

**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No. 231/CTK/2015
Assessment Year : 2011-2012

ACIT, Sambalpur	Circle	1(1),	Vs.	Patnaik Minerals Pvt Ltd., Boneikala, Joda, Keonjhar, Orissa
PAN/GIR No.AABCP 3278 P				
(Appellant)			..	(Respondent)

Assessee by : Shri S.C.Bhadra, AR
Revenue by : Shri Kunal Singh, CIT DR

Date of Hearing : 01/08/ 2017
Date of Pronouncement : 03 /08/ 2017

ORDER

Per N.S.Saini, AM

This is an appeal filed by the Revenue against the order of the CIT(A), Cuttack, dated 29.12.2014, for the assessment year 2011-12.

2. In Ground Nos.1 & 2 of the appeal, the grievance of the revenue is that the CIT(A) erred in confirming the order of the Assessing Officer in deleting the disallowance of expenditure of Rs.6,44,42,275/- made u/s.14A of the Act.

3. The brief facts of the case are that the Assessing Officer made disallowance u/s.14A r.w. Rule 8D of I.T.Rules for Rs.6,44,42,275/-.

4. On appeal, the CIT(A) deleted the disallowance.

5. At the time of hearing, both the parties agreed before us that the issue is covered in favour of the assessee by the decision of this Bench of the Tribunal in assessee's own case for the assessment year 2010-2011 in ITA No.444/CTK/2014, order dated 16.6.2017, wherein, the Tribunal has discussed the issue and confirmed the action of the CIT(A) in deleting the disallowance made by the Assessing Officer, by observing as under:

" 3. Brief facts of the case are that the assessee is carrying on business of mining, processing and manufacturing of sponge iron. The Assessing Officer found that the assessee has shown investment in financial assets of shares and mutual funds and earning dividend income. Further, the assessee has on its own disallowed Rs.8,57,512/- as expenses u/s.14A of the Act for earning exempt income. The assessee has produced a chart indicating that the disallowance has been computed on prorata basis taking into the income which was exempt. The Assessing Officer perused the computation prepared by the assessee and opined that in the case of the assessee, Rule 8D of the I.T.Rules will be applicable and observed that the disallowance u/s.14A made by the assessee is on lower side and calculated the disallowance u/s.14A r.w.s Rule 8D at Rs.14,34,60,722/- and added the same to the total income of the assessee and passed order u/s.143(3) of the Act on 29.3.2013.

4. Aggrieved, the assessee has filed appeal with the CIT(A). Before the CIT(A), Id A.R. submitted that the assessee company has obtained term loans for its wind mills and purchase of machineries and equipment and the loans have been utilised for specific purpose. The assessee company has neither diverted nor invested the loan towards investment in shares & mutual funds and there is no nexus between the investments and the borrowed funds. In the appellate proceedings, the assessee submitted written submissions compiled with judicial decisions referred in the order of the CIT(A) at page 3,4,5 & 6, stating therein that the assessee has sufficient funds in its Reserve & surplus as internal accruals so as to make investments to earn taxable and exempted income. It was also submitted that the investment in shares and mutual funds by the assessee was out of its own funds not from the borrowed funds and, therefore, no portion of interest paid during the year could be allocated to the exempted income. Further, it was submitted that based on the similar facts in the case of the assessee for the assessment year 2008-09, the Co-ordinate Bench of the Tribunal in ITA No.008/CTK/2012 order dated 14.3.2012 deleted the disallowance made by the revenue authorities.

5. The CIT(A) perused the written submissions, findings of the Assessing Officer and the ratio of decisions relied by the assessee and

deleted the disallowance made by the Assessing Officer, inter alia, observing as under:

"I have perused the assessment order framed by the AO, the grounds of appeal of the appellant, the written submission of the appellant and particularly the ratios of case laws submitted by the appellant. The genesis of computation of disallowable expenditure u/s.14A of the Act is that the AO having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income. Moreover the AO can determine the disallowable expenditure also in relation to a case where the assessee claims that no expenditure has been incurred by it in relation to income which does not form part of the total income. While computing the disallowable expenditure the AO has to put the above two tests to the accounts of the assessee. The AO should record his dissatisfaction regarding the amount already shown by the assessee as disallowance or AO can compute the same where assessee itself shows no disallowance of expenditure under this head.

In the present case it is to be found out whether both the tests are genuinely and ally applied by the AO. The appellant had disallowed an amount of Rs.8,75,512/- on account therefore Section 1.4A(3) does not apply to its case. The only applicability is ion 14A[2] of the Act. In the body of the order the AO had stated that the assessee had mitted the computation of disallowance of expenditure made by it in relation to income which does not form part of the taxable income. Observing the same the AO had stated that e details of the computation have been seen and it is pertinent to mention here that in case of the assessee Rule 8D of the I.T.Rules will be applicable for the year under consideration since the earlier method for computing the expenses relating to income which does not form part of the total income has been substituted with the method as provided under Rule 8D. Considering the fact that the self declared disallowance u/s.14A is n the lower side and is not in conformity with the law the same is being recomputed in the manner as provided under Rule 8D."

From the above observation of the AO, with all ambiguity of the statement, it comes out that the AO felt that expenses relating to income which does not form part of the total income should be computed as per the method provided under Rule 8D of the I.T.Rules and the AO considered the self declared disallowance by the assessee u/s.14A is on the lower side. Now whether the above observation of the AO can be considered to be that the AO "is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act" (The relevant part of Section 14A(2) of the Act). With the above premise the decisions of various higher legal authorities may be analyzed.

In the case of Sesa Goa Ltd. v.]CIT,Goa (supra) the Hon'ble 1TAT , Panaji Bench held that *"before making any disallowance u/s. 14A AO is required to record satisfaction having regard to accounts of the assessee, that claim of the assessee that expenditure incurred is not related to income forming part of total income is incorrect He is also required to record reasons for arriving at such satisfaction.....According to TPO disallowance made by assessee was very less but how they are very less and how other expenses incurred by assessee related to dividend income had not been*

brought on record. The AO nowhere pointed out proximate connection of other expenses not apportioned by assessee for earning dividend income. The AO has not pointed out expenses excluded by assessee for disallowance has proximate connection with dividend income. No discrepancy in claim of assessee was pointed out." The Hon'ble IT AT,) Bench Mumbai in the case of J K Investors v. AC1T (supra) also held the view that the AO can invoke Rule 8D only when he records satisfaction in regard to the correctness of the claim of the assessee, having regard to the accounts of the assessee. The Hon'ble 1TAT, A Bench Kolkata in the case of REI AGRO LTD. v. DCIT (1TA No.1331/Kol/2011 have held the same view.

The appellant has emphasized on the submission that it had obtained term loans for its wind mills and purchase of machineries and equipment for its business purposes. The branch and financial institutions have directly disbursed the loan amounts to the suppliers and vendors instead of disbursing the same to the appellant. The loans are only utilized for specific purposes and the interest on these term loans are clearly attributed to their respective purposes. The company has made investments in shares and mutual funds out of its surplus i.e. internal accrual of the company and reinvestment of dividends and other income arising out of these investments. The appellant has produced a statement showing the reserve and surplus to cover the investments. The appellant also submitted-that from the cash flow statement for the FY 2009-10 it is evident that the opening cash and cash equivalent amounted to Rs.208,27,74,318.73 whereas investment amounting to Rs.97,42,32,545.28 has been made during the year out of the cash inflows from the operating profit of the appellant and the funds accumulated from previous years. The appellant further pointed out that in the impugned year no further borrowings has been availed which proves that it had invested in shares and mutual funds out of its own funds and not from the borrowed funds.

PARTICULARS	BALANCE AS ON 31.3.2007	BALANCE AS ON 31.3.2008	BALANCE AS ON 31.3.2009	BALANCE AS ON 31.3.2010
Reserve & Surplus	1,79,56,32,924.56	3,58,47,41,594.10	5,18,75,54,457.86	5,67,54,10,091.77
Investment	67,07,10,458.11	2,23,05,63,332.00	2,60,60,03,070.51	3,58,02,35,615.79
Increment in Investment	#REF!	1,55,98,52,873.89	37,54,39,738.51	97,42,32,545.28
Increment in Reserve & Surplus	#REF!	1,78,91,08,669.54	1,60,28,12,863.76	48,78,55,633.91

The Learned CIT(A), Cuttack while deciding the appeal in the case of M/s.Banspani Iron>Ore Ltd. for the AY 2008-09 in ITA No.0180/2010-11 had taken the similar view as that of the assessee that as the assessee has sufficient funds for investment in those kind of shares and mutual funds and since the borrowed fund has not been used, the scope of computation of disallowable expenditure as per Rule 8D does not arise.

In the case of C1T, Gandhinagar v. Gujrat Power Corporation Ltd. (Tax Appeal No.1587 of 2009) the Hon'ble High Court of Gujrat decided that " the assessee had demonstrated that it had other sources of investment and that therefore according to assessee no part of the borrowed fund could be stated to have been diverted to earn tax free income."

In the own case of the appellant for the AY 2008-09 the Hon'ble IT AT, Cuttack in ITA No.008/CTK/2012 decided that "the assessee has demonstrated so as to establish the fact that the loans are availed for a specific purpose and utilized for the said purpose and almost all the loans are directly disbursed to the suppliers by the bank/financial institution/..... When the amount invested in tax free security are not from loan obtained from banks as clearly demonstrated by the assessee, in our considered view no portion of interest paid during the year can be allocated to the tax free income received." The Hon'ble ITAT, Cuttack after observations as above have deleted the addition made by the AO u/s.14A of the Act.

From the above analysis it is clear that the AO had not recorded his satisfaction regarding not accepting the disallowable expenditure shown by the appellant. The investment in such assets were made by the appellant from its operational surplus and not from loan funds. Following the judgments of the above higher legal authorities and the judgment of the Hon'ble JTAT, Cuttack in the case of the appellant for AY 2008-09 the AO is directed to delete the addition made u/s.14A of the Act."

6. Aggrieved by the order of the CIT(A), the Revenue has filed appeal before the Tribunal. Ld D.R. relied on the order of the Assessing Officer and submitted that the self-declared disallowance u/s.14A of the Act by the assessee is on lower side and is not in conformity with the law and prayed to restore the order of the Assessing Officer. The Ld A.R. of the assessee submitted that the Tribunal in assessee's own case for A.Y. 2008-09 after considering various objections raised by the AO and judicial decisions has allowed the claim of deduction u/s.14 r.w. Rule 8D.

7. We heard the rival submissions, perused the orders of lower authorities, judicial decisions and materials on record. We find an identical issue had come up for consideration before the Tribunal in assessee's own case for A.Y. 2008-09. The Tribunal vide ITA No.008/CTK/2012 order dated 14.3.2012 following various judicial decisions has allowed the ground raised by the assessee. On perusal of statement of accounts, we find that value of investments as on 31.3.2010 is less than opening balance on 1.4.2009 and as explained there are no fresh investment further. The Ld.CIT(A) while deciding the issue in favour of the assessee has followed the decision of the Tribunal in assessee's

own case as well as various judicial decisions, therefore, in absence of any contrary material brought to our notice against the decision of the Tribunal in assessee's own case, we do not find any infirmity in the order of the CIT(A) allowing the claim of of the assessee. Accordingly, we uphold the order of the CIT(A) and the grounds raised by the Revenue are dismissed."

6. Therefore, following the precedent, we dismiss the grounds of appeal of the revenue.

7. In Ground No.3 of the appeal, the grievance of the revenue is that the CIT(A) is not justified in accepting the contention of the assessee that the interest accrued on term loan availed for captive power plant (CPP) and Ore beneficiation Plant (OBP) amounting to Rs.10,63,560/- and Rs.50,23,112/-, respectively had been capitalized and not claimed as deduction in the profit and loss account.

8. The brief facts of the case are that the Assessing Officer observed that the assessee has shown capital work in progress of Rs.31,72,99,073/- whereas investment in plant & machinery, out of such has been shown at Rs.17,55,75,128/-. The Assessing Officer further observed that during the corresponding period, the assessee had shown loans amounting to Rs.51,20,23,082/-, for which, it had incurred interest liability amounting to Rs.6,72,96,690/-. Considering the proviso to section 36(iii) and the fact that the assets which are still in the process of installation and have not been put to use, interest on loan corresponding to the capital work in progress was disallowed by the Assessing Officer. Since the assessee could not specifically identify the amount of such

interest which should be disallowed, the Assessing Officer determined the same in the following manner:

"Capital work in progress/total loan at the end of the year x interest charged on total loan which comes to Rs.2,30,76,352/-."

9. On appeal before the CIT(A), the assessee submitted as under:

"The appellant during appeal hearing submitted that "The assessee has capital work in progress amounting to Rs.31,72,99,073/- as on 31.3.2011 which is mostly comprising the amount relating to cost of its Captive Power Plant (CPP) and Ore Beneficiation Plant. The assessee has availed term loan amounting to Rs.1,67,10,000/- for its CPP and Rs.7,89,20,000/- for Ore Beneficiation Plant and the interest amounting to Rs.10,63,560.81 pertaining to the term loan for CPP and interest amounting to Rs.50,23,112.89 pertaining to term loan for Ore Beneficiation Plant has been duly capitalized under the respective heads as per the Accounting Standard 16 of 1CA1. The said interests are not charged in P & L A/c. under the head Interest and Finance Charges for the relevant assessment year. The assessee has outstanding term loan amounting to Rs.51,20,23,082/- as on 31.3.2011 which are availed for different purposes and out of which Rs.1,58,30,527/- pertain to CPP and Rs.7,47,66,316/- pertain to Ore Beneficiation Plant as on 31.3.2011. The corresponding interest on the said term loans amounting to Rs.6,72,96,690/- does not include the corresponding interest amounting to Rs.10,63,560/- pertaining to term loan for CPP and interest amounting to Rs.50,23,11,2(89/- pertaining to term loan for Ore Beneficiation Plant. In this connection, the details of Interest & Finance Charges amounting to Rs.6,72,96,690/- and details of interest capitalized are submitted herewith for your Honour's kind perusal.

As the said interests on term loan availed for CPP and Ore Beneficiation Plant are capital in nature, these are not claimed as revenue expenses in the P & L A/c. The Learned Assessing Officer has not gone through the detailed break up of interest debited to P & L A/c. and has presumed that the interest relating to capital work in progress had been charged to P & L A/c. of the Company. Therefore, the addition of proportionate interest amounting to Rs.2,30,76,352/- corresponding to the work in progress was not based on facts and is therefore arbitrary and unjustified."

10. The CIT(A) after considering the submissions of the assessee held as under:

" I have carefully perused the assessment order and the submissions made by the appellant. From the details of the capital work in progress of the appellant it is evident that the same consist of cost of the captive power plant (CPP) and ore beneficiation plant. The appellant had availed

term loan for setting up of the plants and has capitalized the interest pertaining to the term loans for both the plants. The appellant had done the capitalization as per Accounting Standard of 16 of ICAI. The appellant had submitted details of interest and finance charges incurred by it and the accounts regarding capitalization of the same.

As per the Accounting Standard 16 issued by ICAI " Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset should be capitalized as part of the cost of that asset. The amount of borrowing costs eligible for capitalization should be determined in accordance with this Statement. Other borrowing costs should be recognized as an expense in the period in which they are incurred.

From the assessment order, it appears that the AO had not verified the details regarding the capitalization of interest paid for acquiring capital assets as above by the appellant. The AO is therefore directed to delete the addition."

11. Ld D.R. relied on the order of the Assessing Officer whereas Id A.R. of the assessee supported the order of the CIT(A).

12. After considering the rival submissions and perusing the materials available on record, we find that Id D.R. could not controvert the findings of the CIT(A) to the effect that from the details of the capital work in progress of the assessee, it was evident that the same consist of cost of the captive power plant and ore beneficiation plant. The assessee had availed term loan for setting up of the plants and has capitalized the interest pertaining to the term loans for both the plants. The assessee has capitalised as per Accounting Standard of 16 of ICAI. The assessee had submitted details of interest and finance charges incurred by it and the accounts regarding capitalization of the same. Therefore, we find no good reason to interfere with the order of the CIT(A), which is hereby confirmed the ground of appeal is dismissed.

13. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 03/08/2017.

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 03/08/2017

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : ACIT, Circle 1(1), Sambalpur
2. The Respondent. Patnaik Minerals Pvt Ltd.,
Boneikala, Joda, Keonjhar, Orissa
3. The CIT(A)- Cuttack
4. Pr.CIT, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
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BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack