

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1785/DEL/2014 [A.Y 2009-10)

The Dy. C.I.T
Circle - 13(1)
New Delhi

Vs. M/s Oscar Investment Ltd
55, Hanuman Road,
Connaught Place, New Delhi

PAN: AAACO 1722 C

(Applicant)

(Respondent)

Assessee By : Shri Tarandeep Singh, Adv
Department By : Ms. Rakhi Vimal CIT-DR

Date of Hearing : 06.09.2022
Date of Pronouncement : 08.09.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the
ld. CIT(A) - XVI, Delhi dated 27.12.2013 pertaining to Assessment Year
2009-10.

2. The grievances of the Revenue is two-fold - firstly, the Revenue is aggrieved by the deletion of disallowance u/s 14A of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] r.w.r 8D of the ITAT Rules, 1963 amounting to Rs. 5,52,52,182/- and secondly, the Revenue is aggrieved by the deletion of addition on account of disallowance of foreign exchange loss of Rs. 11,48,23,000/-.

3. The representatives of both the sides were heard at length, the case records carefully perused.

4. Briefly stated, the facts of the case are that the assessee company is engaged in the business of investing/dealing in shares and securities and financing activities.

5. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has earned income not forming part of total income in nature of dividend exempt u/s 10(34) /10(35) of the Act.

6. The assessee was asked to explain why the disallowance should not be made as per section 14A r.w.r 8D of the Rules.

7. In its reply, the assessee stated that the assessee's company's own funds are far too excess of its investments.

8. It was explained that the assessee's own fund as on 31.03.2009 were at Rs. 1,292.24 crores whereas the investments were at Rs.

201.74 crores. However, since the investments as on 01.04.2008 were more than its own funds, the assessee suo motto computed the disallowance u/s 14A of the Act at Rs. 2,39,59,0968/-.

9. Computation of disallowance made by the assessee was not accepted by the Assessing Officer who proceeded by computing his own disallowance as under:

Particulars	Amount (Rs.)
b) Administrative & Personnel Expenses	1,19,35,491
-As per clause (i) of sub-rule (2) of Rule 8D	1,37,17,818
-As per clause (iii) of sub-rule (2) of Rule 8D	
b) Interest Cost	
As per clause (ii) of sub-rule (2) of Rule 8D	5,35,58,841
Total	7,92,12,150

10. Deducting the suo motto disallowance made the assessee, the Assessing Officer made addition of Rs. 5,52,52,182/-.

11. Before us, the ld. DR strongly contended that since the assessee itself has computed the disallowance u/r 8D of the Rules, therefore, the entire disallowance has to be computed as per provisions of section 14A r.w.r 8D of the Rules and disallowance computed by the assessee is not as per the formula given in Rule 8D(2) clause (i) and (iii).

12. The ld. counsel for the assessee vehemently stated that the assessee has disallowed the entire expenditure and there cannot be any further disallowance over and above the expenditure claimed by the assessee. The ld. counsel for the assessee drew our attention to the computation of disallowance.

13. We have given thoughtful consideration to the rival contentions qua the issue. A perusal of the statement of taxable income shows that the assessee has added interest of Rs. 1,80,777/- and other expenses Rs. 1,19,35,491/- under disallowance u/s 14A of the Act. We further find that disallowance of interest has been made on day to day basis as under:

Date	Particulars	DR.	CR.	Balance	Days	interest
01-Apr-08	investments	3,535,009,098		3,535,009,098	0	
01-Apr-08	Capital		172,801,700	3,357,752,388	0	
01-Apr-08	Reserves & Surplus		3,222,822,89	134,929,498	0	
01-Apr-08	Oscar Traders C/A		4,455,010	3,530,554,088	0	
01-Apr-08	Oscar Syndicate - C/A		28,703	134,900,795	0	
01-Apr-08	Delta Associates - C/A		31,344	134,869,451	45	1,928,818
	NCRP- FHCL Purchase ; O.*	25,000,000		159,869,451	19	965,349
16-May08	Oscar Traders C/A		3,390,924	156,478,527	1	49,730 j
04-June-04	EqShare- ANR Securities Ltd.	3,798,240		160,276,767	7	356,561
05Jun08	Eq.Share - ANR Securities Ltd. Purchase	20,000,000		180,276,767	46	2,635,498
12 Jun08	NCRP- FHCL Purchase	5,000,000		185,276,767	80	4,710,598
28 Jul 08	Eq.Share - Rantsaxy Sold		506,800	184,769,967	2	117443;
16 Oct 08	Redemption of FHCL NCRP		3,125,000	181,644,967	0	-
	Redemption of FHCL NCRP		56,250,000	125,394,967	2	79,703
	Eq.Share - Ranbaxy Sold		7,370,000,00	(7,244,605,033)	18	-
	Eq.Share - Ranbaxy Sold		5,257,252,41	(12,501,857,451)	0	-
II07-1 -08	Oscar Traders C/A ,		416,500,000	(12,318,357,451)	4	-
i 11-Nov-05	Oscar Traders C/A	1,600,000		(12,916,757,451)	24	-
J 05-Oec-10	Oscar Traders C/A	200,000		(12,916,557,451)	5	-
10-Dec-08	Oscar Syndicate - C/A	28,703		(12,916,528,748)	0	-
10-Dec-08	Delta Associates - C/A	31,344		(12,916,497,404)	5	-
15-Dec-08	Oscar Traders C/A	28,200,000		(12,888,297,404)	17	-
01-Jan-09	Redemption of FHCL NCRP		677,500	(12,888,974,904)	4	-
05-Jan-09	Purchase - FHCL Pref.Shares			(12,888,974,904)	4	-
09-Jan-09	Oscar Traders C/A	350,000		(12,888,624,904)	12	-
21-Jan-09	Oscar Traders C/A	56,300,000		(12,832,324,904)	8	-
29-Jan-09	Eq.Share - ANR Securities Ltd.		23,088,000	(12,855,412,904)	0	-
29-Jan-09	Share Application - Best Cure	46,750,000		(12,808,662,904)	0	-
2S-Jan-09	Share Application - Best Health	14,850,000		(12,793,812,904)	0	-
29-Jan-09	Share Application - Best	38,500,000		(12,755,312,904)	0	-
29-Jan-09	Share Application - Green me	134,200,00		(12,621,112,904)	27	-
25-Feb-09	Religare Securities Ltd.	200,000		(12,620,912,904)	7	-
04-Mar-Q9	Oscar Traders C/A	20,000		(12,620,892,904)	9	-
13-Mar-Q9	Oscar Traders C/A	19,000,000		(12,601,892,904)	4	-
17-Mar 09	Oscar Traders C/A	18,765,000		(12,583,127,904)	6	-
4! 09	Religare Securities Ltd.	1,000,000	112,916,822	(12,582,127,904)	0	-
.Mar*0S	Sale of Karnataka Bank Shares			(12,695,044,728)	9	-
01-Apr-09	Balance C/F				36	
		Total			5	10,843,700 T

14. Expenditure directly relating to income which does not form part of total income is computed as under:

Particulars	Amount (Rs.)	
A) Total Expenses		<u>411,866,557</u>
- Expenses (As per P&L A/c)		
Less : Expenses suo moto added back in Computation		
- Provision for Leave Encashment	<u>2,040</u>	
- Out of Miscellaneous Expenses -	25,000	
- Securities Transaction Tax	<u>677</u>	
- Donation	80,000,000	
- Out of Amount Written-off	26,761	
- Depreciation (Rs. <u>1965486</u> - Rs. <u>1397103</u>)	<u>568,383</u>	<u>80,622,861</u>
Less ; Finance Cost (to be considered separately)		<u>331,243,696</u>
- Interest Cost	<u>184,405,196</u>	
- Difference in Exchange	114,823,009	
- Syndication Fee & Prepayment Charges of Loan		<u>319,308,205</u>
Total Expenditure claimed		11,935,491

15. And computation of expenditure directly relating to income which does not form part of income is as under:

Particulars	Amount (Rs.)	
A) Total Interest		18,44,05,196
B) Interest Disallowed		1,08,43,700
C) Financial Expenses Excluding Interest Syndication Fee Prepayment Charges	1,00,80,000 1,00,00,000	2,00,80,000
Disallowance of Financial Expenses =	(B)X(C) (A)	<u>11,80,777</u>

16. We further find that secured loans have come down from Rs. 143.60 crores to Rs. NIL and unsecured loans have come down from 116.80 crores to Rs. 60 crores. We further find that during the year under consideration, the assessee has realized Rs. 1262.78 crores being sale consideration of its entire share holding in Ranbaxy shares by which the assessee repaid its entire borrowings and had made investments thereafter only after sale proceeds realized from disposal of shares of M/s Ranbaxy. Therefore, there is no question of incurring any interest cost on investment after 20.10.2008.

17. In our considered opinion, interest cost of Rs. 18.44 crores taken by the Assessing Officer in computing the disallowance is contradictory to the facts discussed hereinabove and therefore, the computation of disallowance made by the Assessing Officer on erroneous facts cannot be accepted and therefore, the findings of the ld. CIT(A) cannot be faulted with. Accordingly, the grievance of the Revenue is dismissed on the facts of the case in hand as discussed hereinabove.

18. In so far as second grievance of the Revenue is concerned, the underlying facts are that the assessee company claimed loss of Rs. 11,48,23,009/- on account of foreign exchange fluctuation.

19. It was explained during the course of assessment proceedings that for the purpose of carrying out its business activities, the assessee had taken loan of Rs. 60 crores from M/s RHC Holding Pvt Ltd at an interest rate of 11% p.a. It was explained that the said loan was utilized by the assessee in its activity of granting loans and advances on which it had earned interest income.

20. It was further explained that in order to save/reduce interest cost, the assessee entered into a Swap Deal Agreement with HSBC wherein HSBC agreed to swap the assessee's loan of Rs. 60 crores in USD @ 40.68 per USD and in terms of agreement with HSBC the assessee was to earn interest income of 0.95% per annum from the bank which reduced the interest cost of 11% per annum on loan of Rs. 60 crores from M/s RHC.

21. However, the forex gain /loss on such Swap transaction of loan was to be borne by the assessee. The Assessing Officer was of the firm belief that since the liability of the assessee was outstanding in foreign currency, which has resulted loss to the assessee due to fluctuation and since there is no settlement of transaction, loss is clearly a notional loss and was, accordingly, disallowed by the Assessing Officer.

22. We find that in the year ended 31.03.2010 and 31.03.2011, there was foreign exchange fluctuation gain of Rs. 4.75 crores and 1.22 crores respectively. The undisputed fact is that these gains have been credited to the profit and loss account and the same were offered for taxation and was accepted by the Assessing Officer while completing the assessment for Assessment Years 2011-11 and 2011-12 u/s 143(3) of the Act.

23. Following the same principle, the assessee has claimed loss incurred during the year under consideration and in our considered opinion, the same cannot be disallowed by the Assessing Officer assuming it to be a contingent loss because when there was gain, the Assessing Officer taxed the same and. therefore, by the same analogy, when there is loss the Assessing Officer should have allowed the same.

24. Following findings of the Id. CIT(A) need special mention:

"4.2.18 It is also seen that in the ultimate analysis the net impact of foreign exchange gain/loss accounted for by the assessee on accrual basis is revenue neutral. Since the appellant is accounting for the net loss/gain on the basis of difference between the dollar rate as on the beginning and closing of the financial year, therefore, the net impact of foreign exchange

loss/gain would be revenue neutral. In other words the profit or loss based on the difference between the dollar rate as on 12.03.2008 and as on 21.02.2013 at the end of the 5 year swap deal period is the same as the aggregate of the net gain or loss accounted for by the appellant financial year wise on accrual basis to comply with the provisions of section 145(1) of Income Tax Act as well as AS-11. The above fact is also verifiable from the loss/gain offered for taxation by the appellant in the IT Return filed for AY 2009-10 to AY 2013-14. As per year wise details of foreign exchange gain/loss submitted by the appellant the dollar rate as on Feb, 2013 is Rs. 54.064. Therefore, the loss based on difference between dollar rate of Rs. 40.68 as on 12.03.2008 and the dollar rate of Rs. 54.064 as on Feb, 2013 is Rs. 19.73 crores. On the other hand, the aggregate of loss/gain claimed/offered for taxation under the IT Act on accrual basis for the AY 2009-10 to AY 2013-14 is also (-) Rs. 19.73 crs. Therefore, in the ultimate analysis net impact of foreign exchange gain/loss is revenue neutral because in all the above AY 2009-10 to AY 2013-14 taxes are paid by the appellant at maximum marginal rate on normal profit and not on book profit u/s 115JB.

4.2.19 In view of above, factual and legal position the deduction on account of foreign exchange loss suffered by the appellant during the year is duly allowable as loss incurred during the year. Therefore, AO is directed to allow the said Foreign Exchange Loss under reference. The appeal is allowed in these grounds."

25. Considering the facts in totality, the afore stated findings of the ld. CIT(A) cannot be faulted with. Second grievance of the Revenue is also dismissed.

26. In the result, the appeal of the Revenue in ITA No. 1785/DEL/2014 is dismissed.

The order is pronounced in the open court on 08.09.2022.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 08th September, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

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Date on which the fair order is placed before the Dictating Member for pronouncement	
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