



IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.2592/Mum./2018
(Assessment Year : 2014-15)

Spaco Technologies India Pvt. Ltd.
901, Prasad Chambers
Opera House, Mumbai 400 004
PAN – AABCSS5307E

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-5(3)(2), Mumbai

..... Respondent

Revenue by : Shri Chaudhary Arunkumar Singh
Assessee by : None

Date of Hearing – 01.08.2019

Date of Order – 16.08.2019

ORDER

PER SAKTIJIT DEY. J.M.

Captioned appeal has been filed by the assessee challenging the order dated 22nd March 2018, passed by the learned Commissioner (Appeals)-10, Mumbai, for the assessment year 2014-15.

2. The grounds raised by the assessee relate to disallowance of expenditure under section 14A r/w rule 8D.

3. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case, in spite of notice of hearing having been issued through registered post with A/D. Therefore, we proceed to dispose of the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

4. Brief facts are, the assessee company is engaged in the business of manufacture and sale of carburetor components and allied engineering parts. For the assessment year under consideration, the assessee filed its return of income on 29th November 2014, declaring total income of ₹ 10,85,91,970, under the normal provisions of the Act and book profit of ₹ 12,14,13,813, under section 115JB of the Act. During the assessment proceedings, the Assessing Officer noticed that in the year under consideration the assessee had received exempt income by way of dividend amounting to ₹ 6,36,17,047. Beside the above, the assessee has also received tax free interest income of ₹ 27,70,291, from NHAI Bonds. Whereas, the assessee has disallowed an amount of ₹ 2,53,000, only towards expenditure incurred for earning exempt income. Noticing the above, the Assessing Officer called upon the assessee to explain why disallowance of expenditure should not be computed as per rule 8D(2). In response to the query raised by the Assessing Officer, the assessee filed its explanation

objecting to the proposed disallowance. However, rejecting the submissions of the assessee, the Assessing Officer computed disallowance at ₹ 1,06,88,187, under rule 8D(2) r/w section 14A of the Act comprising of the following:-

1.	<i>Direct expenditure under rule 8D(2)(i)</i>	₹ 2,53,000
2.	<i>Interest disallowance under rule 8D(2)(ii)</i>	₹ 5,34,403
3.	<i>Administrative expenditure under rule 8D(2)(iii)</i>	₹ 99,00,784
<i>Total:-</i>		₹ 1,06,88,187

5. After adjusting the disallowance made by the assessee, the Assessing Officer computed the net disallowance of ₹ 1,04,35,187, under section 14A of the Act. The aforesaid amount was also added back to the book profit computed under section 115JB of the Act. The assessee challenged the aforesaid disallowance before the first appellate authority.

6. The learned Commissioner (Appeals), however, granted partial relief to the assessee by partly reducing the interest expenditure disallowed under rule 8D(2)(ii). Further, he also directed the Assessing Officer to exclude the debt fund liquidity fund with growth option while calculating average value of investments, since, income from these investments are not exempt.

7. We have heard the learned Departmental Representative and perused the material on record. As could be seen from the facts on record, before the Departmental Authorities the assessee had submitted that disallowance of interest expenditure under section 80(2)(ii) of the Act cannot be made as the assessee had surplus interest free fund with it to take care of the investment made. Further, it was submitted that the interest cost incurred by the assessee was in respect of borrowed funds which were exclusively used for the purpose of business. As it appears, the contention of the assessee that it has sufficient interest free surplus fund has not been properly appreciated by the Departmental Authorities. It is now fairly well settled, if the assessee has sufficient interest free surplus fund available with him, the presumption would be investments made were out of such funds. Therefore, assessee's claim of availability of surplus fund requires examination. As regards disallowance of administrative expenditure under rule 8D(2)(iii), it is observed, learned Commissioner (Appeals) has directed the Assessing Officer to exclude debt/liquidity fund with growth option while computing average value of investments. In addition to the aforesaid direction of the learned Commissioner (Appeals), we direct the Assessing Officer to also exclude the investments which have not yielded any exempt income during the year while computing the average value of investment. With the aforesaid observations, the issues raised in the present appeal are

restored back to the file of the Assessing Officer for fresh adjudication in terms with our directions hereinabove. Grounds are allowed for statistical purposes.

8. In the result, appeal is allowed for statistical purposes.
Order pronounced in the open Court on 16.08.2019

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 16.08.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai