

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

**BEFORE SH. J.SUDHAKAR REDDY, ACCOUNTANT MEMBER &
SH.S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.348/Kol/2016
(ASSESSMENT YEAR-2009-10)**

Megatherm Electronics Pvt.Ltd., 123, SDF Building, Block GP, Sector-V, Salt Lake City, Kolkata-700091. PAN-AACCM0633N	vs	DCIT, Circle-2, Kolkata-700069.
(Appellant)		(Respondent)
Appellant by	Sh. Vivek Churiwala, CA	
Respondent by	Sh. C.J.Singh, JCIT, Sr.DR	
Date of Hearing	23.04.2019	
Date of Pronouncement	10.07.2019	

ORDER

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

This appeal filed by the assessee against the order dated 31.12.2015 passed by CIT(A)-1, Kolkata for AY 2009-10.

2. The only issue is to be decided as to whether the CIT(A) is justified in confirming the addition made by the AO u/s 14A of the Income Tax Act, 1961 (in short "Act") r.w. Rule 8D(2)(ii) of the Income Tax Rules, 1962 (in short "Rules") in the facts and circumstances of the case.

3. Heard both parties and perused material available on record. It is noted that the assessee earned dividend income of Rs.15,03,200/- from its subsidiary company i.e. M/s. Engel Machine Tools Ltd. and claimed no expenditure was incurred in earning the said exempt income and contended that no disallowance u/s 14A of the Act is maintainable. The AO however by invoking the method under Rule 8D(2)(ii) made disallowance u/s 14A of the Act to an extent of Rs.51,57,686/- vide order u/s 143(3) of the Act. The CIT(A)

confirmed the order of AO by placing reliance in the decision of Hon'ble High Court of Calcutta in the case of *Dhanuka & Sons reported in 339 ITR 319 (Cal.)*.

4. Before us, Ld. AR submits that the ratio laid down by the Hon'ble High Court of Calcutta in the case of *Dhanuka & Sons (supra)* is not applicable because the assessee made investment for acquisition of shares of its subsidiary companies from the own funds available in the hands of assessee without taking the benefit of borrowed loans. In order to substantiate the claim of having own funds in the hands of the assessee, no evidences whatsoever were filed before the both authorities below. According to him, the assessee filed petition to accept additional evidence before this Tribunal i.e. documents, details of date of investments, bank statement of relevant period, audited accounts for FY 2004-05 & 2005-06 and loan repayment schedule and prayed to accept the same and remand the matter to the file of AO for is fresh consideration to rework the disallowance to be made u/s 14A of the Act r.w. Rule 8D(2) of Rules afresh in accordance with law. The Ld.DR reported no objection in sending back the matter to the file of AO for his fresh consideration in terms of the observations of Hon'ble High Court of Calcutta in the case of *Dhanuka & Sons (supra)*.

5. We find the Co-ordinate Bench of this Tribunal in assessee's own case for AY 2008-09, remanded the matter to the file of AO for his fresh consideration. Taking into consideration the same situation arising out of the filing of additional documents in support of the claim of having own funds in the hands of the assessee in acquiring the shares of its subsidiary companies. The relevant portion of which is reproduced hereunder:-

6. "We have heard the rival submissions. At the outset, we find that the assessee had filed additional evidence before us pointing out various factual aspects with regard to availability of own funds for making investments. However, we find that these

papers were not furnished before the Ld. AO. We also find that these papers are crucial for adjudication of the issue before us and hence deem it fit to admit these additional evidences in terms of Rule 18(4) read with Rule 29 of the ITAT Rules. Hence, we direct the Ld. AO to consider these additional evidences filed before us and rework the disallowances to be made u/s 14A of the Act read with Rule 8D of the Rules afresh in accordance with law. Accordingly, grounds raised by the assessee are allowed for statistical purposes.”

6. In view of the observations of Co-ordinate Bench of the Tribunal in assessee's own case and discussion made herein above in the afore-mentioned paragraphs, we deem it proper to remand the matter to the file of AO to rework the disallowance to be made u/s 14A of the Act r.w. Rule 8D(2) of the Rules and to pass an order in accordance with law. Thus, only ground raised by the assessee is allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10.07.2019.

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Date:- 10.07.2019

Amit Kumar

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant- Megatherm Electronics Pvt.Ltd., 123, SDF Building, Block GP, Sector-V, Salt Lake City, Kolkata-700091.
2. Respondent- DCIT, Circle-2, Kolkata-700069.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

By order

AR/H.O.O
ITAT, KOLKATA