

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” Bench, Mumbai
Before S/Shri B.R.Baskaran (AM) & Amarjit Singh (JM)
I.T.A. No. 3500/Mum/2015 (Assessment Year 2009-10)

SMC Infrastructure Pvt. Ltd. 101, Akruti SMC, LBS Marg Khopat, Thane-400 601. PAN : AACCS3437L (Appellant)	Vs.	Addl. CIT Range-3 Thane (Respondent)
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Assessee by	Shri Neelkanth Khandelwal
Department by	Shri V. Vidhyadhar
Date of Hearing	28.6.2018
Date of Pronouncement	06.7.2018

O R D E R

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 31.3.2015 passed by the learned CIT(A)-11, Pune and it relates to A.Y. 2009-10.

2. This appeal was initially disposed of by the Coordinate Bench, vide its order dated 25.5.2017. Subsequently, the assessee moved a Miscellaneous Application submitting that the issue relating to the addition made by the Assessing Officer u/s. 14A of the Act read with Rule 8D(2)(iii) of the I.T. Rules (out of administrative expenses) has not been disposed of by the Tribunal. Finding merit in the said petition, the Coordinate Bench, vide its order dated 13.4.2018 passed in MA No. 399/Mum/2017, recalled the order for limited purpose of adjudicating the issue relating to addition made u/r. 8D(2)(iii) of the I.T. Rules. Accordingly this appeal was placed before us.

3. The assessee has made investment in various sister concerns as joint venture partner. Profit received from these joint ventures were claimed to be exempt u/s. 10(2A) of the Act. Hence the Assessing Officer invoked provisions

of section 14A of the Act and disallowed a sum of ₹ 55.24 lakhs out of interest expenditure u/r. 8D(2)(ii) of the I.T. Rules and a sum of ₹ 8,49,686/- out of administrative expenses u/r. 8D(2)(iii) of the I.T. Rules. The learned CIT(A) gave partial relief in respect of the disallowance of interest expenditure and sustained addition of ₹ 8,49,686/- made out of administrative expenses.

4. The Tribunal deleted the disallowance of interest expenses made u/r. 8D(2)(ii) on noticing that own funds available with the assessee is in excess of the value of investment. However, it did not render any decision with regard to disallowance made u/r. 8D(2)(iii) of the I.T. Rules and hence said ground is being disposed of now.

5. The Learned AR contended that the assessee had made initial investment in various joint ventures and the assessee has accumulated the share profit in its capital account itself. Hence the closing balance of investments available in each of the joint venture undertakings represents initial capital plus the share of profits accumulated over the years. Accordingly, the learned AR submitted that the computation of average value of investments by including profit accumulated over the years would give misleading result. The Learned AR submitted that the assessee has not incurred any expenditure for the joint venture undertakings, as they are separate undertakings. He submitted that the provisions of Rule 8D(2)(iii) should not be applied in the facts of the present case. In the alternative, he submitted that, for the purpose of computing disallowance u/r. 8D(2)(iii), the initial investments should alone be considered.

6. On the contrary, the learned DR supported the order passed by the learned CIT(A). He further submitted that it is quite possible that the assessee could have used its resources towards joint venture undertakings and hence addition made by the tax authorities should be sustained.

7. We have heard the rival contentions and perused the record. We notice that the assessee has made investment in twelve Joint Venture concerns and profit earned there from is exempted u/s. 10(2A) of the Act. It is the contention of the assessee that the initial investments were made in the earlier years and thereafter the share of profit of every year were allowed to be accumulated in the capital account of the assessee. It is also contention of the assessee that the joint venture concerns are separate concerns incurring expenditure on their own and the assessee did not incur any expenditure towards joint ventures. Accordingly it was submitted that the provisions of Rule 8D(2)(iii) should not be applied in the facts of the case and it at all, it is applied that the average value of investments should be computed by considering only initial investments. On the contrary, the Ld D.R submitted that the assessee should have used its own resources to manage the investments.

8. As submitted by Ld D.R, the investments made in the joint venture undertakings are required to be managed by the assessee and hence the possibility of using the existing resources for such purposes could not be ruled out. Since the assessee has made investments in earlier years and almost all the investments have been brought forward from the earlier years, the quantum of resources/expenses incurred by the assessee would not be significant. Hence, in our view, formula prescribed u/r. 8D(2)(iii) to compute disallowance out of administrative expenses may not suit the facts and circumstances of the case. However, a portion of administrative expenses should be disallowed to meet the requirements of sec. 14A of the Act. We have noticed that there was not much activity during the year in respect of investments made in the Joint Venture Concerns. Accordingly, we are of the view that a sum of ₹ 2.00 lakhs may be disallowed out of administrative expenses and, in our view, the same would meet the requirement of section 14A of the Act. Accordingly, we modify the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to sustain the disallowance u/s. 14A of the Act towards administrative expenses to a sum of ₹ 2.00 lakhs. We order accordingly.

9. In the result, ground of the assessee relating to disallowance of administrative expenses u/s. 14A of the Act is partly allowed.

Order has been pronounced in the Court on 6.7.2018.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 6/7/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Senior Private Secretary)
ITAT, Mumbai

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