

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

BEFORE SHRI RAMIT KOCHAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1844/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Suhami Power & Finance Corporation 26, Gobind Mahal, 86-B, Netaji Subhash Nagar, Marine Drive, Mumbai- 400002.	बनाम/ Vs.	ACIT, Range -17(3) Aayakar Bhavan, Mumbai- 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AASFS8718F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Anuj Kisnadwala	
Revenue by:	Shri Chaudhary Arun Kumar Singh (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 24/07/2019
घोषणा की तारीख /Date of Pronouncement: 31/07/2019

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 13.12.2017 passed by the Commissioner of Income Tax (Appeals) -28, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2012-13.

2. The assessee has raised the following grounds: -

“Ground No. 1:

On the facts and in the circumstances of the case and in law, the learned CIT(A) grossly erred in upholding the disallowance made



by the AO of Rs.9,08,174/-, under Section 14A of the Act r.w.r 8D. The appellant prays that the said disallowance is unjustified and may please be deleted.

Ground No. 2:

On the facts and in the circumstances of the case and in law, the learned CIT(A) grossly erred in upholding the disallowance made by the AO of Rs.5,72,805/- under Section 14A of the Act r.w.r 8D(2)(ii) towards the finance cost, without netting off interest income with the interest expenses. The appellant prays that the disallowance out of interest expenses, if any, should be net off interest income.

Ground No. 3:

On the facts and in the circumstances of the case and in law, the learned CIT(A) grossly erred in upholding the disallowance made by the AO of Rs.3,35,369/- under Section 14A of the Act r.w.r 8D(2)(iii) towards administrative cost. The appellant prays that disallowance of Rs.3,35,369/- under rule 8D(2)(iii) is unjustified and the same may please be deleted.

The appellant reserves its right to add, alter, amend or delete the grounds of appeal."

3. The brief facts of the case are that the assessee filed its return of income on 12.09.2012 declaring total income to the tune of Rs.56,67,600/-. The return was processed u/s 143(1) of the Act. The case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee was engaged in Trading in Shares Securities, Lending and Borrowing of Money and Commission Agents. The assessee was deriving income by way of Trading in Securities and Income from Commission, Dividend and Interest. The assessee earned the dividend income but failed to disallow the expenses to earn the exempt income in view of the provisions u/s 14A of the Act r.w. Rule 8D of the Income Tax Rules, 1962. The AO applied the provisions u/s 14A r.w. Rule



8D of the 1962 Rule sand assessed the expenditure incurred to earn the exempt income to the tune of Rs.9,08,174/-. The total income of the assessee was assessed to the tune of Rs.65,75,780/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the addition, therefore, the assessee has filed the present appeal before us.

ISSUE No. 1

4. Under this issue no specific adjudication is required being the relief claimed in this issue is relates to issue nos. 2 & 3.

ISSUE NO. 2

5. Under this issue the assessee has challenged the confirmation of the disallowance made by the AO of Rs.5,72,805/- u/s 14A of the Act r.w. Rule 8D (2)(ii) of the Rules. The Ld. Representative of the assessee has argued that the assessee received the interest income to the tune of Rs.2,114,950/- which was credit to the profit and loss account as against the interest expenses of Rs.1,332,797/-. It is also argued that while computing the disallowance of interest expenses, the interest should be net off from the interest received. In this regard, the Ld. Representative of the assessee has placed reliance upon the decision of Hon'ble Gujarat High Court in case of **PCIT Vs. Nirma Credit & Capital P. Ltd. (Appeal No. 409 & 514 of 2017)** and Hon'ble ITAT Delhi in case of **ACIT Vs. Keshav Shares & Stock Ltd. (ITA. No.4394/Del/2011 decided on 26.04.2013 Delhi Bench.** However, on the other hand, the Ld. Representative of the Department has refuted the said contention. On appraisal of the order passed by the AO, we find that the AO did not consider the interest net off against the interest received while deciding the interest expenditure in view of the provisions



u/s 14A of the Act r.w. Rule 8D(2)(ii) of the Rules while deciding the interest expenditure. Net off interest is required to be assessed or not has been decided by Hon'ble ITAT Mumbai Bench in case of **DCIT Vs. M/s. Jubliant Enterprises P. Ltd. in ITA. No.6364/M/2012 dated 12.03.2014.**

