

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)
AND
SHRI RAJESH KUMAR (ACCOUNTANT MEMBER)

I.T.A. No.111/Mum/2020
(Assessment year 2015-16)

ACIT-1(1)(1), Mumbai	vs	M/s Cyrus Investments Pvt Ltd 2 nd Floor, Esplanade House Hazarimal Somani Marg, For Mumbai-400 023 PAN : AAACC2880P
APPELLANT		RESPONDENT

I.T.A. No.7853/Mum/2019
(Assessment year 2015-16)

M/s Cyrus Investments Pvt Ltd 2 nd Floor, Esplanade House Hazarimal Somani Marg, For Mumbai-400 023 PAN : AAACC2880P	vs	Dy.CIT, Range 1(1), Mumbai
APPELLANT		RESPONDENT

C.O.80/Mum/2021
(Arising out of I.T.A. No.7853/Mum/2019)
(Assessment year 2015-16)

M/s Cyrus Investments Pvt Ltd 2 nd Floor, Esplanade House	vs	Dy.CIT, Range 1(1), Mumbai
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Hazarimal Somani Marg, For Mumbai-400 023 PAN : AAACC2880P		
CROSS OBJECTOR		RESPONDENT

Assessee by	Shri Rajan Vora, AR
Respondent by	Shri B Bagchi, DR

Date of hearing	21-09-2021
Date of pronouncement	12-10-2021

O R D E R

Per Saktijit Dey (JM)

Captioned cross appeals and cross objection by the assessee arise out of order dated 22-10-2019 of learned Commissioner of Income Tax (Appeals)-2, Mumbai pertaining to assessment year 2015-16.

2. The only issue involved in assessee's appeal is relating to part disallowance of legal expenses and service tax paid thereon. Whereas, in ground 1 of its appeal, revenue has challenged partial relief granted by learned Commissioner (Appeals) on the very same issue.

3. Briefly the facts are, the assessee is a resident company and is registered as a non banking financial company (NBFC) with RBI. Basically, the assessee has been categorized as an investment company. Be that as it may, for the assessment year under dispute, assessee filed its return of income on 24-09-2015 declaring loss of Rs. 98,34,692/-. In course of assessment proceedings, the assessing officer noticed that the assessee has claimed deduction of legal expenses amounting to Rs.1,35,89,610/- including service-tax component of Rs.14,08,860/-. After calling for necessary details and verifying them, he found that the legal expenses are in

relation to various legal proceedings concerning acquisition of interest in the estate of erstwhile Nizam of Hyderabad. He found that though, by virtue of an order of the Hon'ble Andhra Pradesh High Court, a part of Nizam's immovable properties was given to the assessee; however, the subject properties were under legal dispute as some of them were acquired by government or government agencies and the assessee is not in possession of the properties. He found, part of the legal expenses is relating to dispute between assessee and one Dr. P.S. Prasad appointed as power of attorney holder to look after Nizam's property acquired by the assessee. Though, the assessee claimed that the properties in question have been treated as stock-in-trade and the compensation received has been offered as business receipt; however, the assessing officer was unconvinced. He held that since the assessee has no possessory right over the properties and the legal expenses incurred by the assessee are for acquiring/improving title over the property, they cannot be treated as revenue expenditure. Accordingly, he disallowed the legal expenses of Rs.1,34,89,610/-. When the dispute came before learned Commissioner (Appeals), he observed that in respect of interest acquired by the assessee in couple of properties at Hyderabad and Pune, the assessee did not have possessory right. Therefore, assessee's claim that the properties are in the nature of stock-in-trade, cannot be accepted. Learned Commissioner (Appeals) agreed with the assessing officer that the legal expenses incurred by the assessee in respect of the aforesaid two properties are capital in nature. However, as far as the balance amount of legal expenses relating to some other properties as well as the service tax component on legal fees in respect of which the assessee has already received compensation and is in further dispute for

enhanced compensation, and the legal expenses incurred in respect of power of attorney granted to Dr. P.S. Prasad, learned Commissioner (Appeals) allowed as revenue expenditure.

