

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “J”, MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

ITA NO.5048/MUM/2016 (A.Y: 2012-13)

M/s. Pest Control India Pvt Ltd
36, Yusuf Building
M.G. Road, Fort
Mumbai – 400 001

v. The Dy. CIT
Central Circle 4(2)
Mumbai

PAN No: AAACP 5994 K

(Appellant)

(Respondent)

ITA NO.5608/MUM/2016 (A.Y: 2012-13)

DCIT -2(2)(1),
R.No.545, 5th Floor,
Aayakar Bhavan, M.K.Road,
Mumbai-400 020

M/s. Pest Control India Pvt Ltd
36, Yusuf Building
M.G. Road, Fort
Mumbai – 400 001

PAN No: AAACP 5994 K

(Appellant)

Assessee by : Shri G.S. Pikale
Department by : Ms. Arju Garodia

Date of Hearing : 05.10.2017
Date of Pronouncement : 31.10.2017

ORDER**PER C.N. PRASAD (JM)**

1. These appeals are filed by the assessee as well as the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)– 52, Mumbai dated 08.06.2016 for the Assessment Year 2012-13.

2. The assessee in its appeal is challenging order of the Ld.CIT(A) in not deleting the entire disallowance made under section 14A r.w. Rule 8D by the Assessing Officer and the Revenue in its appeal is challenging the order of the Ld.CIT(A) in restricting the disallowance u/s. 14A r.w. Rule 8D to ₹.5,10,610/- as against ₹.26,98,662/- made by the Assessing Officer.

3. Briefly stated the facts are that, the Assessing Officer while completing the assessment noticed that assessee received dividend income of ₹.1,83,500/- and claimed this as exempt income. However, he noticed that assessee debited interest and bank charges to the Profit and Loss Account at ₹.1,76,16,357/-. The assessee was required to explain as to why provisions of section 14A r.w. Rule 8D should not be invoked. Assessee submitted that the investment has been made by it in the shares out of own funds and not from borrowed funds. It was also submitted that the investments were not made with the motive of earning dividend

income. Further the Assessing Officer observing that assessee has not been able to establish that no part of interest bearing fund has found its way into the investments shares/mutual funds and funds of the assessee need to be considered as mixed one and mainly the interest expenditure relatable to activity of investments in mutual funds is disallowed u/s. 14A. He also of the view that investments decisions are very complex in nature require substantial market research day to day analysis on market trends. Decisions regarding acquisition, retention and sales of shares at the most appropriate time and feels administrative expenses like salary, wages, staff, welfare, general expenses and printing stationary etc., have to be considered. Therefore, he held that the submissions of the assessee that no expenditure is incurred by the assessee is not correct and he invoked the provisions of section 14A r.w. Rule 8D and computed the disallowance Rule 8D(2)(i) at ₹.26,98,662/- and Rule 8D(2)(ii) at ₹.8,09,793/- and Rule 8D(2)(iii) at ₹.3,35,463/-.

4. On appeal, the Ld.CIT(A) after considering various submissions of the assessee and taking note of the fact that the interest debited to Profit and Loss Account is towards regular banking transactions and not towards the borrowed funds for investments, Ld.CIT(A) recomputed the disallowance under section 14A at ₹.5,10,601/- i.e., u/s. Rule 8D(2)(i) at Nil, Rule 8D(2)(ii) at ₹.3,42,870/- and Rule 8D(2)(iii) at ₹.1,67,731/-

agreeing with the contention of the assessee that bank charges of ₹.26,98,662/- were relating to over draft, D.D charges etc., and not incurred in connection with investments in shares. Therefore, the same should not be considered for the purpose of disallowance u/s. 14A r.w. Rule 8D. Further, Ld.CIT(A) observed that the Assessing Officer wrongly taken the total value of investment on the first and last day of the previous year as against average values for the purpose of computing the disallowance under Rule 8D(2)(ii). Thus he recomputed the disallowance under Rule 8D and worked out the same at ₹.5,10,601/-.

5. The Learned Counsel for the assessee before us vehemently reiterated the submissions made before the lower authorities. The Learned Counsel for the assessee submits that in any case the disallowance should not exceed the dividend income earned by the assessee and in this case he submits that the assessee has earned dividend income of ₹.1,83,500/- only during the current Assessment Year.

6. Ld.DR vehemently supported the orders of the Assessing Officer and written submissions were also furnished.

7. We have heard the rival submissions, perused the orders of the authorities below and the case laws relied upon. The Assessing Officer computed the disallowance u/s. 14A r.w. Rule 8D at ₹.38,43,918/- and the

Ld.CIT(A) recomputed the disallowance at ₹.5,10,601/- which comprises of ₹.3,42,870/- under Rule 8D(2)(ii) and ₹ 1,67,731/- under Rule 8D(2)(iii).

This calculation of the Ld.CIT(A) appears to be proper and justified.

8. Further, it has been held in various cases that the disallowance u/s. 14A r.w. Rule 8D cannot exceed the exempt income. The Hon'ble Punjab and Haryana High Court in the case of Principal Commissioner of Income Tax-I v. M/s Empire Package Pvt. Ltd in ITA.No. 415 of 2015 dated 12.01.2016, dismissed the appeal of the Revenue holding that there is no substantial question of law arise in the appeal on the following question raised by the Revenue: -

"Whether in the facts and circumstances of the case, the Hon'ble ITAT is justified in law to hold that the disallowance made under section 14A read with Rule 8D cannot exceed the exempt income, in the absence of any such restriction being there in the relevant section or rule?"

The Hon'ble High Court affirmed the order of the ITAT in holding that the disallowance u/s. 14A r.w. Rule 8D as worked out by the Assessing Officer is not in accordance with law for the reason that Assessing Officer has disallowed entire tax exempt income and this is not permissible in view of the judgment of the Hon'ble Delhi High Court.

9. The Hon'ble Delhi High Court in the case of Joint Investment Private Limited in ITA.No. 117/15 dated 25.02.2015 held that by no stretch of

imagination can section 14A or Rule 8D be interpreted so as to mean that entire tax exempt income is to be disallowed.

10. Further, we find that considering the above two decisions the Coordinate Bench in the case of Sanghavi Exports International P. Ltd v. ACIT in ITA.No.3405/Mum/2015 dated 10.07.2017 held that disallowance should not be more than the dividend income by observing as under: -

4. We have perused the Assessment Order and find that the assessee earned exempt income of Rs. 1,70,000/- only during this Assessment Year and the Assessing Officer by invoking the provision of Section 14A made disallowance at Rs.54,66,813/-. The Hon'ble Delhi High Court in the case of Joint Investment Private Limited in ITA.No. 117/15 dated 25.02.2015 held that by no stretch of imagination can section 14A or Rule 8D be interpreted so as to mean that entire tax exempt income is to be disallowed. Similarly, Punjab and Haryana High court in the case of PCIT v. Empire Package Private Limited in ITA.No. 415/2015 held that disallowance should not exceed exempt income. In the case on hand since the assessee received dividend income of Rs.1,70,000/- as recorded in the Assessment Order the disallowance should not be more than Rs.1,70,000/-. Thus we direct the Assessing Officer to restrict the disallowance to the extent of dividend income i.e. Rs.1,70,000/- and delete the balance amount and compute the incomes accordingly."

11. Thus, respectively following the said decisions, we direct the Assessing Officer to restrict the disallowance u/s. 14A r.w. Rule 8D to the extent of dividend income of ₹.1,83,000/- received for the Assessment Year 2012-13 and compute the income accordingly.

12. In Revenue's appeal it was also contended that there is a violation under Rule 46A as no opportunity was given to Assessing Officer to examine the additional evidences filed by the assessee before Ld.CIT(A). However, the Revenue could not point out before us what exactly are the additional evidences furnished by the assessee, hence this ground is dismissed as there is no substance.

13. In the result, appeal of the assessee is partly allowed and appeal of the Revenue is dismissed.

Order pronounced in the open court on the 31st October, 2017.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai / Dated 31/10/2017
VSSGB, SPS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mum