s 80IB of the I.T. Act.
3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.30,45,437 made by the AO u/s 14A of the I.T. Act.
- 3.1 The Ld.CIT(A) ignored the fact that the disallowance has been correctly made by the AO u/s 14A of the I.T. Act as per the provisions of the Rule 8D of the I.T. Rules."

2. Ground no.1 is general and requires no adjudication.
3. Apropos ground no.2, as per the assessment order, during the year under consideration, the assessee company had 6 manufacturing/trading units related to photo sensitized goods/chemicals and photographic equipment etc. at various locations, along with return of income filed, the assessee submitted its P&L A/c showing its manufacturing/trading activities in different products, unit-wise. The assessee's units at Dadra(PPD unit) and another unit at Samba (Jammu), were entitled for deduction 80IB of the I. T. Act. The assessee claimed such deduction @ 30% and 100% respectively. On perusal of the tax audit report, the AO observed, the assessee having excluded other income amounting to Rs.1706572 in its turnover of its Dadra unit and other income amounting to Rs.1467641 in the total turnover of its Samba unit. These other incomes comprised of interest received from banks, claims received, miscellaneous receipts, excess provision written back, in both the units and also excess depreciation written back in the Samba unit of the assessee.
4. On query, the assessee filed written submissions dated 30.10.09 before the AO. It was submitted that the interest income was received on account of amounts deposited as margin money/bank guarantees/earnest money in the shape of FDRs with bank issued for import of raw-material necessary to carry on the assessee's business of manufacturing; that the deposits were made out of business compulsion and were not made to earn interest income; that the deposits would not have been made, if there had been no compulsion to issue bank guarantee, margin money, etc. for the purpose of import material; that the import material was directly related to the business of manufacture, carried on by the eligible undertaking; that as such, the interest earned was eligible for deduction u/s 80IB of the Act; that

the claims had been received from insurance company on account of loss of goods in transit; that the claims were directly related to the business of the eligible undertaking, as they have been received against goods manufactured by the eligible undertaking; that the claims received were receipts related to the business of eligible undertaking, eligible for deduction u/s 80IB of the Act and that the miscellaneous receipts were receipts from scrap sales. Submissions were also made in regard to the excess depreciation written back in the Samba unit of the assessee and the excess provision written back for both the units.

5. The CIT(A) held the miscellaneous receipts to be allowable in view of the “Fenner India Ltd. vs. CIT”, 241 ITR 803 (Mad.), these receipts pertained to sale of scraps. The excess provision written back and the excess depreciation written back were also held to be eligible as directly related to the activity of the eligible units.

6. Apropos interest receipts, the AO held that the interest earned had been derived from FDRs kept as margin money/bank guarantees for import of raw-material, due to which, the interest earned was to be excluded from the profits of the eligible units for calculation of deduction u/s 80IB of the Act. For this, the AO applied the decision of the Hon’ble Supreme Court in the “ Pandian Ltd. vs. CIT”, 262 ITR 278(SC).

7. So far as regards the insurance claims received by the assessee on account of goods in transit, the AO relied on “CIT vs. Khemka Container P. Ltd.”, 275 ITR 559 (P&H) to hold that as such claims received could not be held to be income derived from industrial undertaking so as to qualify deduction u/s 80IB of the Act.

8. Ground no.2 raised before us pertains to the action of the CIT(A) having directed the AO to include the amounts of Rs.167967 and

Rs.990873, received by the assessee as insurance claims, in its Dadra & Samba units respectively, for calculating the deduction u/s 80IB of the I.T. Act. The CIT(A), in this regard, placed reliance on “CIT vs. Spot King India Ltd.”, 324 ITR 283 (Del.).

9. The Ld.DR in this regard has contended that the CIT(A) has ignored the fact that the insurance receipt is not a business receipt and does not qualify for deduction u/s 80IB of the Act.

10. Ld.Counsel for the assessee, on the other hand, has placed strong reliance on the impugned order.

11. We find that reliance placed by the CIT(A) on “Spot King India Ltd.” (supra) is proper. In that case, the plea of the assessee regarding claim of deduction u/s 80IB in respect of insurance claim receipt, was accepted. The provisions of section 80IA are in para materia in section 80IB of the Act. “Spot king India Ltd.” (supra) being a decision rendered by the jurisdictional High Court of Delhi, is, as such squarely applicable. Khemka Container Ltd. (supra) relied by the AO, against the assessee, is a decision of a non-judicial High Court qua-the- assessee, and, as such, it gives way to the case of “Spot King India Ltd.”, which has been rendered, as noted by the jurisdictional High Court of Delhi. Accordingly, ground no.2 raised by the department is rejected.

12. Apropos ground no.3, the AO made a disallowance of Rs.3045437 in terms of section 14A of the I.T. Act by applying the method provided in Rule 8D of the I.T. Rules, 1962.

