

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (B), KOLKATA
[Before Shri P.M. Jagtap, Vice President & Shri S.S. Godara, JM]**

I.T.A. No. 1267/Kol/2017
Assessment Year: 2012-13

Crescent Foundry Co. Pvt. Ltd.....Appellant
'Lords', Suit No. 406,
7/1, Lord Sinha Road,
Kolkata – 700 001.
[PAN: AABCC 0101 C]

JCIT, Range – 3, Kolkata.....Respondent
P-7, Chowringhee Square,
Kolkata – 700 071.

Appearances by:

Shri Pawan Kedia, AR appearing on behalf of the Assessee.
Shri Robin Choudhury, Addl. CIT, Sr(DR) appearing on behalf of the Revenue.

Date of concluding the hearing : November 01, 2018

Date of pronouncing the order : November 22, 2018

ORDER

Per P.M. Jagtap, Vice President

This appeal filed by the assessee is directed against the order of Ld. CIT(A) – 12, Kolkata dated 24.01.2017 and the grounds raised therein read as under:

“1. For that in view of the facts & circumstances, the CIT(A) – 12, Kolkata erred in upholding the disallowance of a sum of Rs. 5,57,576/- u/s 14A disregarding the judgement of Hon’ble ITAT – Kolkata in assessee’s own case for A.Y. 2006-07, which was duly brought to his notice.

2. For that in view of facts & circumstances, the CIT(A) – 12, Kolkata erred in upholding the addition of Rs. 4,389/- on account of alleged difference of Rs. 4,389/- in purchase amount of Rs. 19,17,45,756/- from M/s. MMU Metaliks Udyog (P) Ltd. in so far as the purchase as shown by the appellant was lower by that amount than sales reported by the party.”

2. At the time of hearing before the Tribunal, the learned counsel for the assessee has not pressed Ground No. 2 raised in this appeal of the assessee. The same is accordingly dismissed as not pressed.

3. Apropos the issue involved in Ground No. 1, the relevant facts are that the assessee is a company which is engaged in the business of manufacturing of Iron Castings, M.S. Plastic & Aluminium Items. The return of income for the year under consideration was filed by it on 28.09.2012 declaring total income of Rs. 15,93,53,550/-. As noticed by the A.O. during the course of assessment proceedings, investment of Rs. 5.33 crores was made by the assessee company in shares, dividend income of which was exempt from tax. According to the A.O. the expenses incurred by the assessee company in relation to the said investment thus were liable to be disallowed u/s 14A of the Act and since no such disallowance was offered by the assessee, he applied Rule 8D to make a disallowance u/s 14A inter alia on account of interest expenditure to the extent of Rs. 5,57,576/-.

4. The disallowance made by the A.O. on account of interest expenditure u/s 14A by applying Rule 8D was challenged by the assessee in the appeal filed before the Ld. CIT(A) and the following submissions were made on behalf of the assessee in support of its case on this issue:

"The A.O. has applied rule 8D and disallowed a sum of Rs. 5,57,576/- being interest ascertained as per calculation given in the rule. The administrative expenses as arrived as per formula laid down in rule 8D amounting to Rs. 1,48,305/- was disallowed by the assessee himself in its computation and acknowledged by the A.O. in the assessment order.

Your honour, the assessee company is engaged in manufacturing and export of D.I/C.I. castings surplus funds are from time to time invested in debt funds managed by Mutual Funds. The assessee has not taken any loan for investing in mutual fund units. The A.O. has not found any direct nexus between raising of loan and investment and therefore applied rule 8D.

The assessee company had own funds for in excess of the investments. The financial facts for the year are as under:

	2011-12	2010-11
<i>Dividend Earned</i>	<i>10,55,044/-</i>	<i>4,68,977/-</i>
<i>Total Investment</i>	<i>5,32,97,029/-</i>	<i>60,25,145/-</i>
<i>Own Fund</i>	<i>40,85,06,621/-</i>	<i>30,51,75,973/-</i>
<i>Loan Fund</i>	<i>5,95,68,750/-</i>	<i>5,08,43,750/-</i>

The Assessee Company made investments in mutual funds out of common pool of funds and Your honour, would observe that own capital as on 31.03.2012 was 7.66 times the amount of investment. Moreover there was accretion to investment to the tune of Rs. 472.72 lacs during F.Y. 2011-12 as against increase of mere of Rs. 87.25 lacs in loan fund and substantial Rs. 1033.31 lacs in own capital. Hence, by no stretch of imagination it could be conceived that loan funds were used for investments. It has been held by Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (366 ITR 505 Bom) that 'Assessee's capital, profit, reserves, surplus and current A/c deposits were in tax free securities, it would have to be presumed that the investment would be out of interest free funds available with the assessee'.

Hon'ble ITAT-Kolkata was pleased to held, in assessee's own case for A.Y. 2006-07, that '19. After considering the rival submissions, we are of the view that order of CIT(A) on this issue does not call for interference. As fast as the disallowance on the interest expenses is concerned the available funds available with the assessee were much more than in investments made by the assessee.....

The deletion of the addition made on account of disallowance of interest expense is therefore held to be proper and the order of CIT(A) on the same is confirmed.'

In view of above it is earnestly submitted that disallowance of interest of Rs. 5,57,576/- made by A.O. u/s 14A be deleted at once."

5. The Ld. CIT(A) did not find merit in the submissions made by the assessee for the reason that no separate accounts for making investment in shares were maintained by the assessee. He held that in the absence of details of utilisation of funds, the formula given in rule 8D was mandatorily applicable and the A.O. was fully justified in

making a disallowance u/s 14A on account of interest expenditure by applying the said formula. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

6. We have heard the arguments of both the sides and also perused the relevant material available on record. As submitted on behalf of the assessee company before the Ld. CIT(A) as well as before us, sufficient own funds to the extent of Rs. 40.85 crores were available at the relevant time to make the investment of Rs. 5.33 crores in shares and since the said investment was made by the assessee company out of its own funds and not out of interest bearing borrowed funds, the disallowance made on account of interest u/s 14A by the A.O. and confirmed by the Ld. CIT(A) is not sustainable. We find merit in this stand taken on behalf of the assessee company and since the same is duly supported inter alia by the decision of the Co-ordinate Bench of this Tribunal rendered in the case of DCIT vs M/s. Crescent Foundry Co. Pvt. Ltd. (ITA Nos. 973 & 974/Kol/2013 dated 03.08.2016), we delete the disallowance on account of interest as made by the A.O. u/s 14A and confirmed by the Ld. CIT(A). Ground No. 1 of the assessee's appeal is accordingly allowed.

7. In the result, the appeal of the assessee is partly allowed.

Order Pronounced in the Open Court on 22nd November, 2018.

Sd/-
(S.S. Godara)
JUDICIAL MEMBER

Sd/-
(P.M. Jagtap)
VICE PRESIDENT

Dated: 22/11/2018
Biswajit, Sr. PS

Copy of order forwarded to:

1. Crescent Foundry Co. Pvt. Ltd., 'Lords', Suit No. 406, 7/1, Lord Sinha Road, Kolkata – 700 001.
2. JCIT Range -3, P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata