

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI K.N. CHARY, JUDICIAL MEMBER**

ITA No. 2770/DEL/2018 [A.Y 2011-12]

&

ITA No. 2771/DEL/2018 [A.Y 2012-13]

BIO MED PVT LTD
C - 96, Site - 1, B.S. Road
Industrial Area, Ghaziabad

Vs.

The Addl. C.I.T
Range - 2
Ghaziabad

PAN: AABCB 3477 C

[Appellant]

[Respondent]

Assessee by : Shri Akhilesh Kumar, Adv

Revenue by : Shri Jagdish Singh Dahia, Sr. DR

Date of Hearing : 26.07.2021

Date of Pronouncement : 26.07.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

Both the above captioned appeals by the assessee are preferred against the order of the CIT(A) - Aligarh, dated 13.01.2016 pertaining to A.Ys 2011-12 and 2012-13.

2. Since common grievance is involved in both the appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. Both the appeals have been filed after the period of limitation and, accordingly, barred by limitation.

4. The ld. counsel for the assessee filed an application for condonation of delay in filing the appeals. The ld. counsel for the assessee stated that Shri S.P. Garg, Managing Director of the assessee company handed over the appeal papers to one Shri Pushkar Pandey who works in the office of the ld. counsel for the assessee. Both Shri S.P. Garg and Shri Pushkar have filed affidavits to show that the appeal papers were misplaced due to office renovation work and could only be discovered after substantial lapse of time and immediately thereafter, appeals were filed.

5. The ld. counsel for the assessee strongly contended that there was no malafide intention on the part of the assessee to circumvent due process of law and, therefore, the delay should be condoned.

6. Per contra, the ld. DR strongly opposed the condonation of delay and vehemently stated that the assessee has intentionally filed the appeals beyond the period of limitation and has no justifiable cause for delay.

7. We have carefully considered the condonation letter supported by affidavits of Shri S.P. Garg and Shri Pushkar Pandey. Material available on record reveals that the impugned appeals are covered by earlier order of this Tribunal in assessee's own case and hence, in our considered opinion, there could not be any malafide intention on the part of the assessee in filing the appeals which are, in fact, covered by earlier order of this Tribunal.

8. We are of the considered view that technicalities should not come in the way of imparting justice. Delay is, accordingly, condoned.

9. The common grievance in both these appeals relates to the disallowance made u/s 14A of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] r.w.r 8D of the Income tax Rules, 1962.

10. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has received dividend from UTI Liquid Plus Fund and dividend from shares of other companies. The Assessing Officer was of the opinion that to earn exempt income, the assessee must have incurred some expenditure and accordingly, computed the disallowance u/s 14A of the Act r.w.r 8D amounting to Rs. 12,24,394/- in A.Y 2011-12 and Rs. 10,01, 542/- in A.Y 2012-13.

11. The assessee agitated the matter before the ld. CIT(A) but without any success.

12. Before us, the ld. counsel for the assessee drew our attention to the decision of this Tribunal in assessee's own case in ITA No. 6827/DEL/2014 for A.Y 2009-10. It is the say of the ld. counsel for the assessee that while making disallowance, the Assessing Officer has himself mentioned that there is no expenditure which is directly attributable to the exempt income and disallowances have been made only considering the past history of the assessee.

13. With this in mind, the past history, i.e, A.Y 2009-10 shows that this issue has been decided in favour of the assessee and against the Revenue. Relevant findings of the co-ordinate bench read as under:

"9. After hearing both the parties, we find that none of the authorities below has controverted the facts put forward by assessee. Obviously when dividend is directly credited to fund by way of credit entries and then such credit by fund does not require any effort by assessee which is the major portion of dividend. Other Amount is directly collected by bank through e-transfer example of which is placed on record at pages 3-4. Besides, the authorities below have not indicated any specific amount/item which is considered as related to above income. Ld. CIT(A) misdirected himself in stating about the decisions for investment that too on a probabilistic view but not for exempt income more so when funds etc. itself provided sufficient services as explained by assessee before AO. Investments are admittedly out of own funds for which no addition is made. Ld. AR also took us to the order for AY 2011-12 of assessee with identical facts on the issue which is on pages 15 to 19 of paper book where Id. AO has recorded in para 4 that, '.... It is evident that there is no expenditure which is directly attributable to exempt income (dividend). However , it cannot be ruled out that certain element of indirect expenses cannot be remotely attributable to the exempt income.....'. It is also stated that disallowance is made to maintain consistency and keep issue alive. Such specific findings proves that factually no

incurrence of expenditure is found even in a subsequent year though revenue is making addition merely to keep issue alive. Hence we do find force in the claim of assessee about non-incurrence of expenditure and upheld same.

10. Beside above, basis of invoking [s. 14A](#) as is stated above is not in terms of said provision read with rule 8 D. There is absolutely no satisfaction except rejection of explanation of assessee. There is no reference to any item of expenses found related to exempt income. There is no reference to accounts in relation to this issue either or even any material/basis in AO order. With the development of law, now we have series of decisions on this issue. The Ld. AR cited following cases on the issue:

- A) H.T.MEDIA LIMITED V PCIT -ITA NO 548/2015--order dt. 23.08.2017 (Delhi)
- B) CIT V Taikisha Engineering India Ltd. [2015]
54 taxmann.com 109 (Delhi)
- C) Priya Exhibitors (P.) Ltd. v. [2012] 27 taxmann.com 88 (Delhi)
- D) Eicher Motors Ltd. v CIT (2017) 86 Taxmann.com 49(DEL)

11. In the case of HT MEDIA, AO had invoked 14A almost on the same basis i.e. after stating that explanation on no expenditure is no acceptable and that making, continuing, exiting from investment etc. are coordinated management decision and so expenditure is embedded in indirect expenses(from para 36) and so s.14A invoked. Hon'ble court after relying on Godrej & Boyce Mfg. Co. Ltd. 394 ITR 449(SC) held that AO failed to record proper

satisfaction. In the case of Taikisha Engineering, hon'ble court has relied on hon'ble Bombay HC decision in above case of Godrej reported in 328 ITR 81 for the proposition that that satisfaction has to be recorded with respect to accounts in terms of ss. (2)/(3) of [s. 14A](#) and the provisions does not ipso facto enable AO to apply method prescribed in rules. This satisfaction must be on an objective basis having regard to claim of assessee. Rule 8 D(1) itself start with the words, 'where the assessing officer, having regard to the accounts of the assessee.....' in the absence of proper satisfaction.

12. In the most recent case of Eicher [supra] it is held in para 13 that AO merely conjectured that, "there is inbuilt cost even in passive investment as also incidental expenditure like collection, telephone, follow up etc, Thus concluding that expenses are embedded in as indirect expenses. This is not as per requirement of rule 8D. There is no satisfaction recorded based on the accounts of assessee. The AO simply presumes that since exempt income exists

13. In the present case AO has not even identified any specific item of expense he merely says that explanation of assessee is not correct as huge investment is made. As per above discussion respectfully following above authorities which are binding on us it is held that there is no satisfaction of terms of [s. 14A](#) read with Rule 8 D. Copy of order for AY 08-09 is also placed on pages 20-21 of paper book as per which no disallowance u/s 14A was made, hence assessee is right in submitting that disallowance is also against the principle of consistency in the absence of any facts.

14. Grounds 2 and 3 are allowed and addition of Rs. 8,88,490/- is hereby deleted.

14. As no distinguishing decision has been brought to our notice, respectfully following the findings of the co-ordinate bench [supra] we direct the Assessing Officer to delete the impugned disallowance.

15. In the result, the appeals of the assessee in ITA Nos. 2770 & 2771/DEL/2018 are allowed.

The order is pronounced in the open court in the presence of both the rival representative on 26.07.2021.

Sd/-

**[K.N. CHARY]
JUDICIAL MEMBER**

Sd/-

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

Dated: 26th July, 2021

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	