13. By virtue of the impugned order, the CIT(A) restricted the said disallowance to Rs.173038, observing that the assessee had, of its own disallowed expenses to the extent of Rs.173038 incurred at its head office from where the investment in mutual funds had been done; that since dividend is not taxable, the expenditure on rent, taxes, salaries, interest, etc., pertaining to it would also not be allowable, since there was no taxable income of the assessee against which such expenditure

could be allowed and that the disallowance u/s 14A of the Act could be made in a year in which no exempt income had been earned by the assessee.

14. Aggrieved, ground no.3 has been taken by the department before us.

15. The Ld.DR has contended that the CIT(A) has erred in deleting the addition of Rs.3045437, ignoring the fact that the disallowance had been correctly made by the AO u/s 14A of the Act as per the provisions of Rule 8D of the I.T. Rules.

16. The Ld.Counsel for the assessee, on the other hand, has strongly supported the impugned order. It has been contended that the assessee had itself made a disallowance of Rs.173038 relating to expenses incurred at its head office Division; that this disallowance has rightly been maintained by the CIT(A), giving a relief of Rs.3045437 to the assessee; that there was no satisfaction recorded by the AO that the method followed by the assessee was not proper; that the provisions of section 14A(2) were not followed by the AO and wrongly applied Rule 8D of the Rules and automatically disallowance was made by the AO which action has rightly been reversed by the CIT(A).

17. We have heard the parties on this issue and have perused the material on record. During the year, the assessee had earned exempt dividend income of Rs.1797010 in respect of investment made in mutual funds. In the return of income filed, a suo moto disallowance of expenses to the tune of Rs.173038 had been made by the assessee u/s 14A of the Act. In the assessment order, the AO made a disallowance of Rs.3218475 by applying the method provided in Rule 8D of the I.T. Rules, 1962. This was done without pointing out any inaccuracy in the method of apportionment or allocation of expenses, as adopted by the assessee. All through, the assessee has maintained that the assessee was during the year, carrying on manufacturing activities at its manufacturing units at several places. Its head office was at Delhi.

The assessee had maintained separate books of account for each unit. Common expenses incurred at the head office and the branches were attributed to all the units including the head office. Investment in mutual funds, which gave rise to exempt dividend income, was done through the head office. It was the case of the assessee that to earn such dividend income, no direct expenditure was required and no expenses were incurred to make investment of surplus amounts in mutual funds. The suo moto disallowance had, however, been made by the assessee keeping in consideration, the provisions of section 14A of the Act.

18. Now, as per section 14A(2) of the Act, if the AO, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to income which does not form part of the assessee's total income under the Act, the AO shall determine the amount incurred in relation to such income, in accordance with such method as may be prescribed, i.e., under Rule 8D of the I.T. Rules. However, in the present case, the assessment order does not evince any such satisfaction of the AO regarding the correctness of the claim of the assessee. As such, Rule 8D of the Rules was not appropriately applied by the AO as correctly held by the CIT(A). It has not been done by the AO that any expenditure had been incurred by the assessee for earning its dividend income. Merely, an ad hoc disallowance was made. The onus was on the AO to establish any such expenditure. This onus has not been discharged. In "CIT vs. Hero Cycles" (P&H) 323 ITR 518, under similar circumstances, it was held that the disallowance u/s 14A of the Act requires a clear finding of incurring of expenditure and that no disallowance can be made on the basis of presumptions. In "ACIT vs. Eicher Ltd.", 101 TTJ (Del.) 369, that it was held that the burden is on the AO to establish nexus of expenses incurred with the earning of exempt income, before making any disallowance u/s 14A of

the Act. In “Maruti Udyog vs. DCIT, 92 ITD 119 (Del.), it has been held that before making any disallowance u/s14A of the Act, the onus to establish the nexus of the same with the exempt income, is on the revenue. In “Wimco Seedlings Limited vs. DCIT”, 107 ITD 267 (Del.)(TM), it has been held that there can be no presumption that the assessee must have incurred expenditure to earn tax free income. Similar are the decisions in:

1. Punjab National Bank vs. DCIT, 103 TTJ 908 (Del.);
2. Vidyut Investment Ltd., 10 SOT 284 (Del.); and
3. D.J. Mehta vs. ITO, 290 ITR 238 (Mum.)(AT)

19. In view of the above, finding no error with the order of the CIT(A) on the point at issue, the same is hereby confirmed. Ground no.3 is thus rejected.

20. In the result, the appeal filed by the department is dismissed.

Order pronounced in open court on 22.12.2010

Sd/-
(B.C. MEENA)
ACCOUNTANT MEMBER

Sd/-
(A. D. JAIN)
JUDICIAL MEMBER

Dated : December 22, 2010.

SKB

Copy of the order forwarded to :-

1. Appellant.
2. Respondent.
3. CIT,
4. CIT (A)-VII, New Delhi.
5. CIT(ITAT), New Delhi.

By Order.

Assistant Registrar, ITAT.