

\$~8 & 9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25th October 2017

8

+

W.P.(C) 480/2016

**SAMVARDHANA MOTHERSON
INTERNATIONAL LTD**

..... Petitioner

Through: Dr. Rakesh Gupta, Mr. Ashwani
Taneja, Mr. Somil Agarwal, Mr.
Rohit Kumar Gupta and Mr.
Lakashya Goyal, Advocates.

versus

**ASSISTANT COMMISSIONER OF
INCOME TAX & ANR.**

..... Respondents

Through: Mr. Ashok Manchanda and Mr.
Raghvendra Singh, Advocates.

AND

9

+

W.P.(C) 526/2016

**SAMVARDHANA MOTHERSON INTERNATIONAL LTD.
(FORMERLY KNOWN AS(M/S SAMVARDHANA MOTHERSON
FINANCE LTD.))AUTHORISED SIGNATORY, SHRI MANOJ
MAHESHWARI,**

..... Petitioner

Through: Dr. Rakesh Gupta, Mr. Ashwani
Taneja, Mr. Somil Agarwal, Mr.
Rohit Kumar Gupta and Mr.
Lakashya Goyal, Advocates.

versus

**ASSITANT COMMISSIONER OF INCOME TAX,
CIRCLE 22(1) & ANR.**

..... Respondents

Through: Mr. Ashok Manchanda and Mr.
Raghvendra Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

SANJIV KHANNA, J. (ORAL)

We with the consent of the parties have heard the arguments and the writ petitions are taken up for final disposal.

2. M/s. Samvardhana Motherson International Ltd. (formerly known as Samvardhana Finance Ltd.) has filed the present writ petitions impugning two notices dated 30th March, 2015, issued by the Additional Commissioner of Income Tax, Circle 22(1), New Delhi under Section 148 of the Income Tax Act, 1961 ('the Act' for short) relating to Assessment Years ('AY') 2010-2011 and 2011-2012.

3. The Petitioner has also placed on record a copy of the order dated 16th December, 2015 passed by the Assessing Officer ('AO') disposing of objections of the Petitioner against reopening of assessments under Section 147/148 of the Act on the ground of 'change of opinion'.

4. The undisputed position is that the Petitioner company is engaged in the business of establishing subsidiaries, making majority or minority investments and/or to promote technical collaborations and to act as a holding company. The Petitioner in paragraph 4 of the petition has stated that the Petitioner company makes strategic investments.

Original Assessment proceedings for AY 2010-11.

5. For the AY 2010-2011, the return filed by the Petitioner company had disclosed dividend income of Rs. 20,48,37,585/- which it claimed as exempt from tax under Section 10(34) of the Act. The Assessee had disallowed expenditure amounting to Rs. 9,75,26,937/- for earning the exempt income under Section 14A of the Act for AY 2010-11.

6. The return was taken up for scrutiny assessment after issue of notice under Section 143(2) of the Act. In terms of notice dated 16th May, 2012 under Section 142(1) of the Act, the Petitioner was required to furnish several details, including details of dividend income received, and details of expenses attributable for earning of this income. The aforesaid notice was followed by another notice dated 18th October, 2012 by which the Petitioner was asked to give a detailed calculation of the disallowance under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 ('the Rules' for short).

7. In response to the first notice, the Petitioner filed a reply dated 12th June, 2012 stating that it had received dividend income of Rs.20,48,37,585/- which was claimed as exempt under Section 10(34) of the Act. In its subsequent reply dated 11th February, 2013, the Petitioner submitted calculation of disallowance under Section 14A read with Rule 8D of the Rules and computation of the disallowance made by them. For the sake of convenience, since counsels for both parties rely on the same, we would like to reproduce the aforesaid computation, which reads as under:

Samvardhana Matheson Finance Limited
Expenditure in relation to Dividend Income

S. No.	Particulars	Detail	Amount
1	Expenditure Directly relating to Dividend Income		
2	Interest Expense allocated	73,566,653	73,566,653
3	0.5% of Average Investment Since the total expenditure which is Disallowed is Rs 97,526,937/-, hence it is restricted to Rs 97,526,937 – Rs 73,566,653)	50,854,376	23,960,283
	Total Amount	124,421,029	97,526,937

Working

Interest expense allocated

Interest Cost Allocated = $\frac{\text{Interest} * \text{Average Value of Investment}}{\text{Average of Total Assets}}$

Interest

Total Interest Cost as per Balance Sheet	79,528,600
Less: Expenses incurred to earn Interest Income	5,937,096
Less: Interest on delay in ITDS	24,851
Expenses made directly for Investment	<u>73,566,653</u>

Average Value of Investment

Total Investment	11,582,908,669	8,923,821,95
Less:- Overseas Investment	(99,512,139)	(65,468,209)
Investment in Indian Companies	<u>11,483,396,530</u>	<u>8,858,353,744</u>
Average Value	10,170,875,137	

Average of Total Assets

Fixed Assets	162,378	22,714
Investments	11,582,908,669	8,923,821,953
Current Assets, Loans and Advances	218,130,657	196,786,639
Deferred Tax Asset	181,144	

	11,801,382,848	9,120,631,305
Average Value	10,461,007,077	

Total disallowance		
	Total Expenses	171,277,589
Less:	Interest Expenses to earn Interest Income	<u>5,937,096</u>
		165,340,493
Less:	Expenses for Consultancy	<u>13,085,569</u>
		152,254,924
Less:	Expenses which is disallowed as per Provisions of PGBP	
	Donation	50,000
	Provision for diminution in the value of Investment	53,891,189
	Provision for Leave Encashment	311,096
	Loss on Sale of Investment	178,403
	Gratuity Provision	272,448
	Interest Paid on TDS	24,851
		<u>54,727,987</u>
		97,526,937
Less:	Expenses Incurred directly for investments	<u>73,566,653</u>
		23,960,284

8. After examining the aforesaid information and details, the assessment order for AY 2010-11 dated 18th February, 2013 was passed under Section 143(3) of the Act, accepting the returned income of the Assessee of Rs.88,56,759/-.

Original assessment proceedings for AY 2011-12

9. For the AY 2011-12, the return filed by the Petitioner company had disclosed dividend income of Rs.28,55,09,111/-, which it claimed as exempt from tax under Section 10(34) of the Act. The Assessee had disallowed expenditure amounting to Rs. 12,44,11,096/- for earning the exempt income under Section 14A of the Act for the AY 2011-12.

10. The case was taken up for scrutiny. During the course of the assessment proceedings, the Assessing Officer (AO) issued a questionnaire,

enclosed as Annexure 3 to the writ petition, which had required the Petitioner to file detailed computation of disallowance made under Section 14A of the Act, in the computation of the total income.

11. In response to the aforesaid questionnaire, the Petitioner filed its reply dated 29th January, 2014, enclosed therewith as Annexure 16, enclosing detailed computation of disallowance under Section 14A of the Act. For the sake of convenience, since counsels for both the parties rely on the same, we would like to reproduce the aforesaid computation, which reads as under:

Samvardhana Motherson Finance Limited

Annexure to Form 3 CD

Clause 17(1)

Expenditure in relation to Dividend Income

S. No.	Particulars	Detail	Amount
1	Expenditure Directly relating to Dividend Income	1,581,654	1,581,654
2	Interest Expense allocated	121,581,256	115,704,382
3	0.5% of Average Investment	56,521,295	7,125,060
	Total Amount	179,684,205	124,411,096

Working

Interest expense allocated

Interest Cost Allocated = $\frac{\text{Interest} * \text{Average Value of Investment}}{\text{Average of Total Assets}}$

Interest

Total Interest Cost as per Balance Sheet	165,983,855
Less: Expenses incurred to earn Interest Income	44,402,599
Less: Interest on delay in ITDS	
Expenses made directly for Investment	<u>121,581,256</u>

Average Value of Investment

Total Investment	11,359,310,551	11,529,017,479
Less:- Overseas Investment	<u>180,297,977</u>	<u>99,512,139</u>
Investment in Indian Companies	<u>11,179,012,574</u>	<u>22,429,505,340</u>

Average Value **11,304,258,957**

Average of Total Assets

Fixed Assets	380,948	162,378
Investments	11,359,310,551	11,529,017,479
Current Assets, Loans and Advances	649,670,082	218,130,657
Deffered Tax Asset		181,144
	<u>12,009,361,581</u>	<u>11,747,491,657</u>
Average Value	11,878,426,619	

Total disallowance		
Total Expenses		251,139,740
Less: Interest Expenses to earn Interest Income		<u>44,402,599</u>
		206,737,141
Less: Expenses for Consultancy & others		<u>32,397,824</u>
		174,339,317
Less: Expenses which is disallowed as per Provisions of PGBP		
Donation	1,300,000	
Provision for diminution in the value of Investment	43,841,819	
Provision for Leave Encashment	745	
Loss on Sale of Investment		
Gratuity Provision	490,436	
Interest Paid on TDS		<u>45,633,000</u>
		128,706,317
Less: Interest Expenses un allocated		<u>121,581,256</u>
		7,125,060

	Operating	Non-Operating Section 14A (Rule 8D)	Total
Income (X)	120,471,781	285,509,111	405,980,892
Personnel Expenses			
Salary & Wages	5,414,576	896,779	6,311,355
Employer's Contribution to PF	460,806	638,466	1,099,273
Bonus	286,227	46,409	332,636
Total (A)	6,161,608	1,581,654	7,743,263
Administrative Expenses			
Regd. Office Rent	-	39,708	39,708
Repair & Maintenance (Others)	353,718	247,012	600,730
Courier & Postage Expenses	-	62,583	62,583
Rates and Taxes	-	87,020	87,020
Legal and Professional Charges	20,359,985	3,786,410	24,146,395
Business Promotion	3,184,063	152,390	3,336,453
Travelling Expenses	1,862,969	1,628,856	3,491,825
Telephone Expenses	37,636	12,895	50,531
Insurance Expenses	-	7,613	7,613
Provision for diminution in long term investments (net)	-	43,841,819	43,841,819
Printing and Stationery	6,439	-	6,439
Donation	-	1,300,000	1,300,000
Miscellaneous Expenses	431,406	10,100	441,506
Total (B)	26,236,216	51,176,406	77,412,622
Interest and Finance Charges			
Interest on			
Secured Term loans from Other than Banks	44,402,599	115,883,363	160,285,962
Unsecured loans from Other than banks	-	512,781	512,781
Bank Charges	-	919,846	919,846
Processing Fee	-	4,265,266	4,265,266
Total (C)	4,402,599	121,581,256	165,983,855
Grand Total Expenses (A+B+C)	76,800,423	174,339,317	251,139,740
Profit (X-(A+B+C))	43,671,358	111,169,794	154,841,152

12. Vide assessment order dated 28th February, 2014, the AO assessed the income of the Assessee for the assessment year 2011-12 at Rs.3,59,35,409. The disallowance made by the Assessee of Rs.12,44,11,096/- under Section W.P.(C) 480/2016 & W.P.(C) 526/2016

14A of the Act was accepted.

Reassessment proceedings; Reasons to believe

13. To examine the contention of the Petitioner and the respondent on the question of change of opinion, we would like to reproduce the reasons to believe recorded by the AO for AY 2010-11 and 2011-12. The relevant portions have been underlined.

**Reasons recorded for initiating proceedings u/s 147/148 AY
2010-2011**

"In this case, the assessment proceedings u/s 143 (3) of the I.T. Act, 1961 for the A.Y. 2010-11 was completed on 18.02.2013 at an income of Rs.88,56,759/-. On scrutiny of records it was found that an amount of Rs.2,68,94,092/- has escaped assessment on account of incorrect computation of disallowance u/s 14A of the I.T. Act, 1961. It was noticed that the assessee had claimed deduction of Rs. 20,48,37,585/- on account of Dividend income and disallowed expenditure amounting to Rs.9,75,26,937/- u/s 14A. Further scrutiny revealed that the assessee had major income from Dividend and had investments of Rs. 8,92,38,21,953/-(as on 31.03.2009) and Rs. 11,52,90,17,479/- (on 31.03.2010) respectively. The total disallowance u/s 14A r/w Rule 8D should be amounted to Rs.12,44,21,029/-, however assessee restricted it to Rs.9,75,26,937 /- in contravention to Section 14A of the I.T. Act, 1961. Hence it resulted in underassessment of income Rs.2,68,94,092/- (Rs.12,44,21,029- Rs.9,75,26,937).

In this case, it has also been observed that the assessee had itself calculated disallowance u/s 14A amounting to Rs.12,44,21,029/- but restricted the same to Rs. 9,75,26,967 /-. As Section 14A of the I.T. Act, 1961 r/w Rule 8D does not permit any restriction in this regard and therefore the whole amount of Rs. 12,44,21,029/-, should have been disallowed.

