

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

I.T.A. No. 2390/Kol/2017

Assessment Year: 2012-13

M/s. Himalayan Endeavour Pvt. Ltd.....Appellant
C/o. Subash Agarwal & Associates,
Siddha Gibson, 1, Gibson Lane,
2nd Floor, Suite 213,
Kolkata – 700 069.
[PAN: AAACH 7707 C]

DCIT, Circle 1 Siliguri.....Respondent
Aayakar Bhawan, Paribahan Nagar,
Matigara – 734 010.

Appearances by:

Shri Subash Agarwal, Advocate appearing on behalf of the Assessee.

Shri C.J. Singh, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : November 22, 2018

Date of pronouncing the order : December 07, 2018

ORDER

Per P.M. Jagtap, Vice President

This appeal filed by the assessee is directed against the order of Ld. CIT(A), Siliguri dated 31.08.2017 and the solitary issue involved therein relates to the disallowance of Rs. 8,49,767/- made by the AO and confirmed by the Ld. CIT(A) u/s 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 .

2. The assessee in the present is a company which is engaged in the business of bottling of country liquor. The return of income for the year under consideration was filed by it on 23.08.2012 declaring a total income of Rs. 23,73,49,630/-. In the said return, dividend income of Rs. 65,70,935/- was claimed to be exempt by the assessee u/s 10(34) of the Act. Expenses incurred in relation to the earning of the said exempt income however were not disallowed by the assessee

as required by the provision of section 14A. The AO, therefore, worked out such expenses by applying Rule 8D at Rs. 8,49,767/- and a disallowance to that extent was made by him u/s 14A in the assessment completed u/s 143(3) vide an order dated 25.03.2015. On appeal, the Ld. CIT(A) confirmed the said disallowance. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

3. We have heard the arguments of both the sides and also perused the relevant material available on record. As pointed out by the learned counsel for the assessee from the relevant balance sheet of the assessee as on 31.03.2012 (copy placed at page no 2 of the Paper Book), sufficient own funds in the form of share capital and reserves and surplus were available with the assessee company aggregating to Rs. 36.20 crores to make the investment in shares and mutual funds of Rs. 23.36 crores. The investment in shares and mutual funds thus was made by the assessee company out of its own funds and since the borrowed funds were not utilised by the assessee company for making the said investments, we find merit in the contention of the learned counsel for the assessee that the disallowance made by the AO u/s 14A to the extent of Rs. 44,801/- on account of interest as per Rule 8D(2)(ii) is not sustainable. As regards the balance disallowance of Rs. 8,04,966/- made by the AO u/s 14A on account of other expenses as per Rule 8D(2)(iii), the learned counsel for the assessee has relied on the decision of Hon'ble Kolkata High Court in the case of CIT vs REI Agro Ltd. to contend that only the amount of investment in shares which actually fetched the exempt dividend income during the year under consideration should be taken into consideration while working out the disallowance by applying Rule

8D(2)(iii). He has also prepared and furnished such working to show that the disallowance by applying Rule 8D(2)(iii) is sustainable only to the extent of Rs. 4,04,145/-. As submitted by the learned DR, this working prepared and furnished by the assessee however requires verification by the AO. We accordingly restore this issue to the file of the AO for verifying the working prepared and furnished by the assessee of the disallowance to be made u/s 14A as per Rule 8D(2)(iii) in the light of the decision of Hon'ble Kolkata High Court in the case of REI Agro Ltd. (supra) and restrict the disallowance u/s 14A accordingly.

4. In the result, the appeal of the assessee is treated as partly allowed as indicated above.

Order Pronounced in the Open Court on 7th December, 2018.

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

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

Dated: 07/12/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Himalayan Endeavour Pvt. Ltd., C/o. Subash Agarwal & Associates, Siddha Gibson, 1, Gibson Lane, 2nd Floor, Suite 213, Kolkata – 700 069.
2. DCIT Circle 1, Siliguri, Aayakar Bhawan, Paribahan Nagar, Matigara – 734 010.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

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