The relevant finding has been given as under:-

“7. We have carefully considered the rival submissions and perused the orders of the lower authorities. The impugned assessment is A.Y 2008-09 and therefore Rule 8D is very much applicable for computing the disallowance u/s. 14A of the Act. In so far as the interest element is concerned, facts on record show that the assessee has paid interest of Rs. 30,62,021/- and has also received interest at Rs. 66,19,494/-. Thus the interest received by the assessee is more than the interest paid. In the case of Trade Apartment Ltd., in ITA No. 1277/Kol/2011, it was held that the disallowance of interest should be made with reference to the net interest only. A similar view was taken by the Tribunal Mumbai Bench (same combination) in the case of Paresh K. Shah in ITA No. 8214/M/2011. The Ld. CIT(A) has rightly directed the AO to verify the given by the assessee and only net interest may be taken, if any, computation as per Rule 8D. We do not find any error or infirmity in this findings of the Ld. CIT(A). The decisions relied upon by the Ld. DR are distinguishable on the facts of the case. In so far as the disallowance in respect of administrative expense is concerned, the Ld. Counsel for the assessee has filed a chart giving details and bifurcation of expenses between head office and division. We find that the total expenditure is at Rs.1,86,18,068/- out of which Rs. 28,91,649/- are directly attributable to the division M/s. Jai Synthetic. The Ld. CIT(A) has directed the AO to re-compute the disallowance on proportionate basis. Considering the details of expenses, we do not find any error in the findings of the Ld. CIT(A). Ground No. 1 & 2 are accordingly dismissed.”

6. This decision was confirmed by Hon'ble Jurisdictional High Court in IT Appeal No.1512 of 2014 dated 28.02.2017. By following the decision mentioned above, we are of the view that the disallowance of interest expenses should be made after the net off interest only. Accordingly, this issue is decided in favour of the assessee against the revenue in the manner as indicative above. We order accordingly.

ISSUE NO.3



7. Issue no. 3 is in connection with the assessing the expenditure in view of the provisions u/s 14A of the Act r.w. Rule 8D (2)(iii) of the Rules. The Ld. Representative of the assessee has argued that only those investments which yielded exempt income is liable to be considered for the purpose of disallowance u/s 14A of the Act r.w. Rule 8D(2)(iii) of the Rules and in support of this contention, the Ld. Representative of the assessee has placed reliance upon the decision in case of **ACIT Vs. Vireet Investment P. Ltd. (165 ITD 27 (SB) (Del)**. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. In the case decided by Special Bench of Delhi titled as **ACIT Vs. Vireet Investment P. Ltd.** it is specifically held that those investments which yielded the exempt income is liable to be considered for assessing the expenditure to earn the exempt income in view of the provisions u/s 14A of the Act r.w. Rule 8D(2)(iii) of the Rules. In the instant case, the whole investment has been considered for assessing the expenditure to earn the exempt income which is not justifiable. Accordingly, the finding of the CIT(A) is hereby order to be set aside and the issue is remanded to the AO to decide the matter of controversy afresh and to consider the investment which yielded exempt income for assessing the expenditure to earn the exempt income in view of the provisions u/s 14A of the Act r.w. Rule 8D(2)(iii) of the Rules in view of the decision of the special Bench in case of **ACIT Vs. Vireet Investment P. Ltd(supra)** in accordance with law. Needless to say that an opportunity of being heard is required to be given in accordance with law. Accordingly, this issue is decided in favour of the assessee against the revenue for statistical purposes in the manner as indicated above. We order accordingly.



8. In the result, the appeal filed by the assessee is hereby ordered to be allowed as indicated above.

Order pronounced in the open court on 31/07/2019.

Sd/-

(RAMIT KOCHAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 31/07/2019

Vijay /Sr. PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai