

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "ई" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI SHAILENDRA KUMAR YADAV, JM AND SHRI RAJESH KUMAR,
AM

आयकर अपील सं./I.T.A. No.7452/Mum/2013
(निर्धारण वर्ष / Assessment Year : 2010-11)

M/s Saurashtra Fuels Pvt Ltd- 93-C, Mittal Tower, Nariman Point, Mumbai-400021	बनाम/ Vs.	Asstt Commissioner of Income Tax, Circle-3(3), Room No.609, Aayakar Bhavan, Mumbai-400020
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स्थायी लेखा सं./ PAN : AAACS7271G

अपीलार्थी ओर से / Assessee by	Shri B V Jhaveri
प्रत्यर्थी की ओर से/Revenue by	Shri Manjunatha Swamy

सुनवाई की तारीख / Date of Hearing : 9.06.2016

घोषणा की तारीख /Date of Pronouncement :25.08.2016

आदेश / ORDER

PER RAJESH KUMAR, A. M:

This is an appeal filed by the assessee against the order passed by the Id.CIT(A)-7, Mumbai dated 1.10.2013 for the assessment years 2010-11.

2. The first ground raised in the grounds of appeal is with regard to the addition made by the AO u/s 14A of the Income Tax Act, 1961(hereinafter referred to as the Act) and confirmed by the Id.CIT(A) amounting to Rs.1,58,35,981/-.

3. The brief facts of the case are that the assessee filed its return of income on 24.9.2010 declaring loss of Rs.14,61,58,992/- which was revised on 14.12.2011 declaring a loss of Rs.46,94,38,992/- which was processed u/s 143(1) of the Act. Thereafter, scrutiny proceedings were initiated against the assessee and statutory notices under section 143(2) and 142(1) were issued and served upon the assessee. The AO after considering the various facts and after seeking explanation from the assessee on the issue of admissibility of expenses u/s 14A and contingent liabilities framed the assessment vide order dated 28.12.2012 at an amount of Rs.(-)13,02,98,593/- under the normal provisions of Act and at Rs.(-)24,82,79,148/- under the provisions of section 115JB of the Act. Aggrieved by the order of the AO, the matter carried to Id.CIT(A) who also dismissed the appeal of the assessee on the issue of disallowance u/s 14A and writing off contingent liability of Rs.32,32,80,000/-.

4. The Id. AR at the outset, submitted that ground no.2 qua the confirmation of disallowance of Rs.32,32,80,000/- is not pressed and therefore dismissed accordingly.

5. The issue raised in the ground no. 1 is against the confirmation of addition of Rs.1,58,35,981/- by CIT(A) as made by the AO under section 14A r.w.r 8D.

6. Facts of the case are that the assessee received dividend income of Rs. 9,949/- which was claimed exempt- u/s 10(34) of the Act and also made suo mottu disallowance u/s 14A of Rs.1,28,194/-. During the course of assessment proceedings, the AO observed that the disallowance as made by the assessee on its own was not at per Rule 8D of the Income Tax Rules, 1962 and accordingly issued show cause notice to the assessee as to why the disallowance be made as per rule 8D. Finally, the AO worked out the disallowance at Rs.1,59,64,175/- comprising Rs.1,42,65,582/- under rule 8D(2)(ii) and Rs.1698,593/- under rule 8D(2)(iii) and after allowing the credit of disallowance as made by the assessee itself of Rs.1,28,194, added a sum of Rs.1,58,35,981/- to the income of the assessee. Before the First Appellate Authority, the assessee submitted that no interest bearing funds were utilized for the purpose of making investments in shares/mutual funds. The Id. CIT(A) after considering the reply and submissions of the assessee dismissed the appeal of the assessee on this issue by observing and holding as under :

“It has been held in Kalpataru Constructions Overseas (P) Ltd v/s CIT(2007) 13 SOT 194(Mum) that all expenses connected with exempt income have to be disallowed u/s 14A regardless of whether they are direct or indirect, fixed or variable and managerial or financial in accordance with law. Also it has been held in Siva Industries and Holidays Ltd V/s CIT (2012) 54 SOT 49 (Chennai) that even in the year where no exempt income is earned or received by the appellant, disallowance u/s 14A can be made

In view of the above, the addition of Rs.1,58,35,981/- made by the AO is confirmed."

7. The Id. AR vehemently submitted before us that the Id. CIT(A) has completely ignored the facts placed before him qua to disallowance u/s 14A read with rule 8D made by the AO. The Id. AR reiterated his submissions as made before the Id. CIT(A) and submitted that the assessee's own tax free funds as on 31.3.2009 were to the tune of Rs.55.87 crores as against the total investment of Rs.37.45 crores on that date and corresponding amount of interest free own funds and investment as on 31.3.2010 were Rs.28.49 Cr and Rs.30.49 Cr crores respectively. In defence of his arguments, the Id. Counsel strongly relied on the decision in the case of CIT V/s RELIANCE UTILITIES AND POWER LTD. [2009] 313 ITR 340 (Bom) and in the case of CIT V/s HDFC BANK LTD. [2014] 366 ITR 505 (Bom). The Id.AR in the alternatively without prejudice to the above arguments submitted that the assessee had made investments in the foreign company to the tune of Rs.1.10 Cr in Saurashtra World Holdings Pvt Ltd which was inclusive in the total investments of Rs.30.49 Cr which was foreign company the dividend on which would be taxable and therefore no disallowance could be made u/s 14A r.w.r.8D. The Id. counsel also submitted that Rs.8.00 Cr. were invested in the preferential shares in Saurashtra Ferrous Pvt Ltd. And Rs.12.50 were invested in the preferential shares in other 51 companies which were also included in the

amount of total investments of Rs.30.49 Cr in which no disallowance u/s 14A could be made as income from preferential shares or redeemable preferential shares is not exempt from tax. It was also submitted by the Id.AR that the assessee has made investment of Rs.8.79 Cr in the equity shares in Saurashtra Ferrous Pvt Ltd and other four companies in order to gain control over the said companies and not for the purpose of earning any dividend which were of strategic nature and therefore no disallowance u/s 14A could be made in respect of the said investments. The Id.counsel also relied on the following decisions in defence of his arguments :

- a) Everest Kanto Cylinder Ltd V/s ACIT (56 taxmann.com 361, Mum Trib) and
- b) ITO V/s Strides Arcolab Ltd (138 ITD 323) (Mum) Trib.
- c) CIT V/s Oriental Structural Engg P Ltd (35 taxmann. Com 210, Del HC)
- d) Garware Wall Ropes Ltd V/s ACIT (65 SOT 86, Mum Trib);
- e) M/s J M Financial Ltd V/s ACIT (ITA No.4521/Mum/2012),
- f) Shri Jigar P Shah V ACIT (ITA No.4366/M/2014 dated 24th Feb 2016

8. On the contrary, the Id.DR relied on the order of authorities below.

9. We have carefully considered the submissions of the parties, perused the material placed before us including the orders of authorities below and case laws relied upon by the parties. We find that the assessee has made substantial investments in the shares and securities including the shares in foreign companies, preferential shares and redeemable preferential shares and investment in equity shares of subsidiary company and sister

concern/associate concern. Upon going through the facts of the case we find that the total investments as on 31.3.2010 in shares and securities including preferential shares, equity shares of associate concern and other concerns including foreign company were to the tune of Rs.30.49 Cr and the assessee has tax free funds in the form of tax free fund and reserve of Rs.28.49 Cr and out of the total investments of Rs.30.49 Cr as on 31.3.2010, the assessee has made investment in the shares of M/s Saurashtra World Holdings Pvt Ltd a foreign company to the tune of Rs.1.10 Cr the dividend on which is taxable under the Act and the investments in the preferential and redeemable preferential shares to the tune of Rs.20.60 Cr the dividend on which is also taxable under the Act and investments in subsidiary companies/associate concern as on 31.3.2010 amounted to Rs.8.79 Cr which was made with a motive of gain control over the subsidiaries/associate company and not with an intention to earn dividend income. Thus, if we subtract the investments in foreign company, in preferential shares and redeemable preferential shares and in subsidiary/associate concern, the remaining investment would be NIL. As total of these investments would Rs.30.49 Cr which is total investments in the shares and securities as on 31.3.2010 in the balance sheet of the assessee. We, therefore find merit in the submissions of the Id.AR that the disallowance as made by the AO and upheld by the Id.CIT(A) is wrong and

cannot be sustained and deserved deletion. We also find that various case law cited by the Id.AR squarely cover the facts of the assessee case and we therefore respectfully following the ratio laid down in the above decisions we set aside the order of CIT(A) and restore the issue back to the file of AO for verification of issue of investments as discussed above. We accordingly, allow the appeal of the assessee for statistical purposes.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on this 25 th day of Aug, 2016.

Sd (SHAILENDRA KUMAR YADAV) न्यायिक सदस्य / JUDICIAL MEMBER	sd (RAJESH KUMAR) लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई MUMBAI; दिनांक DATED : 25.8.2016	
Sr.PS:SRL:	

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 – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai