

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH KOLKATA

[Before Shri N.V. Vasudevan, JM and Dr. A.L. Saini, AM]

I.T.A. No. 562/Kol/2015
Assessment Year: 2010-11

***M/s. TMT Viniyogan
Ltd.....Assessee***
***Emami Tower, 687, Anandapur,
E.M. Bye Pass,
Kolkata - 700 017***

***D.C.I.T., CIR
6(2).....Respondent***
***Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata - 700 069
[PAN :AAACT 9455 F]***

Appearances by:

Shri S.K. Agarwal, FCA, appearing on behalf of the Assessee.
Shri S. Dasgupta, Addl. CIT DR appearing on behalf of the Revenue.

Date of concluding the hearing :December 07, 2017

Date of pronouncing the order : February 07 , 2018

ORDER

Per Dr. A.L. Saini, AM

The captioned appeal filed by the Assessee, pertaining to assessment year 2010-11, is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals) - 2, Kolkata, in Appeal No. 128/CIT(A)-2/(13-14)/14-15, Dated 06.01.2015, which in turn arises out of an order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (herein after referred to as the 'Act') dated 15.03.2013.

2. The assessee has raised the following grounds of appeal:

1. *That in the facts & circumstances of the case the learned CIT Appeal erred in confirming the disallowance of Rs. 6,65,31,375/- u/s 14A of the IT*

Act which include a sum of Rs. 4,54,66,327/- already disallowed by the assessee.

2. That in the facts & circumstances of the case the learned CIT erred in confirming incorrect calculation of Average Total Assets while determining the disallowance u/s 14A read with Rule 8D.

3. That on the facts & circumstances of the case the learned CIT appeal erred in confirming the disallowance of interest under Rule 8D(2) in excess of interest expenditure debited to P&L A/c and claimed by the assessee.

4. That in the facts & circumstances of the case the learned CIT Appeal erred in confirming the disallowance u/s 14A read with Rule 8D(2)(iii) at Rs. 30,18,381/- and not restricting it to Rs.45,717/- being the total expenses debited to P&L A/c and claimed as a deduction.

5. That in the facts & circumstances of the case the learned CIT Appeal erred in confirming the addition of Rs. 6,65,31,375/- to Book Profit being the amount disallowed u/s 14A.

6. That in the facts & circumstances of the case and without prejudice to ground no 5 the learned CIT (Appeal) erred in not restricting the addition to Book Profit at Rs. 4,54,66,327/-

7. That the assessee craves leave to add additional ground and or modify/substitute any of the grounds.

3. However, in this appeal, the assessee has raised seven grounds of appeals, but at the time of hearing, the assessee has expressed his will not to press the ground No 4. Other grounds raised by the assessee relate to computation of disallowance under Rule 8D(2)(ii) read with section 14A of the Act. The main grievance of the assessee in this appeal is that for the purpose of computation of disallowance under Rule 8D(2)(ii), the Assessing Officer, took the average value of assets after deducting the liabilities i.e. to compute the disallowance under Rule 8D(2)(ii), the A.O. has taken net average assets (assets – liabilities). The AO erred in taking, the section 14A disallowance, for computation of book

profit and did not take into account the suo-moto disallowance made by assessee under section 14A of the Act. Since all the grounds are interlinked to each other therefore we adjudicate them altogether.

4. Brief facts qua the issue are that the assessee filed its return of income for the assessment year 2010-11 on 28.09.2010, declaring a total income at Rs. Nil. The assessee company, during the previous year engaged in investment activity and it received dividend income. The assessee company, has invested in shares and paid interest on loan. The assessee's case was processed under section 143(1) of the Income Tax Act 1961. Later, the assessee's case was selected for scrutiny under section 143(2) of the Income Tax Act, 1961 and the Assessing Officer made the assessment U/s 143(3) of the Act by making disallowance under section 14A read with Rule 8D of the Income Tax Rules as follows:

Calculation of disallowance u/s 14A of the IT Act 1961 read with Rule 8D of the IT Rules:

i)	Direct Expenses STT	3,63,095
ii)	A. Interest	4,89,75,989
	B. Average Investment	60,36,76,226
	C. Average Assets	46,81,81,907
	<u>A*B</u>	6,31,49,899
	C	
iii)	0.5% of the average investment	<u>30,18,381</u>
		6,65,31,375
	14A already disallowed by the assessee (4,51,03,232 + 3,63,095)	4,54,66,327
	Disallowance u/s 14A read with Rule 8D	2,10,65,048

4. Aggrieved by the addition made by the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax appeal who has partly allowed the assessee's appeal. The CIT(A)

observed that as far as disallowance u/r 8D(2)(i) was concerned, there was no dispute between the A.O. and the assessee that direct expense of Rs. 3,63,095/- should be disallowed. Further, disallowance u/r, 8D(2)(ii) was not disputed by the assessee. What had been disputed was the quantum of disallowance u/r 8D(2)(ii). For calculating the average value of assets, the A.O. has taken the net value while the assessee insists that only the gross value of asset should be taken. The CIT(A) noted that disallowance u/r 8D(2)(ii) would be limited to Rs.4,50,57,515/- if the gross value of assets is taken whereas if net value of assets are taken, then, the disallowance would be Rs. 6,31,49,899/-.

4.2 The CIT(A) observed that argument of the assessee was devoid of any merit as the I.T. Rules did not make any distinction of gross or net value of assets. The assessee has also not given any case law in support of his contention. Thus, the action of the A.O. was upheld and disallowance u/r 8D(2)(ii) at Rs. 6,31,49,899/- was confirmed.

4.3 The CIT(A) noted that as far as disallowance of Rs.30,18,381/- u/r 8D(2)(iii) was concerned, the assessee had argued that proportionate disallowance on interest u/r 8D(2)(iii) had already been disallowed and the remaining expenses were only Rs. 45,717/- and disallowance u/s 14A cannot exceed the expenses claimed. In support, the assessee had brought to the notice of CIT(A) the case of ITAT Delhi Gillette Group India Pvt. Ltd. vs ACIT at ITA No. 267 of 2012 dated 23.03.2012. Therefore, keeping the judicial decision in mind, the CIT(A) directed the A.O. to limit the disallowance u/r 8D(2)(iii) to only Rs. 45,717/-, and total disallowance u/r 8D were worked out as below:

u/s 8D(2)(i)	Rs. 3,63,095/-
--------------	----------------

u/r 8D(2)(ii)	Rs. 6,31,49,899/-
u/r 8D(2)(iii)	Rs. 45,717/-

Therefore, CIT(A) confirmed disallowance u/s 14A to the extent of Rs. 6,35,58,711/-.

5. Not being satisfied with the order of Commissioner of Income Tax (Appeal), the assessee is in further appeal before us. The learned counsel pointed out that in order to compute the disallowance under Rule 8D(2)(ii), only the gross value of assets should be taken into account. The AO had taken the net average asset, after deducting liabilities (i.e. Assets – Liabilities) therefore, the Assessing Officer was wrong in taking the liabilities for computing the average assets. The Assessing Officer computed the average net assets at Rs.46,81,81,907/- whereas the average assets should be Rs.65,61,75,555/-. The counsel submitted the statement of average assets before us (Paper Book Page No. 21). Therefore, learned counsel reiterated its submissions stating that by taking the net assets, the Assessing Officer computed the disallowance u/r 8D(2)(ii), which is not as per the Rule 8D(2)(ii) and hence it is not acceptable.

6. On the other hand, learned DR for the revenue has fairly agreed with the submissions of the learned counsel for the assessee.

7. We have given a careful consideration to the rival submissions, perused the material available on record, we note that in order to compute the disallowance u/r 8D(2)(ii) terminology which is to be used is “average assets” and not the “net average assets”. We note that the Assessing Officer by taking the net average assets (Assets – liabilities) has computed the disallowance under section 14A read with rule 8D(2)(ii), which is not acceptable as per the scheme and

intention of the said Rules. The Rule 8D is given below for ready reference:

"RULE 8D : Method for determining amount of expenditure in relation to income not includible in total income.—

(1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with—

(a) the correctness of the claim of expenditure made by the assessee; or

(b) the claim made by the assessee that no expenditure has been incurred, in relation to income which does not form part of the total income under the Act for such previous year,

he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely :—

(i) the amount of expenditure directly relating to income which does not form part of total income;

(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :—

$$\frac{A \times B}{C}$$

Where A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

*C = **the average of total assets** as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;*

(iii) an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year."

*(3) For the purposes of this rule, the 'total assets' shall mean, **total assets as appearing in the balance sheet** excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets."*

It is abundantly clear that Rule 8D (2) clearly uses the terminology "the average of total assets". Therefore, in order to compute the disallowance 'average value of assets' should be taken into account

and not the net average (assets- liability) as computed by assessing officer. Rule 8D (2), cited above, clearly speaks about 'average value of assets'. Therefore, based on the factual position, explained above, we direct the Assessing Officer to take into account the 'average value of assets' as on 31.03.2010 at Rs. 65,61,75,555/-, as computed by the assessee, after due verification and then compute the disallowance under rule 8D(2)(ii). Other grounds raised by the assessee before us are consequential in nature, and therefore consequently, the addition to compute the book profit under section 115JB would also be revised by the Assessing Officer. Hence, we allow the appeal of the assessee for statistical purposes.

8. In the result, the appeal by the assessee, is allowed for statistical purposes.

Order Pronounced in the Open Court on February 07, 2018.

Sd/-
(N.V. Vasudevan)
JUDICIAL MEMBER

Sd/-
(Dr.A.L. Saini)
ACCOUNTANT MEMBER

Dated: 07/02/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. TMT Viniyogan Ltd., Emami Tower, 687, Anandapur, E.M. Bye Pass, Kolkata - 700 017.
2. DCIT, Cir 6(2), Aayakar Bhawan, P-7, Chowringhee Square, Kol-69.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata