

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

**BEFORE SHRI T.S. KAPOOR, ACCOUNTANT MEMBER
&
SMT. BEENA PILLAI, JUDICIAL MEMBER**

**I.T.A .No. 4467/Del/2012
(ASSESSMENT YEAR-2009-10)**

DCM Ltd., 6 th Floor, Vikrant Tower, 4, Rajindra Place, New Delhi. AAACD1012E	vs	DCIT, Circle 10(1), New Delhi.
---	----	--------------------------------------

&

**I.T.A .No.-5176/Del/2012
(ASSESSMENT YEAR-2009-10)**

DCIT, Circle 10(1), New Delhi.	vs	DCM Ltd., 6 th Floor, Vikrant Tower, 4, Rajindra Place, New Delhi. AAACD1012E
--------------------------------------	----	---

Appellant by	Sh. Pradeep Denodia, CA & Sh. V.P. Gupta, Adv.
Respondent by	Smt. Parwinder Kaur, Sr. DR

Date of Hearing	27.08.2015
Date of Pronouncement	01.09.2015

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER:

1. These are cross appeals filed by the Revenue & Assessee against the order dated 06/07/2012 passed by the Id. CIT(A)'s-XIII, New Delhi for A.Y. 2009-10.

2. Grounds of Revenue's appeal are as under:

1. *“That the CIT(A) erred in disallowing alternate claim made by the appellant on actual payment basis in respect of following items of expenses incurred in relation to real estate project without appreciating that claim had been made by the appellant for the reason that department has not accepted allowability of expenses on accrual basis and appeals in respect thereof are pending for adjudication before Delhi High Court.*
 - a) *Expenditure in respect of approvals and permissions – Rs. 72,51,725/-*
 - b) *Expenditure on removal of squatters – Rs. 10,00,000/-*
2. *That the CIT(A) erred in upholding addition of Rs. 260.00 lacs and Rs. 75.53 lacs made u/s 41(1) of the Act in respect of payment to Builders and liability for vacation of squatters allowed in assessment year 2004-05 on accrual basis without appreciating that since the department is disputing allow ability of these liabilities on accrual basis in assessment year 2004-05 amounts cannot be included in the taxable income in this year u/s 41(1) of the I.T. Act.*
3. *That the CIT(A) erred in disallowing an amount of Rs. 11.79 lacs on account of administrative expenses u/s 14A of the Income Tax Act as against disallowance made by the appellant company of Rs. 2.00 lacs in its return of income.*
4. *That the CIT(A) erred in upholding addition on account of disallowance under section 14A read with Rule 8D of Rs. 9.79 lacs in determination of book profit for the purpose of section 115JB of the Income Tax Act.*
5. *That the CIT(A) erred in upholding the initiation of penalty proceedings u/s 271(1)(c) of the Act in the facts and circumstances of the appellant.*
6. *That the order passed by the AO and upheld by CIT(A) is bad in law.*
7. *That the Appellant Company craves leave to alter, amend, vary and/or add any of the grounds of appeal at any time herein after.”*

Grounds of Assessee's appeal are as under:

1. *“Whether the ld. CIT(A) on the facts and circumstances of the case and in law is correct in deleting the deduction of Rs. 2,94,81,000/- on account of interest payable on accrual basis to MCD?”*
 2. *Whether the ld. CIT(A) on the facts and circumstances of the case and in law is correct in deleting the disallowance of Rs. 22,32,000/- made by the AO on account of interest on interest free loans?*
 3. *Whether the ld. CIT(A) on the facts and circumstances of the case and in law is correct in restricting the disallowance to Rs. 9,79,000/- as against Rs. 1,66,18,000/- made by the AO u/s 14A of the IT Act?*
 4. *Whether the ld. CIT(A) on the facts and circumstances of the case and in law is correct in restricted the adjustment u/s 115JB of the I T Act, 1961, to Rs. 9.79 lacs as against the adjustment of Rs. 166.18 lacs made by the AO?*
 5. *The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.”*
3. We first deal with the appeal filed by the Revenue in:

ITA No. 4467/Del/2012.

Ground no. 1: Whether the CIT(A) erred in disallowing alternate claim made by the appellant on actual payment basis in respect of following items of expenses incurred in relation to real estate project without appreciating that claim had been made by the appellant for the reason that department has not accepted allowability of expenses on accrual basis and appeals in respect thereof are pending for adjudication before Delhi High Court;

- a) Expenditure in respect of approvals and permission Rs. 72,51,725/-
- b) Expenditure on removal of squatters Rs. 10,00,000/-,

4. We find that the issue stands covered in favour of the assessee by the orders of Tribunal in the earlier assessment years annexed to the paper book as under;

A.Y. 2004-05 at page 67 to 68

A.Y. 2005-06 at page 72 to 73

A.Y. 2006-07 at page 81 to 82

5. The coordinate Bench has passed the order on identical ground for A.Y. 2007-08 in ITA No. 1895/Del/2012 which has been produced before us. The said order for A.Y. 2007-08 has adjudicated the matter relying upon the order for A.Y. 2006-07 as below:

“2.1 It is the common case of both the parties that the grounds stand covered in favour of the assessee company by the order of the Tribunal in ITA No. 1983/Del/09 for A.Y. 2005-06 dated 17.11.2009, a copy of which has been placed in the paper book on page nos. C-3 to C-10. In this order, reliance has been placed on the orders of the Tribunal for earlier years in the case of the assessee. Therefore, we think it fit to reproduce the paragraph from that order, which as discussed the issue in detail.

In regard to ground no. 2 regarding interest of Rs. 67.20 lacs payable to MCD for nonpayment of flyover cost in time, the decision has been as under:

“We have considered the rival submissions. In regard to the issue of disallowance of Rs. 12.21 crores being the expenses which had been disallowed by the AO as also the issue of disallowance of flyover cost of Rs. 13.50 crores and the issue of interest payable to MCD in respect of outstanding flyover cost, it is noticed that for the assessment year 1993-94 to 1996-97 the revenue has included the income on the sale of property rights on the entering into agreement with the buyers and the expenses on account of land and development incurred by the assessee has been allowed in proportion to the area sold but applying the matching principle. It is also noticed that

in the later years, the assessee has accepted the stand of the revenue and has also been following the same practice. For the relevant assessment year, it is noticed that the AO has changed his stand just because the assessee has transferred the complete rights in the project as a whole to M/s Purearth Infrastructure Ltd. When a particular method of computation of income of the assessee has been followed and has been accepted and is also followed by the revenue and the assessee, just because the total rights in the project has been transferred, such method cannot be changed as by the change of the method, the expenses otherwise allowable to the assessee, is now being denied which is not a permissible act. In these circumstances, we are of the view that the action of the CIT(A) in directing the AO to allow the deduction of the said expenses is on right footing and do not call any interference.”

6. The facts and circumstances of the issue being identical, we are also inclined to follow the orders Tribunal in the preceding assessment years in assessee's own case. Accordingly this ground of Revenue is dismissed.

7. **Ground no. 2:** Whether the CIT(A) erred in upholding addition of Rs. 260.00 lacs and Rs. 75.53 lacs made u/s 41(1) of the Act in respect of payment to Builders and liability for vacation of squatters allowed in assessment years 2004-05 on accrual basis without appreciating that since the department is disputing allow ability of these liabilities on accrual basis in assessment year 2004-05 amounts cannot be included in the taxable income in this year u/s 41(1) of the I.T. Act.

8. The Tribunal has dealt with this issue in the assessee's own case and the same stands covered in favour of the assessee by the

orders of Tribunal in the earlier assessment years annexed to the paper book as under;

A.Y. 2004-05 at page 69,

A.Y. 2005-06 at page 74,

A.Y. 2006-07 at page 82

A.Y. 2007-08 at pages 13, 14 & 17

9. The coordinate Bench has passed the order on identical ground for A.Y. 2007-08 in ITA No. 1895/Del/2012 which has been produced before us. The said order for A.Y. 2007-08 has adjudicated the matter relying upon the order for A.Y. 2006-07 as below:

“2.2 In regard to notional interest, the finding of the Tribunal has been as under:

In regard to the issue of disallowance of interest on the loans outstanding from M/s DCM Employees Welfare Trust, it is noticed that the issue is squarely covered by the decision of the Coordinate Bench of this Tribunal in the assessee’s own case for the A.Y. 2003-04 referred to supra and consequently respectfully following the decision of the Coordinate Bench of this Tribunal in the assessee’s own case for the A.Y. 2003-04, the findings of the ld. CIT(A) on this issue stand upheld.”

10. The facts and circumstances of the issue being identical, we are also inclined to follow the orders Tribunal in the preceding assessment years in assessee’s own case.

11. Accordingly ground no. 1 & 2 of Revenue is dismissed.

12. We now deal with the appeal filed by the Assessee in;

ITA No. 4467/D/2012

13. It is submitted by the ld. AR that ground no. 1 & 2 of the assessee's appeal are incidental in nature to ground no. 1 & 2 of the Revenue's appeal. As we have dismissed the ground no. 1 & 2 of the Revenue's appeal, ground no. 1 & 2 of the assessee's appeal stand infructuous.

14. The only issue left for adjudication is addition in respect of Sec.14A disallowance. Both the Assessee as well as Revenue is in appeal (**being ground no.3**) before us on this issue.

Facts germane to deal with this issue are as under:

15. On perusal of assessment records it is observed that the assessee had made certain investments, and it had received dividend income of Rs. 60,088/- during the year under consideration which was claimed as exempt u/s 10(34) of the Act. The assessee in its computation of income had *suo moto* disallowed an amount of Rs. 10,23,000/- as per Rule 8D, calculations of the same has been submitted by the assessee before ld. AO. The AO worked out the disallowance at Rs. 166.18 lacs u/s 14A of the Act. The AO had made the disallowances u/s 14A as under:

Clause	Particulars			Amount (in lacs)
i.	Expenditure directly related to exempt income		751.21	2.00
ii.	Disallowance of interest expenditure	$\frac{6583.5 + 6583.5}{2}$	6583.5	141.50
	A. Interest expenditure incurred during the year	33105.47	+ 34951.23	
	B. Average Value of Investment	$\frac{36796.98}{2}$		
	C. Average of total assets Disallowance + AX B/C	$\frac{751.21 \times 6583.5}{34951.22}$		

iii.	Aggregate of opening & closing value of investment (Average value of investment) 1/2% of above as per Rule 8D	6583.5 X 0.5%		32.91
	Total disallowance (Average of (i), (ii) & (iii))			176.41
	Already added back in the computation of income by the assessee			10.23
	ADDITION ON ACCOUNT OF SEC. 14A R/w Rule 8D			166.18

16. It is argued that out of 751.21 lacs, interest expenditure to an extent of 681.25 lacs is directly attributable to loans, which was taken for the purposes of business of the company, namely Textile Division and I.T. Division. This amount cannot be proportionately attributed in terms of Rule 8D. The AO has further included value of shares amounting to Rs. 42 crores which are allotted by DCM Engineering Ltd., pursuant to transfer of business to that company under the scheme of arrangement approved by the Delhi High Court. Therefore, the amount of Rs. 42 crores cannot be included in the value of assets as well as investments, as no funds had been invested by the appellant for the allotment of above shares.

17. In respect of disallowance of administrative expenses the appellant submits that it had received dividend income during the year to an extent of Rs. 60,088/- only, and that there has been no transaction of purchase and sale of shares during the relevant year under consideration. Therefore, no disallowance on account of administrative expenses is warranted. In any case, it noticed that the appellant has offered a disallowance of Rs. 2 lacs over and above the interest expenses.

18. On the other hand, the ld. DR present supported the stand of the CIT (A) on the issue. The Ld. D.R. placed reliance on the decision of coordinate bench in the case of T&T Motors Ltd., in ITA no. 6490/Del/2010 for assessment year 2009-10.

19. We have verified the above submissions and perused the Statement of accounts submitted by the assessee in paper book. As per the computation the assessee has offered disallowance on account of interest amounting to Rs. 8.23 lacs and has further offered disallowance on account of administrative expenses to an extent of Rs. 2 lacs. Thus, the total disallowance u/s 14A as offered by the assessee amount to Rs. 10.23 lacs.

20. It is further observed that as per the scheme of restructuring and arrangement approved by the Hon'ble Delhi High Court, the assets and liabilities(including loans) were transferred to a new company and shares were allotted against the same(**clause 3, 11 of the Schedule to the Accounts**). In respect of administrative expenses, we find that the assessee has not made any purchase or sale of investment in the relevant year under consideration. Still to cover up, the assessee has *suo moto* disallowed an amount of Rs.2,00,000/- (**working of 14 A disallowance at page 34 of paper book**).

21. We find force in the submissions made by the ld. AR. We also find that the AO has neither recorded his satisfaction nor given reasons as to how the claim of expenditure in relation to tax free income has not been correctly made by the assessee as envisaged under section 14A(2). The ld AO has mechanically invoked Rule 8D. Sub-section (2) of section 14A of the Act provides the manner in which the AO is to

determine the amount of expenditure incurred in relation to income, which does not form part of the total income.

22. We find that the AO has not established any nexus between the investments made and the expenditure incurred under the head interest expenditure and administrative expenses, before disregarding the disallowance *suo moto* made by the assessee u/s 14A of the Act vis a vis the dividend income earned amounting to Rs.68,088/-.

23. The decision relied upon by the Revenue in the case of T&T Motors Ltd., in ITA no. 6490/Del/2010 for assessment year 2009-10 are distinguishable on facts. In the case of T&T, the assessee had argued that there cannot be any expenditure that could be disallowed against the exempt income received by the assessee therein. The Hon'ble coordinate bench has recorded in para 5 therein that the assessee had incurred certain expenses which was attributable to the earning of exempt income. However in the facts of the present case before us, the assessee has *suo mote* disallowed expenses under section 14A of the Act. The Ld.D.R, contended that in the event there are any deficiency left by the A.O in recording proper satisfaction, the same can be made good by the Ld.CIT(A). In the facts of the present case the Ld. CIT(A) has not compensated for the deficiency by the A.O in recording proper satisfaction. The ld. CIT(A) has restricted the disallowance to an extent of Rs. 9.79 lacs. The ld. CIT(A) fails to appreciate the reasonableness of expenditure that has been disallowed *viz-a-viz* the exempt income. In the light of the judgment of *Maxopp Investments Ltd. vs. CIT (2012) 374 ITR 272*. We, restrict the disallowance to 10.23 lacs as calculated by the assessee.

24. The Hon'ble Delhi High Court in the case of Joint Investment Pvt.Ltd., Vs. CIT, vide its order dated 25.02.2015, has held that disallowance u/s.14A cannot exceed the amount of exempt income. The Delhi High Court in the case of Holcim India Pvt.Ltd., reported in (2014) 272 CTR 282(Del), has held that there can be no disallowance u/s. 14A in the absence of any exempt income. The rationales behind these judgments are that, the amount of disallowance should not exceed the exempt income.

25. In view of the aforesaid discussion and on the basis of material and evidence on record, to meet the ends of justice, we find no perversity in the calculation of 14 A, disallowance by the assessee. This ground no.3 in the assessee's is allowed and that of Revenue is dismissed.

26. **Ground no 4:**This ground raised by the assessee is in respect of inclusion of the addition u/s.14A made by the ld. A.O in determining the book profits u/s115JB. As the addition made by the A.O u/s.14A stands deleted in view of the aforesaid reasoning, this ground no.4 of the assessee's appeal becomes consequential in nature.

27. **Ground no.5:** This ground is in respect of initiation of penalty proceedings u/s.271(1) (c) of the Act. Since has been allowed relief on account of disallowance u/s.14 A, penalty proceedings u/s.271(1) (c) of the Act becomes consequential in nature and no specific determination is called for.

28. The grounds raised by the assessee are partly allowed.

29. In the result, the Revenue's appeal is dismissed and the assessee's appeal is partly allowed.

The order is pronounced in the open court on 01/09/2015

Sd/-

**(T.S. KAPOOR)
ACCOUNTANT MEMBER**

Dated: 01/09/2015

**Kavita, P.S.*

Copy forwarded to:

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

Sd/-

**(BEENA PILLAI)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI

		Date
1.	Draft dictated on	27.08.2015
2.	Draft placed before author	28.08.2015
3.	Draft proposed & placed before the second member	31.08.2015
4.	Draft discussed/approved by Second Member.	01.09.2015
5.	Approved Draft comes to the Sr.PS/PS	01.09.2015
6.	Kept for pronouncement on	01.09.2015
7.	File sent to the Bench Clerk	01.09.2015
8.	Date on which file goes to the AR	
9.	Date on which file goes to the Head Clerk.	
10.	Date of dispatch of Order.	