In view of the above mentioned facts, it is clear that the assessee company has not disclosed fully and truly all material facts

before the A.O. resulting in under assessment of income. Hence, I have reasons to believe that a sum of Rs.2,68,94,092/- has escaped assessment in the case of assessee relevant to A.Y. 2010-11, within the meaning of Section 147 of the IT Act."

Reasons recorded for initiating proceedings u/s 147/148 for AY 2011-2012.

"In this case, the assessment proceedings u/s 143 (3) of the I.T. Act, 1961 for the A.Y. 2011-12 was completed on 28.02.2014 at an income of Rs.3,59,35,409/-. On scrutiny of records it was found that an amount of Rs.5,00,95,760/- has escaped assessment on account of incorrect computation of disallowance u/s 14A of the I.T. Act, 1961. It was noticed that the assessee had claimed deduction of Rs. 28,55,09,111/- on account of Dividend income and disallowed expenditure amounting to Rs.12,44,11,096/- u/s 14A. Further scrutiny revealed that the assessee had major income from Dividend and had investments of Rs. 11,52,90,17,479 (as on 31.03.2010) and Rs. 11,35,93,10,551/- (as on 31.03.2011) respectively. The total disallowance u/s 14A r/w Rule 8D should be amounted to Rs.17,45,06,856/-, however assessee restricted it to Rs. 12,44,11,096/- in contravention to section 14A of the I.T. Act, 1961. Hence it resulted in underassessment of income of Rs. 5,00,95,760/- (Rs. 17,45,06,856 - Rs.12,44,11,096).

In this case, it has also been observed that the assessee had itself calculated disallowance u/s 14A amounting to Rs.17,38,07,331/- but restricted the same to Rs. 12,44,11,096/-. As section 14A of the I.T. Act, 1961 r/w Rule 8D does not permit any restriction in this regard and therefore the whole amount of Rs. 17,45,06,856/-, should have been disallowed.

In view of the above mentioned facts, it is clear that the assessee company has not disclosed fully and truly all material facts before the A.O. resulting in under assessment of income. Hence, I have reasons to believe that a sum of Rs. 5,00,95,760/- has escaped assessment in the case of assessee relevant to A.Y. 2011-12, within the meaning of Section 147 of the IT Act."

(emphasis supplied)

Analysis and Findings:

14. The contention of the respondent-Revenue is that this is not a case of change of opinion because the Assessee had made an incorrect or wrong calculation which was accepted by the AO. In particular, reliance is placed upon the computation charts submitted by the Petitioner in response to the questionnaire/queries raised, which have been reproduced above. Hence, it is the Revenue's submission that in the present case the assessment proceedings have been validly initiated under the provisions of Section 147 read with Section 148 of the Act and the judgment of the full Bench of the Delhi High Court in the case of ***Commissioner of Income Tax v. Usha International, (2012) 348 ITR 485 (Del)*** (hereafter 'Usha International') would support the case of Revenue and not the case of the Petitioner.

15. There could not be a more clear and obvious case of change of opinion. The AO doing the original assessment had focused himself and examined the question of appropriateness of the expenditure which was disallowed by the Assessee under Section 14A of the Act. The AO was aware of the difference between the disallowance of expenditure made by the Assessee in its computation under Section 14A of the Act, and disallowance if made by applying Rule 8D of the Rules. The AO not only raised a specific query but did so twice in respect of the disallowances for the AY 2010-11. The details called for in the two notices/questionnaires for AY 2010-11 read as under:

"Notice dated 16.5.2012:

21. Details of dividend received, if any. Also give details of expenses attributable for earning this income."

"Notice dated 18.10.2012:

-Calculation of Disallowance U/s 14A read with Rule 8D."

In AY 2011-12, the AO had asked for the details vide questionnaire dated NIL as under:

"Questionnaire dated NIL:

45. Detailed computation of Disallowance made u/s 14A of the Act as per the Computation of Total Income."

16. From the queries raised during the course of assessment proceedings and the replies thereto, there can be no doubt that the AO specifically examined and went into the question of disallowance of expenditure under Section 14A of the Act as the Assessee had declared substantial dividend income, which was exempt from tax. The AO was certainly conscious and aware of the nature of business activities undertaken by the Petitioner as a strategic investor in shares, making majority or minority investments.

17. In the aforesaid circumstances, principle of change of opinion as enunciated in *Usha International (supra)* would be applicable. The majority opinion in *Usha International (supra)* holds:-

"12. It is, therefore, clear from the aforesaid position that:

(1) Reassessment proceedings can be validly initiated in case return of income is processed under Section 143(1) and no scrutiny assessment is undertaken. In such cases there is no change of opinion;

(2) Reassessment proceedings will be invalid in case the assessment order itself records that the issue was raised and is decided in favour of the assessee. Reassessment proceedings in the said cases will be hit by principle of "change of opinion".

(3) Reassessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in

original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons.

13. In the second and third situation, the Revenue is not without remedy. In case the assessment order is erroneous and prejudicial to the interest of the Revenue, they are entitled to and can invoke power under Section 263 of the Act. This aspect and position has been highlighted in *CIT vs. DLF Powers Limited*, ITA 973/2011 decided on 29th November, 2011 and *BLB Limited vs. ACIT Writ Petition (Civil) No. 6884/2010* decided on 1st December, 2011. In the last decision it has been observed:

13. Revenue had the option, but did not take recourse to Section 263 of the Act, inspite of audit objection. Supervisory and revisionary power under Section 263 of the Act is available, if an order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. An erroneous order contrary to law that has caused prejudiced can be correct, when jurisdiction under Section 263 is invoked.

14. Thus where an Assessing Officer incorrectly or erroneously applies law or comes to a wrong conclusion and income chargeable to tax has escaped assessment, resort to Section 263 of the Act is available and should be resorted to. But initiation of reassessment proceedings will be invalid on the ground of change of opinion."

(emphasis supplied)

18. The Supreme Court recently in ***Godrej and Boyce Manufacturing Company Limited v. Deputy Commissioner of Income Tax, Mumbai & Anr., (2017) 7 SCC 421*** on the question of disallowance under Section 14A W.P.(C) 480/2016 & W.P.(C) 526/2016

of the Act and the effect of Rule 8D of the Rules has held as under:

"37. We do not see how in the aforesaid fact situation a different view could have been taken for Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14-A of the Act read with Rule 8-D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the assessing officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8-D or in the best judgment of the assessing officer, what the law postulates is the requirement of a satisfaction in the assessing officer, what the law postulates is the requirement of a satisfaction in the assessing officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Sections 14-A(2) and (3) read with Rule 8-D of the Rules or a best judgment determination, as earlier prevailing, would become applicable.

38. In the present case, we do not find any mention of the reasons which had prevailed upon the assessing officer, while dealing with Assessment Year 2002-2003, to hold that the claims of the assessee that no expenditure was incurred to earn the dividend income cannot be accepted and why the orders of the Tribunal for the earlier assessment years were not acceptable to the assessing officer, particularly, in the absence of any new fact or change of circumstances. Neither any basis has been disclosed establishing a reasonable nexus between the expenditure disallowed and the dividend income received. That any part of the borrowings of the assessee had been diverted to earn tax free income despite the availability of surplus or interest free funds available (Rs 270.51 crores as on 1-4-2001 and Rs 280.64 crores as on 31-3-2002) remains unproved by any material whatsoever. While it is true that that the principle of res judicata would not apply to assessment proceedings under the Act, the need for consistency and certainty and existence of strong and compelling reasons for a departure from a settled position has to be spelt out which conspicuously is absent in the present case. In this regard, we may remind ourselves of what

has been observed by this Court in Radhasoami Satsang v. CIT (1992) 1 SCC 659: (1992) 193 ITR 321.

“16. We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.”

(emphasis supplied)

19. The chronology of events leading up to the passing of the orders under Section 143(3) of the Act, clearly shows that the AO was ‘satisfied with the claim of the assessee’ while passing the original orders. Rule 8D is triggered only in a case where the AO is not satisfied with the deduction made by the Assessee. The reasons to believe assume and are predicated on the belief that the AO should not have accepted the Petitioner’s deduction as explained and justified, albeit should have applied Rule 8D. Thus, the view and opinion formed by the AO, while passing the original assessment orders is doubted as erroneous. This is obviously a case of change of opinion.

20. In view of the aforesaid position, we allow the present writ petition and quash the reassessment notices dated 30th March, 2015 in the case of the Petitioner for the AYs 2010-11 and 2011-12. In the facts of the case, there will be no order as to costs.

SANJIV KHANNA, J

PRATHIBA M. SINGH, J

OCTOBER 25, 2017/dk