

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH, AHMEDABAD**

[Coram: Pramod Kumar, VP and Ms. Madhumita Roy, JM]

ITA No. 2099/Ahd/2017
Assessment Year: 2014-15

Ex-Protecta**Appellant**
305/306, GIDC Estate,
Vithal Udyognagar, Industrial Area
Anand - 388001
[PAN : AAAFE 4816 E]

Vs.

Dy. Commissioner of Income-tax**Respondent**
Anand Circle, Anand

Appearances by:

Pramesh B. Doshi, for the Appellant
James Kurian, for the Respondent

Date of concluding the hearing : 25.03.2019
Date of pronouncing the order : 24.06.2019

O R D E R

Per Pramod Kumar, Vice President:

1. This appeal is directed against learned CIT(A)'s order dated 18th July 2017 for the assessment year 2014-15.

2. In the first ground of appeal, the assessee has raised the following grievances:-

"1. The Assessing Officer and Ld CIT(A), Baroda both have erred in law in disallowing the claim u/s 35(1)(ii) of the Income Tax Act amounting to Rs.8,75,000/- in respect of contribution of Rs.5,00,000/- given to Matrivani Institute of Experimental Research and Education, Kolkata which was approved u/s 35(1)(ii) of the Act at the time of giving contribution."

3. The deduction has been declined only because the approval granted to the recipient institution was subsequently withdrawn. Learned representatives fairly agree, even as learned Departmental Representative dutifully relied upon the stand of the authorities below, that the issue is covered in favour of the assessee by a coordinate bench decision in the case of DCIT Vs. Maco Corporation India Pvt Ltd

(ITA No. 16/Kol/2017; order dated 14.03.2018) wherein it was, *inter alia*, observed as follows:-

“8.2. At the outset, we find that the Taxation Laws (Amendment) Act, 2006 with retrospective effect from 1.4.2006 had introduced an Explanation in Section 35 of the Act which reads as under:- Section 35(1)(ii) – Explanation The deduction, to which the assessee is entitled in respect of any sum paid to a research association, university, college or other institution to which clause (ii) or clause (iii) applies, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval granted to the association, university, college or other institution referred to in clause (ii) or clause (iii) has been withdrawn. Hence the aforesaid provisions of the Act are very clear that the payer (the assessee herein) would not get affected if the recognition granted to the payee had been withdrawn subsequent to the date of contribution by the assessee. Hence no disallowance u/s 35(1)(ii) of the Act could be made in the instant case.”

4. We see no reasons to take any other view of the matter than the view so taken by the coordinate bench. Respectfully following the same, we uphold the plea of the assessee and direct the Assessing Officer to delete the impugned disallowance.

5. Ground no.1 is thus allowed.

6. In ground no.2, the assessee has raised the following grievance:-

“2. The Ld CIT(Appeals) has erred in law in disallowance of Rs.1,00,000/- u/s 14A of the Act.”

7. So far as this disallowance is concerned, it is sufficient to take note of the fact that while the Assessing Officer made a disallowance of Rs.8,31,900/- by invoking rule 8D r.w. section 14A out of this Rs.8,31,900/-, Rs.7,38,815/- was on account of interest paid and Rs.93,086/- was equal to 0.5% of the average investments. In appeal, CIT(A) noted that sufficient interest free funds are available. The disallowance of Rs. 1 lakh was nevertheless retained on account of estimated indirect expenses to earn the said income. The assessee is aggrieved and is in appeal before us.

8. We have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

9. We find that even on application of rule 8D r.w. Section 14A, the disallowance on account of expenses @0.5% of average investments, worked out to Rs.93,086/-. We must therefore restrict the disallowance to Rs.93,086/-. As we do so, we are unable to accept the plea that the disallowance must be deleted in entirety in the absence of material to justify the same. A portion of expenses incurred by the assessee can indeed be reasonably attributed to earning of dividend income, and

rule 8D formula is a reasonable basis for the same. The disallowance is thus restricted to Rs.93,086/-.

10. Ground no. 2 is thus partly allowed.

11. In the result, the appeal is partly allowed. Pronounced in the open court today on the 24th June, 2019

Sd/-

Ms. Madhumita Roy
(Judicial Member)

Ahmedabad, the 24th day of June, 2019

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *Commissioner*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

Sd/-

Pramod Kumar
(Vice President)

By order

TRUE COPY

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*