

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH : KOLKATA

[Before Hon’ble Shri N.V.Vasudevan, JM & Shri M.Balaganesh, AM]

I.T.A No. 1303/Kol/2016

Assessment Year : 2011-12

DCIT, Circle-3(1), Kolkata

-vs-

M/s MSTC Limited

[PAN: AACCM 0021 E]

(Appellant)

(Respondent)

For the Appellant : Shri Nicholus Murmu, Addl.CIT, Sr. DR

For the Revenue : Shri J.L.Raha, CA

Date of Hearing : 02.01.2018

Date of Pronouncement : 05.01.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the Revenue arises out of the order of the Learned Commissioner of Income Tax (Appeals)-I, Kolkata [in short the Id CITA] in Appeal No. 73/CIT(A)-1/Cir-3/2014-15 dated 17.03.2016 against the order passed by the DCIT, Circle-3, Kolkata [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 20.03.2014 for the Assessment Year 2011-12.

2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in deleting the disallowance made u/s 14A of the Act read with Rule 8D(2)(ii) of the Rules amounting to Rs. 34,06,067/-, in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is a Government of India undertaking engaged in the business of selling, distribution and marketing of scrap, non-alloy steels

and earns income from selling, agency activity in addition to other sources of income like dividend and interest. The assessee filed its return of income for the assessment year 2011-12 declaring total income of Rs. 150,77,75,730/- on 23.09.2011 which was further revised on 22.03.2013. The said revised return was accepted as the original return was filed within due date. The Ld. AO observed that the assessee had made investments in unquoted shares of Rs. 15,81,00,000/- as on 31.03.2011. The assessee made voluntarily disallowance u/s 14A of the Act in terms of Rule 8D(2)(iii) amounting to Rs. 7,90,500/- worked out at 0.5% of average value of investments. The assessee in response to show cause notice issued by the Ld. AO in this regard replied that it had made investment in 20,000/- equity shares of Rs. 1,000/- each valued at Rs. 15.81 crores in its fully owned subsidiary company M/s Ferro Scrap Nigam Ltd.. The Ld. AO observed that the assessee had paid interest on its borrowed funds and held that the assessee had utilized the borrowed funds for the purpose of making investment and accordingly made disallowance under Rule 8D(2)(ii) of the Act amounting to Rs. 34,06,067/- in addition to disallowance already made by the assessee under Rule 8D(2)(iii) of the Rules amounting to Rs. 7,90,500/-.

4. The assessee stated that it had derived dividend income of Rs. 86.37 lacs. from its subsidiary company pursuant to strategic investment made by it. The assessee also explained that these investments were made in the earlier years and further stated that 1.20 crores was invested by the assessee out of funds provided by the Government of India from 1979 to 1981 to the assessee and balance amount of Rs. 14.61 crores were invested out of its own reserves and surplus at the relevant point of making investment wherein the net surplus available with the assessee was Rs. 92.65 crores. Accordingly, it was pleaded that the assessee had made investments only out of its own funds and hence no disallowance under Rule 8D(2)(ii) is warranted. The Ld. CIT(A) duly appreciated these facts based on the fund flow statement indicating the source of investment filed by the assessee and placing reliance of Hon'ble Bombay High Court in

the case of Reliance Utilities and Power Limited reported in 313 ITR 340 deleted the disallowance made in the sum of Rs. 34,06,067/- under Rule 8D(2)(ii) of the Rules.

5. Aggrieved the Revenue is in appeal before us on the following grounds:

01. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law in deleting the disallowance of Rs. 3406067/- u/s 14A of the IT Act, 1961 r.w. Rule 8D(2)(ii) of I.T. Rule, 1962, ignoring the fact that the assessee was unable to prove by producing evidence that the dividend yielding shares were purchased from its own fund and not from interest bearing loan fund.

02. The Revenue shall always crave for adding or altering any ground on or before the date of hearing.

6. We have heard the rival submissions. We find that the Ld. AR placed on record the copy of decision of Co-ordinate Bench of this Tribunal in assessee's own case for the assessment year 2009-10 in I.T.A. No. 1536/Kol/2013 dated 08.06.2016 wherein, a clear finding has been given with regard to availability of own funds with the assessee for the purpose of making investments in subsidiary company to the tune of Rs. 15.81 crores in the earlier years. We have gone through the said order and we find this Tribunal had held as under:

"Having regard to all these facts of the case, we are of the view that the onus that lays on the assessee to prove that own funds had been utilized for earning exempt income was satisfactorily discharged and there is no case to make a disallowance on account of interest under section 14A by applying Rule 8D. In that view of the matter, we delete the disallowance made by the Assessing Officer and confirmed by the Ld. CIT(Appeals) under Section 14A to the extent of interest amounting to Rs. 1,12,26,422/- and partly allow Ground No. 2 of the assessee's appeal."

Respectfully following the aforesaid factual findings given by this Tribunal in earlier years in assessee's own case, which remains uncontroverted by the Revenue, we hold that the Ld. CIT(A) had rightly deleted the disallowance made under Rule 8D(2)(ii) of

the Rules. Hence, we find no infirmity in the order of Ld. CIT(A) in this regard. Accordingly, grounds raised by the Revenue are dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the Court on 05.01.2018

Sd/-
[N.V. Vasudevan]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 05.01.2018
SB, Sr. PS

Copy of the order forwarded to:

1. DCIT, Circle-3(1), Kolkata, P-7, Chowringhee Square, Aaykar Bhawan, 4th Floor, Room No. 19, Kolkata-69.
2. M/s MSTC Limited, 225C, A.J.C. Bose Road, Kolkata-700020
- 3..C.I.T.(A)- , Kolkata 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches