

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ , मुंबई ।

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

BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND

SHRI C.N. PRASAD, JUDICIAL MEMBER

आयकर अपील सं /I.TA No.56/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2010-11

| | | |
|---|---------------------|--|
| The ACIT-4(3), Aayakar Bhavan, Mumbai-400 020 | बनाम/ Vs. | M/s. Tapi Energy Projects Ltd., 26, Gobind Mahal, 86-B, Netaji Subhash Road, Marine Drive, Mumbai-400 002 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAAC 5757C | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| अपीलार्थी ओर से/ Appellant by: | | Shri R.K. Sahu |
| प्रत्यर्थी की ओर से/ Respondent by: | | Shri Anuj Kisnadwala |
| | | |

सुनवाई की तारीख / Date of Hearing :26.07.2016

घोषणा की तारीख /Date of Pronouncement :29.07.2016

आदेश / O R D E R

PER C.N. PRASAD, JM:

This appeal is filed by the Revenue against the order of the Ld. CIT(A)-8, Mumbai dated 23.10.2013 pertaining to assessment year 2010-11.

2. The Revenue challenges the order of the Ld. CIT(A) in deleting the disallowance made under Rule 8D(ii) r.w. Sec. 14A of the Act.

3. Brief facts are that the Assessing Officer while completing the assessment disallowed Rs. 93,43,457/- u/s. 14A r.w. Rule 8D of the Act. The Assessing Officer calculated the expenditure disallowable u/s. 14A at Rs. 96,73,262/- which comprises of interest of Rs. 92,31,978/- and administrative expenses of Rs.4,41,284/- being 0.5% of average investments. However, since assessee himself has disallowed Rs. 3,29,805/- towards administrative expenses, the Assessing Officer restricted the disallowance to Rs. 93,43,457/-.

4. On appeal, the Ld. CIT(A) sustained the disallowance to the extent of Rs. 4,41,284/- towards administrative expenses i.e. 0.5% of average investments and deleted the interest portion observing that the Mumbai Bench of the ITAT in the case of Morgan Stanley India Securities Ltd. Vs ACIT has held that disallowance of interest should be made with reference to net interest only and since the interest income earned by the assessee is more than interest expended, the interest paid cannot be considered while calculating the disallowance under section 14A r.w. Rule 8D(2)(ii)

5. The Ld. Departmental Representative supporting the order of the Assessing Officer submits that the Ld. CIT(A) is not justified in deleting the interest portion disallowed under Rule 8D(2)(ii) r.w. Section 14A.

6. The Ld. Counsel for the assessee submits that assessee is having sufficient interest free funds to make investments and therefore, no part of investments were made out of borrowed funds and hence no part of interest can be disallowable u/s. 14A r.w. Rule 8D(2)(ii). He further submits that assessee has earned dividend

income of Rs. 1,09,025/- only during this Assessment Year and therefore there is no justification at all in disallowing Rs. 93,43,457/-. He further submits that the disallowance should not exceed the dividend income earned and for this proposition he places reliance on the following decisions:

- 1) Joint Investments VS CIT [372 ITR 694(Del)]
- 2) Indus Valley Investments Vs DCIT being ITA No. 3763/Del/2013 for A.Y. 2009-10 dated 29.4.2015 (copy enclosed).
- 3) M/s. Daga Global Chemicals Vs ACIT being ITA No. 592/M/2012 dated 1.1.2015 (copy enclosed)
- 4) M/s. Slyvex Cable Co. Pvt. Ltd Vs DCIT being ITA No. 8581/M/2011 for A.Y. 2008-09 dated 24.2.2016 (copy enclosed)
- 5) M/s. Global Capital Ltd Vs ACIT being ITA No. 6586/Del/2013 for A.Y. 2009-10 dated 27.11.2015 (copy enclosed)
- 6) DCIT Vs DCM Ltd being ITA No. 4467/Del/2012 for A.Y. 2009-10 dated 1.9.2015.

7. We have heard the rival contentions and perused the orders of the authorities below. Admittedly, in this case, assessee earned exempt income of Rs. 1,09,025/-. The assessee suo moto disallowed Rs. 3,29,805/- being 0.5% of average investments towards administrative expenses attributable for earning exempt income. The Assessing Officer invoked provisions of Sec. 14A r.w. Rule 8D and computed the disallowance at Rs. 93,43,457/- as the assessee had offered disallowance voluntarily of Rs. 3,29,805/- The Ld. CIT(A) however deleted the interest portion of Rs. 92,31,978/- and

sustained the disallowance to the extent of administrative expenses being 0.5% of average investment at Rs.4,41,284/-. Against this order of the Ld. CIT(A), Revenue is in appeal and there is no appeal of the assessee.

8. We have heard the rival contentions and perused the orders of the authorities below and the case laws on the issue. In the catena of decisions relied on by the Ld. Counsel for the assessee, it was held that disallowance u/s. 14A cannot exceed the amount of exempt income. In this case, the exempt income earned by the assessee is only Rs. 1,09,025/-. The assessee suo motu disallowed Rs. 3,29,805/- therefore we are under the considered view that there should not have been any further disallowance u/s. 14A of the Act. In the circumstances, we reject the ground of the Revenue and sustain the order of the Ld. CIT(A).

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 29th July, 2016.

Sd/-

Sd/-

(RAJENDRA)

(C.N. PRASAD)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 29th July, 2016

व.नि.स./ Rj , Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai