

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

BEFORE SHRI S. S. GODARA, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1777/Kol/2017

(निर्धारणवर्ष / Assessment Year: 2013-14)

DCIT, CC-4(2), Kolkata	Vs.	M/s Aryan Mining & Trading Corporation Ltd.
Aayakar Bhawan, Poorva, 110, Shantipally, Kolkata – 700107.		P-1, Hide lane, 8 th Floor, Kolkata – 700 073.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AADCA 7247 B		
(Appellant)	..	(Respondent)

Appellant by : Shri A. K. Singh, CIT-DR
Respondent by : Shri A. K. Tulsiyan, FCA

सुनवाईकीतारीख/ Date of Hearing : 29/11/2018

घोषणाकीतारीख/Date of Pronouncement : 19/12/2018

आदेश / ORDER

Per Dr. A. L. Saini:

The captioned appeal filed by the Revenue, pertaining to Assessment Year 2013-14, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-21, Kolkata, in appeal No.257/DCIT,CC-4(2)/CIT(A)-21/2014-15 dated 04.05.2017, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), dated 28.04.2014

2. The grievances raised by the Revenue are as follows:

"i. That on the fact and in restricting the disallowance u/s 14A to Rs.5,10,242/- by observing that such disallowance u/s 14A should be in respect only of that part of investment which gives rise to exempt income during the year, whereas circular No. 5/2014 dated 11.02.2014 has amply clarified that for invoking disallowance u/s 14A, it is not material that assessee should have earned such income during the financial year under consideration.

ii. That on the fact and in deleting the addition of sum of Rs. 95,77,250/- being the amount of disallowance made u/s 14A to the Book Profit determined u/s 115JB, whereas explanation (1)(f) below section 115JB(2) amply clarifies the intent of the Statute that the amount of expenditure relatable to income to which section 10 [except sec. 10(28)], section 11 and section 12 applies should be added in computation of Book Profit.

iii. That on the fact and in the circumstances of the case, the department craves to add more grounds or alter any ground at the time of appeal.”

3. The brief facts qua the issue are that during the assessment proceedings, the Assessing Officer noted that assessee company earned dividend income of Rs.24,935,645/-. The assessee company asked to explain why disallowance of expenses will not be made u/s 14A read with Rule 8D on the exempt income. The assessee has failed to furnish satisfactory submissions as to why disallowance u/s 14A shall not be made in accordance with Rule 8D of the IT Rules. The AO noted that the assessee has not considered in its account expenditure relatable to the earning of the exempt income. Therefore, expenditure relatable to the earning of exempt income should disallowed u/s.14A of the Act in accordance with Rule 8D of the IT Rules and AO therefore, computed the disallowance as follows:

(A) Average investment	Rs. 191,54,50,000/-
(B) Average asset	Rs. 475,95,50,000/-
(C) Total interest cost	Rs. NIL
Proportionate Interest	$A \times C/B = \text{Rs. Nil}$
½ % of investment	<u>Rs.95,77,250/-</u>
Disallowance u/s 14A	Rs.95,77,250/-

Therefore, AO made the disallowance to the tune of Rs. 95,77,250/-.

4. Aggrieved by the stand so taken by the Assessing Officer the assessee carried the matter in appeal before the Id. CIT(A) who has deleted the addition made by the Assessing Officer. Aggrieved, the Revenue is in appeal before us. The Id Counsel for the assessee relied on the stand taken by the Id CIT(A). On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

5. We have given a careful consideration to the rival submissions and perused the material available on record, we note that main grievance of the Revenue is against deletion of disallowance of Rs.95,77,250/-, which was made by the AO under rule 8D(2)(iii) read with section 14A of the I.T. Act, 1961. The AO has made calculation under rule 8D read with section 14A of the I T Act, 1961 and made disallowance of Rs. 95,77,250/-. We note that Coordinate Bench of ITAT Kolkata, in the case of REI Agro Ltd. Vs. DCIT 144 ITD 141 (Kol-Trib), has held that it is only the investments which yields dividend during the previous year that has to be considered while adopting the average value of investments for the purpose of Rule 8D(2)(ii) & (iii) of the Rules. The aforesaid view of the Tribunal has since been affirmed as correct by the Hon'ble Calcutta High Court in G.A.No.3581 of 2013 in the appeal against the order of the Tribunal in the case of REI Agro Ltd. (supra). Therefore, we note that the only investment which has given rise to the exempted income would be taken into consideration. The assessee has filed a calculation before Id CIT(A), as per rule 8D read with section 14A, keeping in view the ratio decided in the case of REI Agro Ltd (Supra) which is as under:

Sl.	Particulars	Opening balance	closing balance	Dividend received
1	Standard chartered bank money plus	42,47,234/-	2,42,311/-	48,39,392/-
2	Standard chartered bank	4,65,754/-	5,18,117/-	42,93,163/-
3	Reliance Money Manager Fund	-	198,623,445/-	80,05,458/-
4	Reliance Medium Term Fund	-	-	77,97,632/-
	Total	47,12,988/-	199,383,873/-	249,35,645/-
Average investments = $(47,12,988 + 199,383,873)/2 = \text{Rs.}102,048,430/-$				
Disallowance under Rule 8D(iii) = $(0.5\% \text{ of Avg. Investment}) - (0.5\% \text{ of Rs.}102,048,430) = \text{Rs.}5,10,242/-$				

We note that the calculation u/r 8D(2)(iii) r.w.s. 14A, for the investments made by the assessee come to Rs.5,10,242/- which has been verified by the Id CIT(A), who has co-terminus power as that of assessing officer. Accordingly, addition on this

ground is restricted to Rs.5,10,242/- and the balance addition of Rs.90,67,008/- (Rs.95,77,250- Rs.5,10,242) is directed to be deleted. We do not find any infirmity in the order of Id CIT(A), his order on this issue is hereby upheld and ground raised by the Revenue is dismissed.

6. We note that ground no.2 raised by the Revenue is directed against adding a sum of Rs.95,77,250/-, being the amount of disallowance made u/s 14A of the Act, to the book profit of the assessee determined u/s 115JB of the Act.

After giving our thoughtful consideration to the submission of the parties and perusing the judicial decisions relied upon by the Ld. AR, we find that the issue involved in the present appeal is no longer res integra. The important and relevant thing to note here is that for the purpose of applicability of section 14A r.w.r. 8D the computation of total income has to be under some heads in chapter-IV of the Act. Section 14A clearly says “for the purpose of computing total income under the chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form the part of the total income under this Act”. The computation of total income u/s 115JB falls under chapter-XIIB of the Act. Therefore, it is very clear that any disallowance/computation for section 14A r.w.r. 8D will not be applicable for the purpose of calculation of income u/s 115JB of the Act. Accordingly, we dismiss the Revenue`s appeal on ground no.2.

7. In the result, the appeal filed by the Revenue is dismissed.

Order is pronounced in the open court on 19.12.2018.

Sd/-
(S. S. GODARA)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 19/12/2018

(RS, Sr.PS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant- DCIT, CC-4(2), Kolkata
2. प्रत्यर्थी/ The Respondent- M/s Aryan Minning & Trading Corporation Ltd.
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT,
Kolkata
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.