

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.1564/Bang/2017
Assessment Year : 2012-13

The Deputy Commissioner of Income-tax, Circle – 7 (1) (2), Bangalore.	vs.	M/s. Vidya Investment and Trading Company Pvt. Ltd., Next to Wipro Campus, Sarjapur Road, Doddakannelli, Bangalore – 35. PAN: AAACV2878G
APPELLANT		RESPONDENT

Appellant by	:	Shri Pradeep Kumar, CIT (DR)
Respondent by	:	Shri B.K. Manjunath, CA

Date of hearing	:	12.02.2019
Date of Pronouncement	:	15.02.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the revenue and the same is directed against the order of Id. CIT(A)-7, Bangalore dated 24.03.2017 for Assessment Year 2012-13.

2. The grounds raised by the revenue are as under.

“1. The order of the learned CIT (A) is opposed to law and facts of the case.

2. "Whether on the facts and in the circumstances of the case, the CIT(A) was justified in law in allowing the exemption claimed u/s 10(2A) following the judgement in assessee's own case, without appreciating the fact that the Department has filed further appeal in the case and SLP is pending before the Hon'ble Apex Court"?

3. "Whether on the facts and in the circumstances of the case, the CIT(A) was justified in law in holding that the disallowance as per Rule 8D cannot exceed the actual expenditure debited in Profit & Loss Account, which is in contravention of the computation of the expenditure incurred on earning the exempt income under Rule

8D(2)(iii) of I. T Rules read with section 14A of the Act, being 0.5% of the average investment"?

4. For this and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.

5. The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above."

3. The Id. DR of revenue supported the assessment order. He also submitted written submissions and in course of hearing, he submitted that the appeal of the revenue may be decided on the basis of the written submissions filed by him. The same is reproduced hereinbelow for ready reference.

"May it please Your Honours

In the present case filed by the department, the Grounds of Appeal as raised by the revenue has been broadly categorised into the following headings:

(1) The Ld.CIT(A) has erred both in law and on facts and circumstances of the case in holding that the disallowance as per Rule 8D cannot exceed the actual expenditure debited in Profit and Loss Account, which is in contravention of the computation of the expenditure incurred on earning the exempt income under Rule 8D(2)(iii) of I.T.Rules read with section 14A of the Act, being 0.5% of the average investment.

The Ld.CIT(A)'s relief on disallowance u/s 14A r.w.r.8D.

Reliance is placed on para 8 of the A.O.'s order, whereby the A.O.explained the circumstances based on which the calculated the income that cannot be allowed as an expenditure in computing the taxable income.

1.1 As per the provisions of section 14A of the Act, any sum incurred for earning an income exempt from tax cannot be allowed as an expenditure in computing the taxable income. It essentially means that the expenses debited to the Profit & Loss Account of the assessee company are to be divided into 2 categories viz.,one relating to the exempt stream of income and the other relating to the taxable stream of income. The expenses relating to the exempt stream of income cannot be claimed against the taxable stream of income. It is not necessary that there should be income earned during the year. The expenditure incurred for earning an income can be lesser than the income itself. On some occasions, there could not even be any income though expenses are incurred towards earning the same. Also funds of

a company come in a common kitty. In some cases, when there is no direct nexus between the funds and the investments cannot be proved, the Rule 8D provides for the apportionment of interest expenditure in the ratio of total funds employed and the amount of investment made. The method for determining amount of expenditure in relation to income not includable in total income is calculated using a formula based on which the above inadmissible expenditure can be calculated. In view of the above the A.O. correctly calculated the inadmissible income of the assessee/appellant for the relevant assessment year. However, the Ld.CIT(A) relying on the order of Hon'ble ITAT, Chennai Bench 'D' and M.N.Dastur&Co.,Ltd., Vs DCIT of Hon'ble ITAT, Bangalore Bench, restricted the disallowance made equal to the actual amount of expenditure debited by the assessee in the profit and loss account for earning exempt income. This action of the Ld.CIT(A) is not acceptable and the order of the Ld.CIT(A) may be dismissed and the A.O.'s order be restored.

Conclusion

In view of the submissions made above, examination of submissions made by the assessee and department, the order of the Ld.CIT(A), Bangalore is erroneous and bad in law. The Ld.CIT(A) order may be dismissed.

Prayer

In the wake of the above submissions, it is humbly prayed to dismiss the order of the Ld.CIT(A) and any other order as may please your honours.

Respectfully submitted.”

4. The Id. AR of assessee supported the order of CIT(A). He also submitted that Id. CIT(A) has decided the issue by following the Tribunal order rendered in the case of M/s. MNDastur & Co. Pvt. Ltd. Vs. DCIT in ITA No. 410/Bang/2014 dated 07.10.2015. He submitted a copy of this tribunal order.
5. We have considered the rival submissions. First of all, we note down the facts of the present case. We find that as per P&L account of the assessee company for the present year as available on page no. 6 of the paper book, the amount debited to P&L account is Rs. 1,49,29,086/-. The details of these expenses debited by assessee in the P&L account are available in Schedule 15 on page no. 7 of the paper book. Computation of income filed by the assessee along with the return of income is available on pages 3 to 4

of paper book and as per the same, the assessee has made suo moto disallowance of Rs. 1,47,00,218/- out of the amount of expenditure debited by the assessee in the P&L account of Rs. 1,49,29,086/- and hence, only an amount of Rs. 2,28,868/- stands debited in the P&L account. Now the question is whether disallowance u/s. 14A is to be restricted to the amount of expenses for which deduction is claimed by assessee by way of debit to P&L account or whether the disallowance can be of an amount more than such amount of expenses claimed by the assessee. As per the impugned order, Id. CIT(A), he has held that the disallowance u/s. 14A of IT Act r.w.r 8D of IT Rules is restricted to Rs. 3,93,335/- being the excess of total expenses debited to P&L account of Rs. 1,49,29,086/- over the amount of disallowance suomoto made by the assessee of Rs. 145,35,751/-. There seems to be some difference in this amount of Rs. 145,35,751/- noted by CIT (A) but we do not enter into this aspect as no objection was raised by the learned AR of the assessee in this regard. It may be that this amount is correct and the amount noted by us at Rs. 1,47,00,218/- is incorrect. In our considered opinion, the disallowance u/s. 14A cannot be of an amount more than the amount for which the deduction is claimed by the assessee in the computation of income because section 14A is a section for disallowance and not a section for any addition. For this purpose, we reproduce the provisions of sub-section (1) of section 14A which are as under.

“14A. [1] For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.”

6. From the provisions of sub-section (1) of section 14A as reproduced above, it is clear that as per this sub-section (1) of section 14A, no deduction is to be allowed for computing the total income in respect of expenditure incurred by the assessee in relation to income which has not formed part of the total income. Hence even if it is felt that entire expenses claimed by the assessee in the P&L account is in respect of earning of exempt income then also, whole of such amount can be disallowed but nothing more than that can be disallowed. As per the impugned order of CIT(A), he has already confirmed the disallowance of Rs. 3,93,335/- u/s. 14A r.w.r. 8D and

assessee has already made suo moto disallowance of Rs. 1,47,00,218/- as per the computation of income available on page no. 3 of the paper book or Rs. 145,35,751/- as noted by CIT (A) and in this manner, the entire amount debited to P&L account stands disallowed and therefore, no further disallowance u/s. 14A r.w.r 8D is called for. As per the tribunal order cited by the learned AR of the assessee also, this was held that disallowance worked out as per Rule 8D cannot exceed the actual expenditure debited by the assessee in P & L Account. In this view of the matter and by respectfully following this tribunal order, we hold that there is no merit in the written submissions filed by the Id. DR of revenue as reproduced above. Hence we decline to interfere in the order of CIT(A).

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

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 15th February, 2019.
/MS/

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.