

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.3673/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2008-09)

Amforge Industries Ltd. 1104A, Raheja Chambers, Nariman Point Mumbai. Pin:400021	बनाम/ Vs.	DCIT CIR 3(1) Aayakar Bhavan M.K. Rd Mumbai. Pin: 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AMNPS2327M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Rajesh Kumar Yadav (DR)	
Assessee by:	B.V. Jhaveri (AR)	

सुनवाई की तारीख / Date of Hearing: 09.02.2018
घोषणा की तारीख /Date of Pronouncement: 28.03.2018

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 20.03.2014, passed by the Commissioner of Income Tax (Appeals)-5 Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the AY. 2008-09.

2. The assessee has raised the following grounds:-

"(1) Disallowance of u/s 14A-Rs.6,05,122/-

(1) The Commissioner (A) erred in confirming the disallowance of u/s 14A of Rs.6,05,122/-.

The Commissioner(A) erred in not considering the submissions of the assessee company to the effect that the closing balance in the investment in the mutual funds and equity shares had reduced by

Rs.5.81 lakhs in comparison to the opening balance in investment in mutual funds and equity shares and, therefore, no portion of the borrowed funds were utilized in making investment during the year under consideration and, hence, interest of rs.3,81,674/- could not be disallowed u/s 14A of the Act.

(11) Disallowance of professional fees of Rs.22,94,400/-

3. The CIT(A) erred in confirming the disallowance of professional fees of Rs.22,94,400/- paid by the assessee company to M/s Viniyog Investment and Trading Company Pvt. Ltd. which had advised the assessee to invest its spare funds in Inter Corporate (ICDs) from which interest of Rs.1,70,50,361/- was earned and the capital of Rs.12.65 crores was received back without any litigation and without any hassles.

4. The Commissioner (A) erred in confirming the disallowance of professional fees on the ground that it could not be accepted that the assessee was not in a position to invest in ICDs without advise of M/s Viniyog Investment and trading Company Pvt. Ltd.

5 The Commissioner (A) erred in confirming the disallowance of professional fees on the ground that M/s Viniyog Investment and Trading Company Pvt. Ltd. had not rendered similar services to any other unrelated companies and therefore, professional fees paid to it by the assessee company is not allowable.

6. The order of the Commissioner(A) on the aforesaid issues is bad in law and without jurisdiction.

7. Your appellant craves leave to add to, alter, amend or delete any of the foregoing ground of appeal.”

3. The brief facts of the case, are that the assessee filed its return of income for the A.Y. 2008-09 on 29.09.2008 declaring net loss of (-) Rs.3,40,16,174/-. The case was selected for scrutiny. Therefore, notice u/s 143(2) of the I.T. Act, 1961 dated 17.08.2009 was issued and served upon the assessee. Subsequently, notice u/s 142(1) was also issued and served upon the assessee. The assessee company was engaged in the business of Manufacturing of Automobile Forgings, automobile & auto parts. On verification, it was noticed that the assessee has shown exempt dividend income to the tune of Rs.10,23,241/- but no disallowance u/s 14A of the

Act was made. Thereafter, the notice was given and after getting the reply the expenditure to incur the exempt income was assessed to the tune of Rs.6,05,122/-. It was also noticed that on dated 31.03.2008 there was unutilized MODVAT credit of Rs.5,37,826/-. Thereafter, the notice was given to the assessee and after the reply of the assessee, the said MODVAT credit was added to the income of assessee u/s 145A of the Act. The assessee paid the Professional Fees to the tune of Rs.22,94,400/- to **M/s Viniyog Investment & Trading Co. Pvt. Ltd.**, the Assessing Officer nowhere found it reasonable, therefore, the same was declined and added to the income of the assessee. The total income of the assessee was assessed to the tune of Rs.(-) 3,04,75,962/-. The assessee filed an appeal before the CIT(A) who confirmed the said addition, therefore, the assessee has filed the present appeal before us.

ISSUE NO.1:-

4. Under this issue the assessee has challenged the confirmation of addition to the tune of Rs.6,05,122/- in view of the provision u/s 14A r.w. Rule 8D of the Act. The Ld. Representative of the assessee has argued that the assessee company was having its reserves and surplus funds to the tune of Rs.38.32 crores whereas the investment in mutual fund was only to the tune of Rs.4.639 crores. Therefore in view of the said circumstance, no disallowance is required in view of the provision u/s 14A r.w. Rule 8D of the Act in view of the law settled in **CIT Vs. HDFC Bank Ltd. (366 ITR 505, Bom)**. However, on the other hand the Ld. Representative of the Department has refuted the said contentions. In view of the argument arguments advanced by the Ld. Representative of the parties and perused

the record, we noticed that the assessee was having its share capital and reserves and surplus fund to the tune of Rs.38.32 crores whereas the investment the mutual fund was only to the tune of Rs.4.639 crores. The said figure almost has reflected in the A.Y. 2007-08 also. The assessee did not make any fresh investment in the year in question. Since the investment of the assessee was from his own funds, therefore, there can be no disallowance on account of the interest expenditure in view of the provision u/s 14A r.w. Rule 8D of the Act. In this regard we also find support of the law settled in **CIT Vs. HDFC Bank Ltd. (366 ITR 505, Bom)**.. Therefore, in the said circumstances, we delete the interest disallowance. In respect to the disallowance of Rs 2,33,448 u/r 8D(2)(ii)(0.5% of the average investment) is concerned, the assessee relied upon the order passed by the ITAT in the assessee's own case for the assessment year of 2007-08. The finding of the Hon'ble Tribunal is hereby reproduced below:-

“We have considered the rival contention and also perused the material available on record. We have observed that the assessee has received dividend income of Rs.10,19,208/- which income was claimed as exempt from tax u/s 10(34) of the Act. The assessee has made investment in mutual funds and in the shares of listed public limited companies. The assessee's investments as on first day of the previous year were Rs.702.99 lacs and the act day of the previous year was Rs.469.80 lacs. The AO has applied Rule 8D of the I.T. Act, Rules, 1962 while computing disallowance u/s 14A of the Act of the expenditure incurred in relation to earning of exempt income, however, as per the decision of Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. Vs. CIT, (2010) 328 ITR 81 (Bom) wherein it was held that Rule 8D of I.T. Rules, 1962 cannot be applied for the A.Y. 2007-08 and earlier years for computing disallowance u/s 14A of the Act of the expenditure incurred in relation to earning of exempt income in

view of decision of Hon'ble Bombay High Court in the case of Godrej and Boyce Manufacturing Company limited (supra). However, Reasonable disallowance has to be made in view of provision of Section 14A of the Act to disallow expenditure incurred in relation to earning of exempt income having regard to the accounts of the assessee as per mandate of Section 14A of the Act. We have the accounts of the assessee as per mandate of Section 14A of the Act. WE have observed that the assessee has earned dividend income of Rs.10,19,208/- which was claimed as exempt income u/s10(34) of the Act and the Ld. CIT(A) has restricted the disallowance u/s 14A to Rs.1 lac. In our considered view, the disallowance of Rs.1 lac u/s 14A of the Act keeping in view factual matrix of the case is quite reasonable. The AO has not undertaken any exercise to work out the disallowance having regard to the accounts of the assessee and merely applied Rule 8D of I.T. Rules, 1962 in a mechanical manner which cannot be applied for the A.Y. 2007-08 and earlier years in view of Hon'ble Bombay High Court decision in the case of Gdrej and Boyce Manufacturing Company Limited (supra). Keeping in view of the peculiar facts and circumstances of the case, the ground raised by the Revenue in this appeal w.r. t. computation of disallowance u/s 14A of the Act of the expenditure incurred by the assessee in relation to earning of exempt income lacks merit and is hereby dismissed and we confirm the disallowance u/s 14A of the Act to be at Rs.1 lacs for the A.Y. 2007-08 as sustained by Ld. CIT(A). Thus, the order of the Ld. CIT(A) in this regard is upheld/sustained in which we donot find any infirmity in the order of Ld. CIT(A). This disposes of ground no 1 raised by the Revenue. WE order accordingly.”

5. The said order is in connection with the A.Y. 2007-08 in which there was no application of the provision u/s 14A r.w. Rule 8D of the Act. In the said order the disallowance was made on the reasonable basis. In the instant case, the disallowance was to the tune of Rs.605122/- u/s 14A of the Act. The interest disallowance was to the tune of Rs.381674/- Therefore, in the said circumstances, after the deducting the interest expenditure to the tune of Rs.381674/-,we upheld the expenditure to incur the exempt income to

the tune of Rs.223448/- i.e., 605122/- -381674/-. Accordingly, we allowed the claim of the assessee partly.

ISSUE NO.2:-

6. Issue no. 2 is in connection with the confirmation of addition of unutilized MODVAT credit of Rs.5,37,826/-. The unutilized MODVAT credit is not the income in view of the provision u/s 145A. However, the assessee took the relevant plea that if the said amount has been treated as the income then the same be adjusted in the opening stock of subsequent year. Delhi high court in case of CIT v/s Mahavir aluminum Ltd interpreted the Law in this regard. CBDT circular N.772 Dt 23.12.1998 also clarify the object of insertion of section 145A. Anyhow, both the plea seems to justifiable but the unutilized MODVAT credit of Rs.5,37,826/- is not the income of the assessee, therefore, the same is not liable to be added as income of the assessee. Accordingly, we delete the said addition and decide this issue in favour of the assessee against the revenue.

ISSUE NO.3:-

7. Under this issue the assessee has challenged the confirmation of disallowance of Professional Fees to the tune of Rs.22,94,400/-. The Ld. Representative of the assessee has argued that the assessee engaged M/s **Viniyog Investment & Trading Co. Pvt. Ltd.**, for financial consultancy, investment in Inter Corporate Deposits (ICDs) and also other

financial advisory services and due to advise of the said company the assessee company earned the interest income to the tune of Rs.1,70,50,361/- and in lieu of its services the assessee has paid the fees to the tune of Rs. 22,94,400/- which is justifiable and is liable to be allowed. It is also argued that the necessary data with regard to the advice of the M/s **Viniyog Investment & Trading Co. Pvt. Ltd.**, has been submitted before the AO as well as the CIT(A) but the CIT(A) has wrongly confirmed the disallowance of the Professional Fees to the tune of Rs.22,94,400/- which is required to be allowed hence, the finding of the CIT(A) in this regard is wrong against law and facts and is liable to be set aside. However, on the other hand, the Ld. Representative of the Department has refuted the said contentions. The contention of the assessee is that the assessee has paid Professional Fees to the tune of Rs.22,94,400/- to the M/s **Viniyog Investment & Trading Co. Pvt. Ltd.**, for rendering the service to invest its spare funds for the investment in Inter Corporate Deposits (ICDs) and other financial advisory services. The assessee company is the related company of the finance company. There is nothing on record to which it can be assumed that the consultancy company has given some material to the assessee company for the investment of 7 companies which has been shown by the assessee to earn the interest @ of 10% to 11%. The assessee company has relied upon the letter dated 02.02.2007 issued by the M/s **Viniyog Investment & Trading Co. Pvt. Ltd.**, in which the said company has shown annual fees to the tune of Rs.21,00,000/- which can be raised monthly. The said offer was accepted by the Assessee in view of letter dated 06.02.2007 which lies at page no. 73 of the paper book. The assessee company has also shown the company in which the assessee company

earned the interest @ 10% to 11% and the said list which lies at page no. 71 of the paper book. No other document has been placed on record in support of this contention. Since, the company is related company and no working of any kind was given to the assessee company for the investment in 7 companies nor produced before us. The assessee entered into F&O transactions by making purchase only on 18.06.2007 and making sale on 20.10.2007, 23.10.2007 & 25.10.2007. The transaction was carried out only on 10-11 different dates which are few transactions. The assessee paid of Rs.22,94,400/- which was considered as unreasonable. The assessee nowhere submitted about the reasonableness of the fees and comparable fees with other chart by unrelated parties hence, the Professional Fees seems to be rightly disallowed by the AO and confirmed by the CIT(A). Accordingly this issue is decided in favour of revenue.

8. In the result, the appeal filed by the assessee is hereby ordered to be partly allowed.

Order pronounced in the open court on 28.03.2018.

Sd/-

(G.S. PANNU)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :28.03.2018

V.P. Singh

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**