

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.169/Bang/2018
Assessment year : 2010-11

M/s. Kare Electronics & Development Private Limited, Flat No.101, 1 st Floor, Eden Park, No.20, Vittal Mallya Road, Bangalore – 560 001. PAN: AABCK 7679 R	Vs.	The Deputy Commissioner of Income Tax, Circle – 11(5), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Ms. P. Girija, CA / Shri. K. R. Pradeep, Advocate
Respondent by	:	Shri. C. H. Sundar Rao, CIT(DR)(ITAT), Bengaluru

Date of hearing	:	11.07.2018
Date of Pronouncement	:	04.09.2019

ORDER

Per Jason P Boaz, Accountant Member

This appeal by the assessee is directed against the order of CIT(A)-4, Bangalore dated 26.10.2017, for Assessment Year 2010-11.

2. Briefly stated, the facts of the case are as under:

2.1 The assessee, a company engaged in the business of manufacturing of electronic components and real estate development, filed its return for

Assessment Year 2010-11 on 30.09.2010 declaring income of Rs.50,91,870/-. The case was taken up for scrutiny for this Assessment Year and the assessment was concluded under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dated 30.01.2013, wherein the assessee's income was determined at Rs.59,36,626/-; in view of the following disallowances under section 14A of the Act r.w.Rule 8D of the Income Tax Rules, 1962:-

- (i) Under section 14A r.w.Rule 8D(2)(ii) - Rs.2,64,790/-
- (ii) Under section 14A r.w.Rule 8D(2)(iii) - Rs.7,50,525/-

2.2 On appeal, the CIT(A)-4, Bangalore, vide the impugned order dated 26.10.2017 for Assessment Year 2009-10, allowed the assessee partial relief; thereby upholding only the disallowance of Rs.7,50,525/- under section 14A r.w.Rule 8D(2)(iii).

3.1 Aggrieved by the order of the CIT(A)-4, Bangalore, dated 26.10.2017, the assessee preferred this appeal before the Tribunal, wherein it has raised the following grounds:-

1. *That the order of the assessing officer in so far as it is against the appellant is against the law, facts, circumstances, natural justice, equity and all other known principles of law.*
2. *The total income and the total tax computed is hereby disputed*
3. *The learned authorities below erred in disallowing a sum of Rs. 7,50,525/- u/s 14A rwr 8D(2)(iii) of the Act.*

4. *The learned authorities below erred in applying Rule 8D(2)(iii) of the Income Tax Rules without restricting the same to the actual expenditure incurred.*
5. *That the learned authorities below erred in not following the binding/relevant decisions of the higher appellate authorities on the issue.*
6. *The appellant denies the liability of interest u/s 234C and 234D of the I.T.Act.*
7. *Without prejudice to the appellant's right of seeking waiver before appropriate authority, the appellant begs for consequential relief in the levy of interest u/s 234C and 234D of the I.T Act.*
8. *For the above and other grounds and reasons which may be submitted during the course of hearing of this appeal, the assessee requests that the appeal be allowed as prayed and justice be rendered*

3.2.1 We have heard the rival contentions and perused the material on record. Though the assessee has raised many grounds, they all relate to the single issue of disallowance of Rs.7,50,525/- made by the Assessing Officer (AO) under section 14A r.w.Rule 8D(2)(iii). In the course of hearing it was, it was brought to the notice of the Bench that the identical issue; of disallowance under section 14A r.w.Rule 8D(2)(iii) was considered by a Co-ordinate Bench of this Tribunal in the assessee's own case for Assessment Year 2014-15. We have perused the aforesaid order and find that the Co-ordinate Bench, after considering the issue, remitted the matter to the file of the AO holding as under at para 4 thereof:-

“4. We have considered the rival submissions. We find that the disallowance made by the AO is @ 0.5% of Average Investment as per Rule 8D (2) (iii) but this is not coming out from the assessment order as to how much is the amount of administrative expenditure debited by the assessee to P & L account. This is a settled law by now that the disallowance u/s 14A r.w.r. 8D (2) (iii) cannot exceed the amount of administrative expenses debited to P & L Account because section 14A is for disallowance and not addition. But in the absence of any noting by the AO or CIT (A) as to how much is the amount of administrative expenditure debited by the assessee to P & L account, we cannot quantify the disallowance. Moreover, in the paper book also. the assessee has submitted the balance Sheet but not submitted the Profit & Loss Account. As per the tribunal order cited by the learned AR of the assessee as noted above, it was held that the issue of disallowance u/s 14A r.w.r. 8D (2) (iii) requires proper examination of the facts on the aspect of identifying the expenditure attributable there under, In that case, the tribunal restored the matter back to AO for examination and computation • of administrative Expenditure incurred for earning the exempt income for making the disallowance u/r 8D (2) (iii) and it was clarified that the disallowance u/r 8D (2) (iii) cannot exceed the actual expenditure debited by the assessee to the P & L Account which has a nexus for earning of exempt income. Respectfully following this tribunal order, we remit this issue o the AO for a fresh decision with same direction after providing adequate opportunity of being heard to the assessee. We make it clear that the disallowance so made should not exceed the actual expenditure debited by the assessee to the P & L Account which has a nexus (direct or indirect) with earning of exempt income.”

3.2.2 Respectfully following the decision of the Co-ordinate Bench of this Tribunal in the assessee’s own case for Assessment Year 2014-15 in ITA No.1273/Bang/2018 dated 25.04.2019, we remand the issue of determination of the disallowance under section 14A r.w.Rule 8D(2)(iii) to the file of the AO for re-consideration in accordance with the same

directions / observations as laid out by the Tribunal at para 4 of its order (extracted above at para 3.2.1 of this order). We hold and direct accordingly. Consequently, the grounds raised by the assessee on this issue are allowed for statistical purposes.

8. In the result, the assessee's appeal for assessment year 2010-11 is allowed for statistical purposes.

Pronounced in the open court on 04.09.2019.

Sd/-
(N. V. VASUDEVAN)
Vice President

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore.

Dated: 04.09.2019.

/NS/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.