4. The learned authorized representative of the assessee submitted, the assessee all along has treated the properties or interest acquired therein from Nizam as stock in trade as they were acquired for the purpose of its investment business. He submitted, assessee's claim that the properties so acquired are in the nature of stock-in-trade has been accepted by learned Commissioner (Appeals) while deciding assessee's wealth-tax appeal for assessment years 1990-91 & 1991-92. He submitted, the aforesaid decision of learned Commissioner (Appeals) was even upheld by the Tribunal. Thus, he submitted, once the subject properties have been held as stock-in-trade, they cannot be treated as capital asset. Hence, the legal expenditure incurred in respect of the stock-in-trade is allowable as business expenditure. He submitted, the very fact that the subject properties are in the nature of stock-in-trade can be demonstrated from the fact that after compulsory acquisition of the properties by the government, the assessee has offered the compensation received as business income and the revenue has also accepted it. Thus, he submitted, the legal expenses having been incurred in respect of assets held as stock-in-trade, are allowable as business expenditure. In support of his contention, he relied upon the following decisions:-

1. Meenakshi Mills Ltd vs CIT(1967) 63 ITR 207(SC)
2. Dalmia Jain & Co Ltd vs CIT (1971) 81 ITR 754 (SC)
3. CIT vs O.P.N. Aunachala Nadar (1983) 141 ITR 620(Mad)
4. CIT vs Airlines Hotel (P) Ltd (2012) 346 ITR 33(Bom)

5. Hiranandani Akruti JV vs DCIT ITA No.5678/Mum/2015 order dated 3 October, 2017
6. DCIT vs B Kumar Gowda (2017) 396 ITR 386 (Kar)

5. Strongly relying upon the observations of the assessing officer, learned departmental representative submitted, the subject properties were never in the possession of the assessee. He submitted, when the assessee is neither the owner of the properties nor was in possession, the properties cannot be treated as stock-in-trade of the assessee. He submitted, in any case, what the assessee had acquired is an interest in capital asset. Therefore, any expenditure incurred to acquire or improve upon the title of such capital asset would also be of capital nature. Thus, the assessee cannot be allowed the deduction claimed. He submitted, when the appellate authority has not discarded the reasoning of the assessing officer regarding the nature and character of the property, he should not have allowed a part of the expenditure.

6. We have considered rival submissions and perused materials on record in the light of decisions relied upon. Undisputedly, the issue arising for consideration is, whether the legal expenses incurred by the assessee along with service-tax component computed thereon aggregating to Rs.1,35,89,610/- is in the nature of revenue or capital expenditure. It is a fact on record that learned first appellate authority has allowed major part of the expenditure amounting to Rs.1,12,89,702/- as revenue expenditure. It is evident from facts on record that the legal expenses more or less are concerning the acquisition of properties or right, title and interest in the properties transferred to the assessee by the erstwhile Nizam. It is an undisputed fact on record that by virtue of the directions

of Hon'ble Andhra Pradesh High Court, certain properties belonging to Nizam were transferred to the assessee. However, the properties were acquired either by the concerned state government or some other government agencies. In respect of some of the properties, even compensation has been paid by the government/government agencies for acquiring the property. It is the stand of the assessee that from the assessment stage itself the subject properties have not only treated as stock in trade in the books of account, but has been accepted by the department. On perusal of order dated 31-08-1994 of learned Commissioner (Appeals)-II, Bombay for assessment years 1990-91 and 1991-92, we find that the first appellate authority has very clearly and categorically held that the immovable properties located at Hyderabad are stock-in-trade of the assessee. The aforesaid decision of learned first appellate authority has also been approved by the Tribunal while dismissing revenue's appeal in WTA Nos.1255 and 1256/Bom/1994 dated 19-11-1996. Thus, once the immovable properties located at Hyderabad have been held as stock-in-trade, they cannot be treated as capital asset in terms of section 2(14)(i) of the Act. Thus, any expenditure related to stock-in-trade has to be considered as revenue expenditure.

7. As regards the property at Yerawada, Pune, undisputedly, the said property has been acquired by the defence authorities and compensation has been paid to the assessee. Of course, assessee is in dispute over enhancement of compensation. Therefore, the nature and character of these properties are also at par with the properties located at Hyderabad. It is also a fact on record that compensation received by the assessee due to acquisition of some of the properties has been offered as business income and the revenue has accepted it.

This fact also supports assessee's claim that the subject properties are held as stock-in-trade. In view of the aforesaid, we hold that the legal expenses claimed by the assessee, being in the nature of revenue expenditure, are allowable. Accordingly, we delete even the partial disallowance sustained by learned Commissioner (Appeals). Accordingly grounds in assessee's appeal are allowed and ground 1 in revenue's appeal is dismissed.

8. The only other surviving issue as per ground 2 and 3 of revenue's appeal and the grounds raised in the cross objection relate to disallowance made under section 14A of the Act r.w.r. 8D.

9. Briefly the facts are, in course of assessment proceedings, the assessing officer noticed that in the year under consideration, the assessee has earned exempt income by way of dividend amounting to Rs.34,30,88,643/-. Whereas, the assessee has suo motu disallowed an amount of Rs.7,84,584/- under section 14A of the Act. Being of the view that the assessee has not computed the disallowance in terms of Rule 8D, the assessing officer proceeded to compute disallowance by applying rule 8D and worked out a disallowance of Rs.1,43,59,665/- under rule 8D(2)(iii). Since, the assessee has already disallowed an amount of Rs.7,84,584/-, the assessing officer made a net disallowance of Rs.1,35,75,081/-. Assessee contested the aforesaid disallowance before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) observed that the total administrative and management expenditure claimed by the assessee is to the extent of Rs.13,17,496/-. Out of this, the assessee has disallowed an amount of Rs.7,84,584/-. Thus, he held that the disallowance made by the assessee being

more than reasonable, no further disallowance has to be made. Accordingly, he deleted the disallowance made by the assessing officer.

10. The learned departmental representative strongly relied upon the observations of the assessing officer. Whereas, the learned authorized representative of the assessee submitted, in assessee's own case in earlier assessment year 2006-07, the Tribunal has restricted the disallowance to Rs.2 lakhs. Thus, he submitted, similar view may be taken in the impugned assessment year.

11. We have considered rival submissions and perused materials on record. As rightly observed by learned Commissioner (Appeals), the total administrative and management expenses claimed by the assessee is little more than Rs.13 lakhs; whereas, the assessee has disallowed an amount of R.7.84 lakhs under section 14A of the Act. Admittedly, the disallowance computed by the assessing officer only relates to administrative expenditure under rule 8D(2)(iii). Therefore, when the assessee has disallowed more than 50% of the total expenditure claimed, no further disallowance is called for.

12. Now reverting back to assessee's claim that the disallowance should be restricted to Rs.2 lakhs as held by the Tribunal in assessment year 2006-07, we are unable to accept such contention. Firstly, in assessment year 2006-07, rule 8D was not applicable. Secondly, the assessee itself has computed the disallowance at Rs.7.84 lakhs. In fact, in assessee's own case for subsequent assessment years, i.e. assessment years 2009-10, 2011-12, 2012-13 and 2013-14, the Tribunal has consistently held that the disallowance under section 14A r.w.r. 8D should be restricted to suo motu disallowance made by the assessee. In view of the

aforesaid, we do not find any infirmity in the decision of learned Commissioner (Appeals) on the issue. Accordingly, ground 2 in revenue's appeal and grounds 4,5 and 6 in cross objection are dismissed.

13. As regards ground 3 of revenue's appeal concerning deletion of disallowance made under section 14A r.w.r. 8D while computing the book profit under section 115JB of the Act, this issue is now squarely covered by the decision of the ITAT, Delhi Special Bench in case of ACIT vs Vireet Investments P Ltd (2017) 82 taxmann.com 415. Therefore, we uphold the decision of learned Commissioner (Appeals). This ground is also dismissed.

14. Rest of the grounds in assessee's cross objection being merely in support of order of learned Commissioner (Appeals) are also dismissed.

15. To sum up, assessee's appeal is allowed, revenue's appeal and assessee's cross objection are dismissed.

Order pronounced on 12/10/2021.

Sd/-

sd/-

(RAJESH KUMAR)	SAKTIJIT DEY
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dt : 12/10/2021

Pavanan

Copy to :

1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
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By Order

Asstt. Registrar, ITAT, Mumbai