

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA
[Before Shri P.M. Jagtap, Hon'ble Accountant Member]**

**I.T.A. No. 2257/Kol/2017
Assessment Year: 2013-14**

***Income Tax Officer, Ward-4(1), Kolkata.....Appellant
8th Floor
Aaykar Bhawan
P-7 Chowringhee Square
Kolkata - 700 001
[PAN : AADCR 6102 N]***

***M/s. Ratan Loha Udyog Pvt. Ltd..... Respondent
Suite No.172, Marshall House
33/1, N.S. Road
Kolkata - 700 001***

Appearances by:

Shri Miraj D. Shah, AR, appeared on behalf of the assessee.

Shri Pinaki Mukherjee, Addl. CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : February 20th, 2018

Date of pronouncing the order : February 23rd, 2018

O R D E R

Per P.M. Jagtap :-

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-2, Kolkata, dt. 08/08/2017, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), whereby he deleted the disallowance of Rs.47,89,387/-, made by the Assessing Officer u/s 14A r.w. Rule 8D of the Income Tax Rules, 1962 (hereinafter the 'Rules').

2. The assessee in the present case is a company which filed its return of income for the year under consideration on 16/09/2013, declaring total income of Rs. 92,420/-. In the said year, the assessee company was a partner in the partnership firm of M/s. Rattan Steel Supply Co. and had received from the said partnership firm interest on its capital as well as share of its profit. Since its share of profit received from the partnership form of M/s. Rattan Steel Supply Co. was exempt from tax, the AO made a disallowance of Rs. 47,89,387/- u/s 14A on account of expenses incurred in relation to the earning of the said income after computing the same by applying Rule 8D as under:-

"i] From the P&L account, it has been observed that the assessee has not incurred any expense directly attributable to exempt income during the year. Hence, as per Rule 8D(2)(i), the disallowable expenditure is Rs.NIL.

ii] During the course of scrutiny proceedings, it was observed in the P&L A/c. that the assessee is found to have incurred expenditure of Rs. 46,04,919/- by way of interest on loan taken. Hence, as per rule 8D (2) (ii), the quantum of disallowable expenditure is ascertained as under:

[A] The total amount of interest paid is 46, 04,919/-

[B] The average value of investment is

$$\text{Rs.} \frac{[10,05,84,147 + 8,00,58,409]}{2} \text{ i.e. Rs.} 9,03,21,278/-$$

[C] The average value of total assets is Rs. $\frac{[10,61,504 + 8,56,05,735]}{2}$ i.e. Rs. 9,58,83,620/-

Hence, the amount of expenditure to be disallowed is Rs. 4,337,781/- [being $A \times B/C$]

iii] As per the balance sheets as at 31.03.2012 and 31.03... 13, the total investments stand at Rs. $[10,05,84,147 + 8,00,58,409]$ respectively. Therefore, the average value of investments thereof comes to Rs. 90,321,278/-. Hence as per Rule 8D(2)(iii), the quantum of disallowable expenditure is ascertained for Rs.4,51,606/- [being $\frac{1}{2}\%$ of Rs.9,03,21,278/-]

Therefore, the total disallowance of expenses under section 14A as per Rule 8D comes at Rs.(43,37,781 + 4,51,606) i.e. Rs.47,89,387/-"

3. The disallowance made by the Assessing Officer u/s 14A r.w. Rule 8D, was challenged by the assessee in the appeal filed before the Ld. CIT(A) and the same was deleted by the Ld. CIT(A) by following the decision of the ITAT in the case of *Beharilal Agarwal -Vs- Assistant Commissioner of Income-tax, I.T.A No. 1816/Kol/2009*, wherein it was held that no disallowance could be made as per provisions of Section 14A where exempt income was related to share of income from partnership firm exempt u/s 10(2A) of the Act. Aggrieved by the order of the Ld. CIT(A), the revenue has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that, the decision of the Tribunal in the case of *Beharilal Agarwal (supra)*, relied upon by the Ld. CIT(A) to delete the disallowance made by the AO u/s 14A has been overruled by the Special bench of the ITAT Ahmedabad, in the case of *Shri Vishnu Anant Mahajan vs. ACIT, (ITA No. 3002/Ahd/2009, dt. 25th May, 2012)* wherein it was held that since the share

income of the partner from partnership firm is not liable to tax u/s 10(2A) of the Act, the provisions of Section 14A would be applicable to disallow the expenditure incurred for earning such exempt income. This issue thus now stands squarely covered against the assessee by the said decision of the special bench of the ITAT and this position is not disputed even by the Id. Counsel for the assessee. He, however, has contended that while calculating the expenditure to be disallowed u/s 14A by applying Rule 8D, only the net interest expenditure should be taken into consideration instead of the total interest expenditure considered by the AO. He has contended that the assessee company during the year under consideration had earned substantial interest income on the capital with the partnership firm and since the same was chargeable to tax, it was required to be set off with the interest expenditure. Although the Id. D/R has strongly opposed this contention of the Id. Counsel for the assessee by submitting that the disallowance be made u/s 14A is to be strictly worked out as per the formula given in Rule 8D, it is observed that the contention of the Id. Counsel for the assessee is duly supported by the decision of the Hon'ble Gujarat High Court in the case of *Principal Commissioner Of Income Tax Versus Nirma Credit And Capital Pvt.Ltd (I T Appeal No. 409/2017, dt. 31st August, 2017)* wherein it is held that the amount of interest expenditure would be the interest paid by the assessee on the borrowings minus the taxable interest earned during the relevant year for the purpose of disallowance u/s 14A. I accordingly, set aside the impugned order Id. CIT(A) on this issue and restore the matter to the file of the assessing officer with a direction to recompute the disallowance to be made u/s 14A by applying Rule 8D after taking into consideration only the net interest expenditure as per the decision of the Hon'ble Gujarat High Court in the case of *Principal Commissioner Of Income Tax Versus Nirma Credit And Capital Pvt.Ltd (supra)*.

5. In the result, the appeal of the revenue is partly allowed.

Kolkata, the 23rd day of February, 2018.

Sd/-

[P.M. Jagtap]

Accountant Member

Dated :23.02.2018

{SC SPS}

Copy of the order forwarded to:

1. M/s. Ratan Loha Udyog Pvt. Ltd
Suite No.172, Marshall House
33/1, N.S. Road
Kolkata – 700 001

2. Income Tax Officer, Ward-4(1), Kolkata
8th Floor
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P-7 Chowringhee Square
Kolkata – 700 001

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

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