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

BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No.230/M/2018
Assessment Year: 2012-13

ACIT 14(2)(2), 461, Aayakar Bhavan, 4th Floor, M.K. Marg, Mumbai - 400020	Vs.	M/s. Mirae Asset Global Investment (India) Pvt. Ltd., Unit No.606, 6th Floor, Windsor, Off CST Road, Kalina, Santacruz (East), Mumbai – 400 098 **PAN: AAECM 8387K**
(Appellant)		(Respondent)

Present for:
Assessee by : Shri D.G. Pansari, A.R.
Revenue by : Shri Ajay Singh, D.R.

Date of Hearing : 11.02.2019
Date of Pronouncement : 19.02.2019

O R D E R

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 19.10.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The only issue raised by the Revenue is against the order of Ld. CIT(A) deleting/allowing the expenses exceeding limit specified in SEBI Regulation by ignoring the fact that the expenses were not the liability of the assessee and were rightly disallowed by the AO.

3. The facts in brief are that the AO during the course of assessment proceedings observed that the assessee has charged

to the profit & loss account, the expenses incurred in relation to launching of two new NFOs during the year and accordingly the AO issued show cause notice dated 10.03.2015 to provide details of equity NFOs launched during the year and expenses incurred in connection therewith along with documentary evidences which were replied by the assessee by submitting that assessee has incurred Rs.11,22,950/- as expenses in excess of the limit prescribed by the SEBI. The assessee also filed the details of various NFOs on whose behalf the assessee has incurred expenses as reproduced by the AO at page No.3. The AO considered said reply of the assessee and came to the conclusion that the expenses incurred in relation to launching of equities and NFOs on behalf of the above companies as stated in para 7.2 can not be treated as expenses of the assessee as the said expenses were liability of the Mutual funds entities on whose behalf the assessee launched the NFOs. According to the AO, the Income Tax Act and SEBI Act there are two different laws governing different matters and therefore the provisions of SEBI Act are not applicable to the fact. The AO observed that income of the assessee has to be computed as per the provisions of Income Tax Act. Accordingly, the AO disallowed the excess of expenditure as incurred by the assessee over and above the SEBI limit to the tune of Rs.85,43,750/- and added the same to the income of the assessee the details whereof are given in para 7.2 of the assessment order.

4. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

> "6.4 I have considered the facts of the case and the appellant's submissions. The appellant is an AMC (Asset Management Company) and had entered into an investment management agreement with the Trustee company of Mirae Asset

Mutual Fund, namely, Mirae Asset Trustee Company Pvt. Ltd. As per the agreement, the fees and expenses of the AMC are to be subject to the limits prescribed from time to time under the SEBI Regulations and in accordance with the provisions thereof. As per regulation 52(2) and 52(4) of the SEBI (Mutual Fund) Regulations 1996, AMCs are allowed to charge fees & expenses to mutual fund scheme within limitation. The total expenses that can be charged to mutual fund scheme are specified in regulation 52(6). Regulation 52(7) provides that any expenditure in excess of the limits specified in regulation 52 (6) and (6A)] shall be borne by the asset management company or by the trustee or sponsors. Perusal of the investment management agreement shows that paragraph 41 under Article IX clearly mentions that expenses incurred exceeding the limit specified by the SEBI Regulations shall be borne by the AMC. The appellant company had accordingly debited such expenses to its P & L account and claimed it as allowable expenses u/s 37(1) of the Act. The Assessing Officer was of the view that such expenses pertained to the respective companies but could not be charged to them because of the ceiling of expenses prescribed by SEBI. That this liability of others could not be transferred to the appellant company and allowed as deduction under the provisions of the Act. The AO also observed that the appellant had failed to produce anything cogent on record to show that there was any corresponding revenue increase due to the launching of two new equity NFOs and hence disallowed the expense of Rs.85,43,750/- incurred in excess of SEBI ceiling.

6.5 The appellant company had incurred expenses in pursuance of the investment management agreement and the expenses were thus incurred for its business activity. The expenditure had a direct nexus with the appellant's own business of asset management. The SEBI regulations merely prescribes the ceiling of expenses that can be charged to Mutual Fund Schemes. There is no such restriction on the expenses to be incurred by the AMC. The expenses incurred were the appellant's own expenditure and it was a part and parcel of the profit-making activity of the appellant. The expenses that could not be charged to the Mutual Funds/companies because of the SEBI ceiling cannot, therefore, be considered as pertaining to these Mutual Funds/companies and not to the appellant. The non increase in revenue on account of launch of NFOs will also not affect the allowability of the expenses incurred for its business of asset management. Regulation 52(7) of SEBI Regulations provides that any expenditure in excess of the limits specified in regulation 52 (6) and (6A)] shall be borne by the asset management company or by the trustee or sponsors. The investment management agreement at paragraph 41 under Article IX also clearly mentions that expenses incurred exceeding the limit specified by the SEBI Regulations shall be borne by the AMC, In view of all these facts, the disallowance of expenses of Rs.85,43,750/- made by the AO is deleted. This ground of appeal is allowed."

5. The Ld. D.R. reiterated his arguments as made before the Ld. CIT(A) by submitting that SEBI and IT Act are two different Acts governing the matters in their respective arena. The Ld. D.R. submitted that the SEBI Act governs the matter falling under the arena of SEBI Act whereas the provisions of Income

Tax Act govern the assessment of income as per Income Tax Act. The Ld. D.R. submitted that the expenses which are liability of 10 mutual fund companies as has been stated by the AO in para 7.2 of the assessment order can not be treated as expenses incurred by the assessee in the ordinary course of business and can not be allowed under the provisions of section 37 as the assessee has apparently incurred the expenses on behalf of the said companies. The Ld. D.R. also made without prejudice submission that in case of the said expenses are treated as expenses belonging to the assessee even then the same are not allowable as these are of capital nature and not revenue in nature as these were incurred in connection with new NFOs. The Ld. D.R. finally prayed that the order of Ld. CIT(A) be set aside and AO be restored.

6. The Ld. A.R., on the other hand, heavily relied on the order of Ld. CIT(A) and submitted that the expenses incurred by the assessee to the tune of Rs.85,43,750/- are incurred in the ordinary course of business by the assessee as it is specifically mentioned in the investment management agreement in para 41 under Article 9 that expenses incurred exceeding the limit specified by SEBI Regulation shall be borne by AMC and therefore were accordingly debited to the P&L account and is allowable expenses under section 37(1) of the Act. The Ld. A.R. also submitted that the case of the assessee is squarely covered by the decision of Hon'ble Bombay High Court in the case of CIT vs. Templeton Asset Management (India) P. Ltd. (2012) 340 ITR 279 (Bom.) wherein the similar issue has been decided in favour of the assessee that expenses incurred over and above the limit specified as put by the SEBI shall be borne by AMC and are

covered by provision of section 37(1) of the Act. The Ld. A.R. submitted that in view of the said decision and the facts on record, the order of Ld. CIT(A) should be affirmed.

7. After hearing both the parties and perusing the material on record, we find that in this case the assessee is engaged in the business of asset management and investment advisory services. During the year the assessee has launched NFOs on behalf of various clients as mentioned in para 7.2 of the assessment order. The SEBI Regulations specify the limit beyond which the companies on whose behalf the NFOs are launched can not be exceeded and therefore the expenses in excess of the said SEBI limit of Rs.85,43,750/- was claimed by the assessee as expenses incurred in the ordinary course of business under section 37(1) of the Act. We further find that the Ld. CIT(A) recorded a finding of facts that said expenses were incurred by the assessee under investment management agreement which provided that the excess expenses incurred over and above the limit specified by the SEBI Regulation shall be borne by the AMC i.e. assessee. In our view, these expenses are incurred by the assessee in the ordinary course of business as the assessee is in the business of providing asset management and investment revisionary services for launching the equity and NFOs on behalf of various clients the assessee . Moreover, it has been specifically agreed between the parties that any expenses incurred in excess of limit specified by the SEBI Regulation shall be borne by the AMC. The case of the assessee is also supported by the Hon'ble Bombay High Court in the case of CIT vs. Templeton Asset Management (India) P. Ltd. (supra) wherein the Hon'ble Bombay High Court has held that if

the assessee is an asset management company (AMC), due to business exigency, claims and recovers from mutual funds lesser amount than amount of expenditure actually incurred during the course of business, then unless it is established that there were no business exigencies or claim was not genuine expenditure incurred can not be disallowed. In the case of the assessee also the assessee has not doubted the genuineness of the expenditure or business exigencies and came to the conclusion that said expenses are in excess of limit specified by the SEBI Regulation and belong to the mutual funds and not to the assessee. We, therefore, respectfully following the decision of the Hon'ble Bombay High Court (supra), are inclined to uphold the order of Ld. CIT(A) by dismissing the appeal of the Revenue.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 19.02.2019.

Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 19.02.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.