

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'B' KOLKATA

[Before Hon'ble Shri S.S.Godara, JM & Shri M.Balaganesh, AM]

ITA.No.683/Kol//2017
Assessment year : 2013-14

D.C.I.T., Circle-10(1)
KolkataVs M/s Boruka Investment (P)Ltd.
Kolkata
(PAN: AABCB 9008 R)

(Appellant)

(Respondent)

For the Appellant: Shri S.Dasgupta, Addl. CIT(DR)

For the Respondent: Shri R.S.Agarwal, FCA

Date of Hearing : 27.06.2018.

Date of Pronouncement : 29.06.2018.

ORDER

PER S.S.GODARA, JM

This Revenue's appeal for A.Y.2013-14 arises against the CIT(A)-4, Kolkata's order dated 27.01.2017 passed in Appeal No.1454/CIT(A)-4/Circle-10(1)/Kol/15-16 reversing the Assessing Officer's action invoking section 14A r.w.rule 8D disallowance of Rs.1,30,237/- followed by deemed dividend addition made u/s 2(22)(e) amounting to Rs.99,45,697/-; respectively involving proceedings u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act').

Heard both the parties. Case file perused.

2. We come to the former issue of section 14A r.w.r 8D disallowance relating to assessee's exempt income from dividend to the tune of Rs.26,53,390./-. The Assessing Officer invoked Rule 8D (i) to (iii) in assessment order dated 11.02.2016 to inter-alia disallow Demat charges of Rs.5,221/-, proportionate expenditure of Rs.28,63,004/- and administrative expenditure of Rs.3,49,979; respectively. The CIT(A) has accepted assessee's arguments qua latter two components of the impugned disallowance as follows :-

“4.2. I have considered the submission of the AR of the appellant in the backdrop of the assessment order on the matter. I have also considered the various judicial decisions as cited by the AR in deciding the matter at hand. I find that the AO has

made the impugned disallowance u/s 14A by invoking Rule 8D of the I.T. Rules, 1962 in an amount of Rs.32, 15,204/- for the primary reason that in spite of reaping an exempt income of Rs.26,53,390/- by way of dividend, the appellant did not suo moto offer any disallowance u/s 14A of the Act. In keeping with the various relevant judicial precedents in the matter, I find that on facts (supra) the appellant had enough funds of its own to make investments in shares which yielded dividend income. It is already a foregone conclusion arrived at by various judicial forums (supra) that once there is enough non-interest bearing fund available with an assessee which is in excess of investments made then there could not be any disallowance made under Rule . 8D(2)(ii), the fact of which is evidenced from record in the case of the appellant. There is no adverse finding on this count by the AO in any manner in the assessment order. With regard to disallowance made under Rule 8D(2)(iii), the AO is directed to restrict the said disallowance @ 0.5% only with respect to investments which yielded exempt income. The AO shall work out the disallowance accordingly and if required, the appellant may be afforded an opportunity in addressing the issue. It may not be out of place to mention here that in this connection, the AR of the appellant has submitted, during the appellant proceeding, a chart wherein it is depicted that 0.5% of average investments which yielded exempt income worked out to Rs.1,30,237/- as depicted below:

Average Investment (Rs.26454954 + Rs.25639815)/2 : RS.2,60,47,385/-

0.5% of the above : RS.1,30,237/-

Therefore, disallowance under Rule 8D(2)(iii) at Rs.1,30,237/- was proposed by the AR of the appellant in accordance with the data as provided above. In this respect, the AO may make the requisite verification to come to a judicious decision and make the disallowance accordingly i.e. @ 0.5% of only the investments which yielded exempt income. This ground is allowed accordingly for statistical purposes. On an overall analysis, these grounds are treated as partly allowed wherein disallowance is to be made only with regard to Rule 8D(2)(iii) r.w. section 14A of the Act as above.”

3. The Revenue vehemently contends during the course of hearing that the CIT(A) has erred in law and on facts in reversing the impugned disallowance qua the above two components. It fails to dispute first of all that various high courts i.e. CIT vs Reliance Utilities & Power Ltd. 313 ITR 340& CIT vs Suzlon Energy Ltd. [2013] 354 ITR 630(Guj) have held that the impugned proportionate expenditure disallowance in question under Rule 8D (2)(ii)of the Income Tax Rules does not apply in case of an assessee having surplus non interest bearing funds since its investments

made lead to a necessary presumption of utilisation of the interest free funds only. We keep in mind the said legal proposition to note that the assessee's share capital along with reserves and surplus as on 21.03.2013 read a figure of Rs.7,33,75,898/- as against its investment made in shares of 6,96,95,083/- only. We thus decline the Revenue's instant arguments qua proportionate interest expenditure in relation to assessee's exempt income.

4. The Revenue's next grievance in the instant issue seeks to revive administrative expenditure disallowance (supra). We notice that the CIT(A) has directed the Assessing Officer to compute the impugned disallowance only qua assessee's investments yielding exempt income in the impugned assessment year. This tribunal's coordinate bench in the case of REI Agro Ltd vs DCIT 144 ITD 141 (Kol) as upheld by hon'ble jurisdictional high court in ITAT No.220 of 2013 decided on 09.4.2014, holds that only such exempt income yielding investments are taken into consideration for the purpose of administrative expenditure. We thus find no fault with the CIT(A)'s direction issued to the Assessing Officer in this regard. The Revenue fails in the former substantive ground.

5. The Revenue's latter substantive grievance seeks to revive deemed dividend addition of Rs.99,45,697/-. Its only plea is that the CIT(A) has erred in law as well on facts in treating the other entity M/s TCI Bhoruka Projects Ltd as a company in which public are substantially interested without any material on record in assessee's support. We find the instant issue to no more res integra. A coordinate bench in ITA No.329/Kol/2016 decided on 29.01.2017 in assessee's case itself for preceding assessment year has already declined Revenue's very argument in seeking to treat the said other entity as a company not having substantial interest of the public. We wish to reiterate here that section 2(22)(e) is in the nature of deeming fiction of income in a fiscal statute which is to be strictly construed. We thus affirm the CIT(A)'s findings on this ground alone without going into much deeper in the relevant facts of the issue. This latter substantive ground fails accordingly.

6. This Revenue's appeal is accordingly dismissed.

Order pronounced in the Court on 29.06.2018.

Sd/-
[M.Balaganesh]
Accountant Member

Sd/-
[S.S.Godara]
Judicial Member

Dated : 29.06.2018.

[RG Sr.PS]

Copy of the order forwarded to:

- 1.M/s Bhoruka Investment (P)Ltd., P-10, New CIT Road, Kolkata-700073.
2. D.C.I.T., Circle-10(1), Kolkata.
3. C.I.T.(A)- 4, Kolkata 4. C.I.T-4, Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

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