

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 (समक्ष)Before श्री पी.एम .जगताप, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri P. M. Jagtap, AM & Shri A. T. Varkey, JM]

I.T.A. No. 1673/Kol/2016
Assessment Year: 2011-12

M/s. Vistar Financiers Pvt. Ltd. (PAN: AABCV0624K)	Vs.	Income-tax Officer, Ward-10(4), Kol.
Appellant		Respondent

Date of Hearing	04.01.2018
Date of Pronouncement	23.03.2018
For the Appellant	Shri S. K. Tulsian, Advocate
For the Respondent	Shri Sallong Yaden, Add. CIT

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by assessee is against the order of Ld. CIT(A)-18, Kolkata dated 18.07.2016 for AY 2011-12.

2. The assessee has raised as many as seven grounds of appeal but the sole issue involved in this appeal of assessee is against the order of Ld. CIT(A) in partially confirming the disallowance u/s. 14A of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) read with rule 8D of the Income-tax Rules, 1962 (hereinafter referred to as the “Rules”) towards expenses for earning exempt dividend income.

2. Briefly stated facts are that the assessee company is engaged in the business of dealing in shares, Govt. securities and PSU Bonds. The assessee filed e-return of income on 29.09.2011 disclosing total income at NIL. The same was selected for scrutiny. After processing the return, the assessment was completed u/s. 143(3) of the Act on 27.03.2014 at the figure of total income of Rs.1,32,45,889/-. During the assessment proceedings, the AO found from the accounts of the assessee that the assessee has made investment in shares of

other companies and during the year assessee has received dividend income of Rs.20,54,396/- from investment made. But no disallowance of expenditure for earning exempt income was offered by the assessee. Vide notice dated 28.11.2013, the assessee was asked by AO to explain as to why the disallowance u/s. 14A read with rule 8D should not be made. In reply, the assessee submitted that no expenses had actually been incurred for the purpose of earning the said exempt dividend income, and pointed out that the net interest liability had been capitalized and debited to the share account and not claimed as expenses in the P&L Account. After considering the reply of the assessee, the AO, however computed the amount to be disallowed u/s. 14A of the Act at Rs.1,29,97,208/- by applying rule 8D of the Rules and disallowed the said amount in the assessment. On appeal, the Ld. CIT(A) relying on Tribunal decision on REI Agro Ltd. directed the AO to consider 29 shares from which dividend has been received during the year, for computing disallowance u/s. 14A of the Act read with Rule 8D(2)(iii) Rules. Aggrieved, assessee is in appeal before us.

3. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the assessee received dividend income of Rs.20,54,396/- which was claimed as exempt. The AO noted that assessee has not suo moto u/s. 14A of the Act disallowed any expenditure for earning the exempt income. The assessee's contention that it has not incurred any expenditure was not accepted by the AO on the reason that there must be some administrative expenses incurred by the assessee for earning the exempt income. AO after having made a finding that investment during the year 2010-11 was funded out of own funds and not from borrowed funds went ahead to make disallowance u/s. Rule 8D and disallowed Rs.1,29,97,208/-. On appeal, the Ld. CIT(A) has given partial relief to the assessee by holding as under:

“..... Now coming to the basket of investments to be considered for calculating average investment, AO is directed to include only those shares on which dividend has been earned during the year. This is in view of the judgment of Kolkata ITAT and High Court in the case of REI Agro Ltd. (supra). Further out of the list 30 (thirty) shares, investment in the shares of Aum Capital Market Pvt. Ltd. has to be excluded from computing average investment as this is a subsidiary company and in view of the case law cited by appellant (supra) and several other judgments, Rule 8D is not applicable on such strategic investment.”

4. We note that against the partial relief granted by the Ld. CIT(A) the Revenue is not in appeal. So, the Ld. CIT(A) direction to exclude while computing Rule 8D(2)(iii) of the Rules investment in the shares of M/s. Aum Capital Market Pvt. Ltd. being a subsidiary company is not being adjudicated, since there being no challenge to it. We note that the Ld. CIT(A) has not directed the AO to compute disallowance under Rule 8D(2)(i) and 8D(2)(ii) of the Rules. The Ld. CIT(A) has taken note that assessee has capitalized the interest expenditure and not claimed any interest expenditure. We note that the Ld. CIT(A) has followed the consistent view of this Tribunal in respect to computation under Rule 8D(2)(iii) in REI Agro Ltd. 144 ITD 141 wherein the Tribunal held that only investments which has given rise to the exempted income should be taken into consideration. This order of the Tribunal has been confirmed by the Hon'ble Calcutta High Court. So, we do not find any infirmity in the order of the Ld. CIT(A) and we confirm the order of the Ld. CIT(A). Therefore, the appeal of assessee is dismissed.

5. In the result, appeal of assessee is dismissed.

Order is pronounced in the open court on 23.03.2018

Sd/-
(P. M. Jagtap)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 23rd March, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Vistar Financiers Pvt. Ltd., 5, Lower Rawdon Street, Akashdeep Building, Kolkata-700 020.
2. Respondent – I.T.O, Ward-10(4), Kolkata.
3. The CIT(A) Kolkata
4. CIT Kolkata
5. DR, ITAT, Kolkata.

/True Copy,

By order,

Sr. Pvt. Secretary