

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एम बाला गणेश, लेखा सदस्य
केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI, M. BALAGANESH ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.2031/Mds./2017

निर्धारण वर्ष /Assessment year :2013-14

M/s.Questnet Enterprises India Pvt. Vs. The Deputy Commissioner of
Ltd., Income Tax,
The Rain Tree Place, 'B' Wing, 9th Corporate Circle 5(2),
floor, No.7 McNichols Road, Chetput, Chennai 600 034.
Chennai 600 031.

[PAN AAACQ 1177 H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.G.Seetharaman, C.A
प्रत्यर्थी की ओर से /Respondent by : Mr.AR.V.Sreenivasan, JCIT, DR

सुनवाई की तारीख/Date of Hearing : 17-01-2018
घोषणा की तारीख /Date of Pronouncement : 18-01-2018

आदेश /O R D E R

PER M. BALAGANESH, ACCOUNTANT MEMBER:

This appeal of the assessee arise out of the order of the Id
Commissioner of Income Tax (Appeals)-3, Chennai , in ITA No.
208/2015-16/CIT(A)-3 dated 31.05.2017.

2. The first issue to be decided in this appeal is as to whether the Id
CITA was justified in upholding the disallowance made u/s 14A of the Act

read with Rule 8D of the Rules, in the facts and circumstances of the case.

2.1. The brief facts of this issue is that the assessee filed its return of income for the assessment Year 2013-14 on 30.9.2013 declaring loss of ₹1,32,89,903/- under normal provisions of the Act and loss of ₹9,99,888/- u/s 115JB of the Act. The assessee company is engaged in the business of trading of gold jewellery and other valuable jewellery. The assessee received dividend income of ₹10,53,146/- out of investments in mutual funds. The Id AO observed that the assessee had not disallowed any amount u/s 14A of the Act for the purpose of earning the aforesaid dividend income. Accordingly, he directly resorted to make disallowance under Rule 8D(2)(iii) of the Rules and made disallowance of ₹7,24,321/- (0.5% of average value of investments). The Id CITA observed that the disallowance u/s 14A of the Act read with Rule 8D of the Rules was ultimately reduced to ₹6,14,219/- by the Id AO which was upheld by the Id CITA. Aggrieved, the assessee is in appeal before us on the following grounds :-

"1. The Ld.CIT(A) erred in both in law and on the facts of the case in sustaining the following additions:-

(i)	Disallowance u/s.14A	7,24,321
(ii)	Customs duty	<u>21,42,227</u>
		<u>28,66,548</u>

2. He overlooked that the appellant had neither made any new investments nor had borrowed any money during the year.

3. *He overlooked that no expenditure had been incurred in respect of the dividend as it could not even been collected.*

4. *He overlooked the principles laid down by the Supreme Court in the case of Godrej & Boyce (394 ITR 449(SC)).”*

2.2. The Id AR argued that the assessee had not incurred any expenditure for earning dividend income from mutual funds as the same are credited through Electronic Clearing Service (ECS). There is no portfolio maintained by the assessee warranting its management and incurrence of expenditure thereon. No expenditure was incurred towards collection charges. No investments were made during the year under appeal by the assessee. These arguments were made before the Id AO and the Id AO did not whisper about the same in his order before proceeding to invoke Rule 8D(2)(iii) of the Rules. Without prejudice to the main argument that no satisfaction was recorded by the Id AO in terms of Rule 8D(1) of the Rules, he argued that only the dividend bearing mutual funds should be considered for making disallowance under the third limb of Rule 8D(2) of the Rules. On the contrary, the Id DR argued that the applicability of Rule 8D is mandatory in nature from Asst Year 2008-09 and the same has been rightly applied by the Id AO.

2.3. We have heard the rival submissions and perused the materials available on record. At the outset, it is not in dispute that the Id AO had not recorded any satisfaction in terms of section 14A(2) of the Act having

regard to the accounts of the assessee. The same is also mandated in terms of Rule 8D(1) of the Rules. The assessee had clearly stated that no expenses were incurred by the assessee for the purpose of earning dividend income from mutual funds in the instant case. The scheme of taxation provides for satisfaction to be recorded by the Id AO having regard to the accounts of the assessee and the correctness of the claim of the assessee and without doing the same, the Id AO cannot directly proceed to invoke the workings for disallowance as provided in Rule 8D(2) of the Rules. In case if the stand taken by the assessee are to be rejected, the same could be done only with cogent reasons by the Id AO and he cannot straight away embark upon computing disallowance under Rule 8D(2) of the Rules. Reliance in this regard is placed on the decision of the Hon'ble Calcutta High Court in the case of CIT vs R.E.I. Agro Ltd in GA 3022 of 2013 in ITAT 161 of 2013 dated 23.12.2013 wherein it was held that :-

"The Assessing Officer also disallowed the expenditure under section 14A of the Income Tax Act, 1961 without first recording that he was not satisfied with the correctness of the claim as regards the claim that "no expenditure" was made by the assessee. Challenging the order of the tribunal, the present appeal has been filed. We have heard Mr.Bhowmik and are of the opinion that no point of law has been raised. Therefore, this appeal is dismissed."

Respectfully following the aforesaid decision, we hold that no disallowance could be made u/s 14A of the Act in the instant case. In

view of this decision, the other arguments advanced by the Id AR need not be gone into. Accordingly, the grounds 1(i) , 2 to 4 raised by the assessee are allowed.

3. The last issue to be decided in this appeal is as to whether the Id CITA was justified in not allowing the deduction towards customs duty paid in the sum of ₹21,42,227/- in the facts and circumstances of the case.

3.1. The brief facts of this issue is that the assessee paid a sum of ₹21,42,227/- as differential customs duty in pursuance of an order of the Hon'ble Settlement Commission and claimed it as expenses in the next year i.e Asst Year 2014-15. The assessment order was passed u/s 143(3) of the Act on 30.11.2016 for the Asst Year 2014-15 wherein the disallowance of ₹21,42,227/- towards customs duty was made by the Id AO, which was appealed against by the assessee before the Id CITA. The Id AO disallowed the said claim u/s 43B of the Act for the Asst Year 2014-15 on the ground that the said duty has been paid during the Asst Year 2013-14. The assessee filed additional grounds of appeal before the Id CITA for the Asst Year 2013-14, praying that the sum of ₹ 21,42,227/- should be allowed u/s 43B of the Act on payment basis. The Id CITA observed that the assessee had not filed any details towards customs duty except stating that copy of order and payments received were enclosed. He observed that since the primary onus was not discharged by the assessee by proving whether the customs duty

was paid or not, the assessee is not entitled for deduction u/s 43B of the Act in Asst Year 2013-14. Aggrieved, the assessee is in appeal before us on the following grounds:-

"1. *The Ld.CIT(A) erred in both in law and on the facts of the case in sustaining the following additions:-*

(i)	Disallowance u/s.14A	7,24,321
(ii)	Customs duty	<u>21,42,227</u>
		<u>28,66,548</u>

5. *He erred factually in holding that primary evidence regarding the customs duty has not been filed."*

3.2. We have heard the rival submissions. The Id AR furnished the copy of demand drafts for payment of customs duty as under:-

13.3.2013	9,90,000
13.3.2013	3,32,005
19.4.2013	8,20,222
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	21,42,227
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The Id DR argued that the said papers were not produced before the Id AO and prayed for examination of the same by the Id AO and the allowability of the claim u/s 43B of the Act for the Asst Year 2013-14. For this proposition, the Id AR also agreed for setting aside of this issue to the file of the Id AO. In view of the same, we deem it fit and appropriate to remand this issue to the file of the Id AO to decide this issue afresh in accordance with law, with a direction to examine whether the customs duty has been paid for the purpose of the business of the assessee or not. If it is found to be meant for the purpose of business, then the same should be allowed u/s 43B of the Act

on payment basis as the first two payments above had been paid before the end of the previous year and the third payment above had been made before the due date of filing the return of income u/s 139(1) of the Act. Accordingly, the Grounds 1(ii) and 5 raised by the assessee are allowed for statistical purposes subject to directions given hereinabove.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 18th January, 2018 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/Judicial Member

Sd/-

(एम बाला गणेश)

(M. BALAGANESH)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 18th January, 2018

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त(अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF