

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "B": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.6879/Del./2015
Assessment Year 2012-2013

The ACIT, Central Circle- 17, Room No.103, Hall No.1, 1 st Floor, ARA Centre, Jhandewalan Extension New Delhi.	vs.,	M/s. Sainik Mining and Allied Services Ltd., 129, Transport Centre, Punjabi Bagh, New Delhi. PAN AAACS2791P
(Appellant)		(Respondent)

C.O.No.131/Del./2016
Arising out of
ITA.No.6879/Del./2015
Assessment Year 2012-2013

M/s. Sainik Mining and Allied Services Ltd., 129, Transport Centre, Punjabi Bagh, New Delhi. PAN AAACS2791P	vs.,	The ACIT, Central Circle- 17, Room No.103, Hall No.1, 1 st Floor, ARA Centre, Jhandewalan Extension, New Delhi.
(Cross Objector)		(Respondent)

ITA.No.6880/Del./2015
Assessment Year 2013-2014

The ACIT, Central Circle-17, Room No.103, Hall No.1, 1 st Floor, ARA Centre, Jhandewalan Extension New Delhi.	vs.,	M/s. Sainik Mining and Allied Services Ltd., 129, Transport Centre, Punjabi Bagh, New Delhi. PAN AAACS2791P
(Appellant)		(Respondent)

C.O.No.132/Del./2016
Arising out of
ITA.No.6880/Del./2015 - Assessment Year 2013-2014

M/s. Sainik Mining and Allied Services Ltd., 129, Transport Centre, Punjabi Bagh, New Delhi. PAN AAACS2791P	vs.,	The ACIT, Central Circle-17, Room No.103, Hall No.1, 1 st Floor, ARA Centre, Jhandewalan Extension New Delhi.
(Cross Objector)		(Respondent)

For Revenue :	Ms. Rachna Singh, CIT-D.R.
For Cross-Objector :	Shri Sajjan Kumar Tulsian, Ms. Nisha Racha, Shri Karan Kumar, Advocates.

Date of Hearing :	30.11.2017
Date of Pronouncement :	05.12.2017

ORDER

PER BHAVNESH SAINI, J.M.

The Department Appeals as well as cross objections of the assessee are directed against the common order of the Ld. CIT(A)-27, New Delhi, dated 29th October, 2015, for the A.Ys. 2012-2013 and 2013-2014.

2. We have heard the Learned Representatives of both the parties and perused the material on record.

3. The assessee filed both the cross-objections mainly in support of the order of the Ld. CIT(A). The same are therefore, dismissed.

4 Both the Departmental Appeals are decided issue-wise as under.

ISSUE No.1

5. On Grounds No.1 and 2, in both the Departmental Appeals, the Revenue has challenged the deletion of addition of Rs.37,57,442 and Rs.40,09,335 under section 14A read with

Rule 8D of I.T. Rules, respectively in both the years. The A.O. noted that assessee-company has investments in shares, the income of which i.e., dividend is exempt from tax. The assessee-company was specifically asked to give details of the expenses attributable for earning this income and also to quantify the disallowance under section 14A read with Rule 8D of the I.T. Rules. The assessee-company submitted before A.O. that assessee-company has not earned any dividend income and as such, question of incurring of expenditure does not arise. The A.O. however, noted that by not earning of income does not mean non-incurring of expenses. There might be huge amount of expenses which could not result into earning of income. Further, presently, it is settled Law that Rule 8D is applicable w.e.f. A.Y. 2008-09 irrespective of earning income. The CBDT has issued Circular on this issue in February, 2014 i.e., Circular No.5 dated 11th February, 2014. The assessee-company has not given any working of the disallowances. Therefore, the A.O. by applying Rule 8D of I.T. Rules, made the above disallowance under section 14A of the I.T. Act, 1961.

5.1. Both the additions were challenged before Ld. CIT(A). The assessee-company reiterated the submissions made before A.O. that assessee-company has not earned any dividend income in the years under appeal. In addition to the above, the assessee-company relied upon the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd., vs. CIT-VI, New Delhi 378 ITR 33 in which it was held that "*Section 14A will not apply if no exempt income is received or receivable during the relevant previous year.*"

5.2. The Ld. CIT(A) considering the explanation of assessee-company noted that Section 14A comes into play only where exempt income has been earned during the relevant period. During the assessment years under appeal, the assessee-company had not earned any dividend income. Therefore, following the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd., vs. CIT-VI, New Delhi (supra), both the additions were deleted by the Ld. CIT(A).

5.3. The Ld. D.R. relied upon the order of the A.O. and submitted that Rule 8D is applicable to assessment years under appeal irrespective of earning of income in reference. The tax statute is to be considered strictly. Section 14A(1) is the basic and primary provision, which provides for disallowance of an expenditure incurred in relation to exempt income. The A.O. has rightly disallowed the claim of expenditure pertaining to exempt income within the ambit of Law and provisions of Income Tax Act. The Ld. D.R. also filed the written submissions in which certain case Law have been relied upon.

5.4. On the other hand, the Learned Counsel for the Assessee, reiterated the submissions made before the authorities below and submitted that in A.Ys. 2009-10 to 2011-12 the same issue came up for consideration before ITAT, Delhi 'B' Bench in ITA.Nos.6876 to 6878/Del./2015 dated 15th September, 2017, in which following the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd., vs. CIT-VI, New Delhi (supra), the Departmental Appeals were dismissed. Copy

of the order of the ITAT is filed. He has submitted that the issue is covered in favour of the assessee-company.

6. After considering the rival contentions, we do not find any merit in the Departmental Appeal on this issue. It is not in dispute that assessee-company has not earned any dividend income in assessment years under appeal. The Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs CIT-VI, New Delhi (supra) has held that if there is no exempt income, there can be no question of making any disallowance under section 14A of the I.T. Act. The Ld. CIT(A) has passed the impugned order for A.Ys. 2008-2009 to 2013-2014 and deleted the similar addition. In A.Ys. 2009-2010 to 2011-2012, the Departmental Appeal has been dismissed by the Tribunal vide order dated 15th September, 2017. The Tribunal following the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd., vs. CIT-VI, New Delhi (supra) and finding that there is no exempt income earned by the assessee-company, dismissed the Departmental Appeals. The issue is covered in favour of the

assessee by the order of the ITAT as well as judgment of the Hon'ble Delhi High Court in the case of Cheminvest Ltd., vs. CIT-VI, New Delhi (supra). The contention of the Ld. D.R. therefore, rejected. Grounds No.1 and 2 of appeals of the Revenue in both the appeals are dismissed. Issue No.1 is decided against the Revenue.

ISSUE No.2

7. In A.Y. 2012-2013, the Revenue on ground No.3 challenged the deletion of addition of Rs.69,61,660 made on the basis of the seized material. In this case, search and seizure operation was conducted on 12th April, 2012. During the course of assessment proceedings, assessee-company was asked to explain the payment mentioned at pages 18 and 19 of the seized paper A-1. The assessee-company submitted before A.O. that financial jottings at pages 18 and 19 of Annexure-A1 amounting to Rs.69,61,660 represents draft statements of bill details, deduction therefrom and fund planning for the month of March, 2012 of Ranchi Branch Office of SMASL (assessee). The

financial implication of the same were already taken in F.Y. 2011-2012 in the books of account of the assessee-company. Copy of the bank statement reflecting receipt of Rs.68,00,540 was filed before A.O. However, the A.O. was not satisfied with the explanation of assessee-company and noted that the seized document reveal that document is on loose sheet, contains certain calculations, partly written by pen and partly by pencil. The assessee-company has admitted ownership of the document, but did not explain the figures and occasion and the purpose of recording these figures. The explanation of assessee-company cannot be accepted in the absence of supporting documents. In the absence of explanation of assessee-company, the A.O. was of the view that the seized documents remain unexplained. Further, the seized document contain names of three persons, while the amount received is through a single RTGS. The A.O. accordingly made the addition. The assessee-company filed written submissions before Ld. CIT(A) which is reproduced in the appellate order in which the assessee-company briefly explained that seized paper shows the amount

of the work done of Rs.57,21,735.60 and service tax of Rs.12,39,934. The gross total of which is Rs.69,61,669.60. Central Coal Field Ltd., paid Rs.68,00,564 after deducting Rs.1,61,105 on account of statutory dues of TDS etc., This amount of Rs.68,00,564 was received in ICICI Bank Ltd., by assessee-company on 7th March, 2012 through RTGS. The copy of the bank statement was also filed. The assessee-company also filed copy of the accounts. It was submitted that the planning can be recorded at any time. It was also explained that after receipt of the amount in question from Central Coal Field Ltd., the assessee-company has made payments to three persons which are mentioned in the seized paper for the diesel supplied and work done by them. Copies of the accounts were also filed. All the entries are reflected in the books of account. It was, therefore, submitted that addition may be deleted. The Ld. CIT(A) considering the explanation of assessee-company found that entries in the seized document duly reflected in the books of account of the assessee-company and accordingly, deleted the addition.

7.1. The Ld. D.R. relied upon the order of the A.O. and submitted that no supporting documents were filed before A.O. Ld. D.R. relied upon the decision of the Hon'ble Supreme Court in the case of Keshav Mills & Co., 56 ITR 365 and submitted that the matter may be remanded to the Ld. CIT(A) for reconsideration.

7.2. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before authorities below and referred to paper book which is seized document, PB-3 bank statement to show that entry in the seized document have been explained.

8. After considering the rival contentions, we do not find any merit in the Departmental Appeal. Whatever entries are referred to in the seized document, have been duly explained by assessee-company before the authorities below and all the entries in the seized document are reflected in the books of account. The payments received from Central Coal Field Ltd., have been mentioned in the bank account of the assessee-

company and payments mentioned in the seized documents have been made to the three parties. The Ld. CIT(A) therefore, on proper appreciation of all the seized documents in reference to the books of account, correctly deleted the addition. There is no merit in ground No.3 of appeal of the Revenue. Ground No.3 is accordingly dismissed. Issue No.2 is decided against the Revenue.

ISSUE No. 3 :

9. In A.Y. 2013-2014 on ground No.3 the Revenue challenged the deletion of addition of Rs.2,97,784 on account of unexplained cash found during search. The A.O. asked the assessee-company to explain source of the cash. The assessee-company submitted that during the course of search proceedings, cash amounting to Rs.6,47,000 was found. This amount pertains to 03 companies i.e., assessee, Sainik Finance & Industries Limited (SFIL) and M.P. Sainik Coal Mining Private Limited (MPSCMPL). Copy of the cash book and confirmations were filed. The A.O. was not satisfied with the explanation of

assessee-company because cash of Rs.6,47,000 was found from Gurgaon Office of the assessee-company and as per cash book, balance is available of Rs.3,49,216 only. Other group companies are having their office at Delhi and Bhopal. Therefore, explanation of assessee-company were rejected. The A.O. accordingly, made addition of Rs.2,97,783

9.1. The written submissions of the assessee-company were reproduced in the appellate order in which the assessee-company briefly explained that confirmation of all the group companies were filed to explain the availability of the cash. It was submitted that in Gurgaon Office all group companies have their Corporate Office. Therefore, cash is explained through the confirmation and books of account of the group companies. The Ld. CIT(A) accepted the explanation of assessee-company and deleted the addition.

10. After considering the rival contentions, we do not find any merit in this ground of appeal of the Revenue. The assessee-company explained the availability of the cash found during

the course of search as available to the assessee-company and the group companies at the time of search which were duly reflected in the books of account, confirmation of the availability of the cash were filed, which supports the explanation of assessee-company. No material has been brought on record to dislodge the findings of fact recorded by the Ld. CIT(A). Ground No.3 of appeal of Revenue for the A.Y. 2013-2014 is dismissed. This issue is decided against the Revenue.

11. In the result, both the appeals of Revenue are dismissed.

12. To sum-up, appeals of the Revenue and cross-objections of the assessee-company are dismissed.

Order pronounced in the open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 05th December, 2017

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "B" Bench
6.	Guard File

//By Order//

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