

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

BEFORE SHRI N.V. VASUDEVAN, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.986/Kol/2016

(निर्धारणवर्ष / Assessment Year: 2010-11)

DCIT, CC-1(3), Kolkata	Vs.	M/s JKS Infrastructure Pvt. Ltd.
Aayakar Bhawan Poorva, 3 rd Floor, 110-Shantipally, Kolkata- 700 107.		P-4, Black Burn Lane, Kolkata – 700 012.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AABCJ 3408 M		
(Assessee)	..	(Respondent)

Assessee by :Shri Soumyajit Dasgupta, Addl. CIT

Respondent by:Shri Chirag Desai, A/R.

सुनवाईकीतारीख/ **Date of Hearing** : **28/11/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **31/01/2018**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue, pertaining to Assessment Year 2010-11, is directed against an order passed by the Commissioner of Income Tax(Appeals)-1, Kolkata, in Appeal No.296/CIT(A)-1/W-1(2)/2013-14, dated 04.02.2016, which in turn arises out of an order passed by the Assessing Officer u/s.143(3) of the I.T. Act, 1961 (hereinafter referred to as the 'Act'), dated 31.01.2013.

2. The grounds of appeal raised by the Revenue are as follows:

"1. In the facts and circumstances and law point of the case, Id. CIT(A) is erred in deleting the addition u/s 14A without going into the provision of IT Act and IT Rule.

2. The assessee craves leave to make any addition, alteration, modification etc. of ground or grounds before or in course of appellate proceedings."

3.The brief facts giving rise to this appeal are that during the course of assessment proceedings, the assessee furnished a formal computation of total income. The assessee claimed the dividend income as an exempted one u/s 10 of the I.T. Act, 1961. On examination of audited accounts, it was seen that during the relevant previous year the assessee earned dividend

income from Mutual Funds amounting to Rs.12,38,943/- and dividend from Equity Shares amounting to Rs.67,776/-. Thus, the total dividend income amounts to Rs.13,06,719/- (Rs.12,38,943 + Rs.67,776) was earned by the assessee. The assessee claimed entire dividend income as exempt income. Further, study of the audited accounts, it was found that during the relevant period, the assessee debited interest expenditure of Rs.2,99,72,775/-.

3.1 Further study of the audited accounts, it was observed by AO that the assessee paid the interest mostly on secured loans. The unsecured loans have been fully paid up during the relevant previous year. Accordingly, in course of assessment proceedings, the assessee was asked to explain why the provisions of section 14A r.w.r 8D will not be invoked in assessee's case. During the assessment proceedings, it was argued by the assessee that no direct expenses were incurred by the assessee for the purpose of earning exempted income. On the contrary, examination of the bank accounts, it was clear that the assessee utilized its common funds for the purpose of business as well as to earn exempted income. Since the utilization of the funds for the purpose of business and exempted income could not be segregated, the provisions of Rule 8D in connection with section 14A was invoked by AO in assessee's case. Therefore, the disallowance u/s 14A r.w.r. 8D was computed by AO, as under:

Interest expenditure on common use of funds	2,99,72,775/-
Average Value of Investments (7,34,04,364 + 12,34,04,364)/2	9,84,04,364/-
Average total of assets of Balance Sheet (63,63,36,645 + 94,47,35,793)/2	79,05,36,219/-

(Interest Expenditure × Average Value of investment) ÷ (Average total of assets of Balance Sheet)	
= (2,99,72,775 × 9,84,04,364) ÷ 79,05,36,219 =	37,30,951/-
Add: ½ % of Average Value of investment	<u>4,92,022/-</u>
Disallowance u/s 14A:	<u>42,22,973/-</u>

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A), who has partly allowed the assessee's appeal. The CIT(A) noted the facts that the AO issued show cause to the assessee company regarding disallowance under section 14A read with Rule 8D, it was claimed by assessee company that no expenses incurred by the assessee for earning exempt income. From examination of assessee's bank account, the AO found that assessee had invested its common funds of its business and earn exempt income, and segregation of funds was not possible. The AO invoked provisions of section 14A read with Rule 8D and made disallowance under Rule 8D (2) (ii) and Rule 8D (2) (iii) of the I.T. Rules. The assessee submitted before the CIT(A) that for invoking provisions of section 14A read with Rule 8D, it is imperative that the AO should record his satisfaction after examining the accounts, for this proposition reliance was placed on the judgment of ITAT Kolkata in the case of REI Agro Ltd, in ITA No.1811/kol/2012, for A.Y. 2009-10.

4.1 It was stated that assessee had earned dividend of Rs.13,06,719/-. The opening value and closing value of investment on which exempt income was earned was Rs.1,29,46,675/- which has thus average value of investment, as dividend was earned only on investment having value of Rs.1,29,46,675/- and that assessee did not earn any exempt income on balance investment. For the proposition that for disallowance u/s. 14A read with Rule 8D, only such investments can be included for which exempt income was earned and investments from which there was no exempt income, cannot be considered for disallowance. The assessee has relied upon various case laws, including the decision of ITAT, Kolkata, B-Bench in case of Coal India Ltd [ITA No.1032/kol/2012] for A.Y. 2008-09 vide order dated 03/05/2015 and REI Agro Ltd. (supra) for this proposition.

4.2 The Id CIT(A) noted that there was substance in the submission and the argument of the assessee that disallowance of expenses to earn dividend can be made only to the extent of investment made in shares on which

dividend is earned. In the decision of Hon'ble ITAT Kolkata in the case of REI Agro Ltd. (supra), it was held by the Hon'ble ITAT, Kolkata that not all investment became the subject matter of consideration when computing disallowance u/s. 14A read with Rule 8D. The disallowance u/s. 14A read with Rule 8D in relation to the income which does not form part of the total income and this can be done only by taking into consideration the investment which has given rise to this income which does not form part of the total income.

4.3 The CIT(A) examined the assessee's contention that the AO has not specified which part of the expenditure was incurred for the purpose of earning of dividend income where there is a mixed account and assessee is carry on business. It is not practicable to specify which particular proportion of expenditure was incurred for purpose of earning dividend income. For this purpose, Rule 8D was introduced for allocating the expenditure when its possible to ascertain which particular expenditure was incurred relating to exempt income or other income. From details of Schedule 15 to Audited Accounts i.e., Administrative Expenses are found to include expenditure of Rs.18,00,000/- as Director's Remuneration, Rs.25,00,000/- as Keyman Policy (for Directors), Rs.5,150/- as Professional Fees and Rs. 40,600/- as legal expenses to totaling Rs.43,45,750/- as Expenditure, as Administrative Expenditure. Considering the totality of above facts, the contention of assessee that no expenditure was incurred for earning of dividend income is not tenable being contrary to tangible facts on record and the satisfaction of the AO that some expenditure was incurred for earning the exempt income. Therefore, CIT(A) held that the value of investment from which the assessee company had earned dividend income was Rs.1,29,46,675/- and thereof, in view of the decision of the ITAT in case of REI Agro Ltd (supra), the CIT(A) directed the AO to re-compute the disallowance under Rule 8D (2)(ii) and 8D(2)(iii) by considering only the investment made in such shares.

5. Not being satisfied with the order of the CIT(A), the Revenue is in appeal before us. The Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

6. On the other hand, the Id. Counsel for the assessee has submitted that assessee had claimed receipt of dividend income from mutual funds of Rs.12,38,942/- and from equity shares amounting of Rs.67,776/- totaling of Rs.13,06,719/-. The Id. Counsel also stated that the AO should record his satisfaction after examining all the accounts and the propositions laid down by the Hon'ble ITAT Kolkata in the case of REI Agro Ltd. in ITA No.1811/Kol/2012, for A.Y 2009-10, where it was held that only dividend bearing securities should be considered for the purpose of disallowance.

7. Having heard the rival submissions and perused the materials available on record, we are of the view that the disallowance u/s 14A r.w.r 8D should be made only to the extent of dividend bearing investments, for that we rely on the judgment of the Coordinate Bench in the case of REI Agro Ltd (supra) wherein it was held that not all investment became the subject matter of consideration when computing disallowance u/s. 14A read with Rule 8D. The disallowance u/s. 14A read with Rule 8D is in relation to the income which does not form part of the total income and this can be done only by taking into consideration the investment which has given rise to this income, which does not form part of the total income. We also note the contention of the assessee that the AO did not specify which part of the expenditure was incurred for the purpose of earning of dividend income where there is a mixed account and assessee is carrying on business. It was not practicable to specify which particular proportion of expenditure was incurred for the purpose of earning dividend income. For this purpose, Rule 8D was introduced for allocating the expenditure when it is possible to ascertain which particular expenditure was incurred relating to exempt income or other income. The assessee had incurred administrative expenses, director's remuneration, professional fees and legal expenses.

Therefore, the contention of the assessee that no expenditure was incurred for earning of dividend income is not tenable, being contrary to tangible facts on record and the satisfaction of the AO that some expenditure was incurred for earning the exempt income. As mentioned above that value of investment from which the assessee company has earned dividend income was Rs.1,29,46,675/-, therefore, in view of the decision of the Coordinate Bench in REI Agro Ltd (supra), the Id CIT(A) has rightly directed the AO to recompute the disallowance under Rule 8D(2)(ii) and Rule 8D(2)(iii). The conclusions arrived at by the CIT(A) are, therefore, correct and admit no interference by us. We approve and confirm the order of the CIT(A).

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

Order is pronounced in the open court on **31/01/2018**.

Sd/-

(N.V. VASUDEVAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata; दिनांक Dated 31/01/2018

[RS SPS]

Sd/-

(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee –DCIT, CC-1(3), Kolkata
2. प्रत्यर्थी/ The Respondent-M/s JKS Infrastructure Pvt. Ltd.
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.