

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(SMC)', KOLKATA
[Before Shri P.M. Jagtap, Vice President, KZ]**

I.T.A. No. 296/Kol/2019
Assessment Year: 2015-16

Saumas Mercantiles Pvt. Ltd.....Appellant
P-36, 2nd Floor, R. No. 42,
India Exchange Place,
Kolkata - 700 001.
[PAN: AA ECS 5031 Q]

ITO, Ward - 5(2) Kolkata.....Respondent
P-7, Chowringhee Square,
Kolkata - 700 069.

Appearances by:

Shri Anil Kochar, Advocate appearing on behalf of the Assessee.
Smt. Sucheta Chattopadhyay appearing on behalf of the Revenue.

Date of concluding the hearing : September 11, 2019

Date of pronouncing the order : September 13, 2019

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 2, Kolkata dated 04.12.2018 and the solitary issue involved therein relates to the disallowance of Rs. 3,84,775/- made by the AO and confirmed by the Ld. CIT(A) u/s 14A of the Income-tax Act, 1961 read with Rule 8D of the Income-tax Rules, 1962.

2. The assessee in the present case is a company which is engaged in the business of manufacturing of machinery parts. The return of income for the year under consideration was filed by it on 28.03.2016 declaring a total income of Rs. 8,13,960/-. In the said return, dividend income of Rs. 3,78,549/- received during the year under consideration was claimed to be exempt by the assessee. In computation of the total income, a disallowance of Rs. 1,26,497/- was offered by the assessee suo moto u/s 14A in respect of expenditure

incurred for earning the exempt income. In the assessment completed u/s 143(3) vide an order dated 29.02.2017, the Assessing Officer applied Rule 8D and worked out the disallowance to be made u/s 14A at Rs. 5,11,272/-. Accordingly, addition of Rs. 3,84,775/- (5,11,272/- - 1,26,497) was made by him to the total income of the assessee. On appeal, the Ld. CIT(A) confirmed the said addition made by the AO. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

3. The learned counsel for the assessee submitted that the impugned addition was made by the AO and confirmed by the Ld. CIT(A) mainly by way of disallowance on account of interest as per Rule 8D(ii). He invited our attention to the copy of the relevant balance sheet of the assessee to show that sufficient own funds in the form of share capital amounting to Rs. 99.67 lacs and reserves and surplus amounting to Rs. 6.86 crores were available with the assessee at the relevant time and the same being more than the investment of Rs. 2.58 crores made in the shares, there was a presumption available to be drawn that the investment in shares was made by the assessee out of its own funds and not out of the borrowed funds. He contended that the disallowance made by the AO u/s 14A read with Rule 8D(ii) on account of interest thus was not sustainable and the Ld. CIT(A) is not justified in confirming the same.

4. The learned DR, on the other hand, submitted that the investment in shares was made by the assessee in the earlier years and in the absence of anything brought on record by the assessee to establish that

the said investment was made out of its own funds and not from the borrowed funds, proportionate disallowance on account of interest was rightly made by the AO and confirmed by the Ld. CIT(A) by applying Rule 8D(ii).

5. I have considered the rival contention and also perused the relevant material available on record. It is observed that the investment made by the assessee in shares was Rs. 2.58 crores at the beginning of the year under consideration while the same was reduced to 56.60 lacs at the end of the year i.e. 31.03.2015. A perusal of the relevant balance sheet of the assessee company shows that sufficient own funds in the form of share capital and reserves were available with the assessee at the beginning of the year under consideration to the extent of Rs. 7.06 crores which were increased to 7.85 crores as on 31.03.2015. The own funds available with the assessee company at the relevant time thus were much more than the investment made in the shares and since it was a case of mix funds, I find merit in the contention of the learned counsel for the assessee that the presumption is that its own funds were utilised by the assessee company for making investment in shares. The investment in shares thus was not made by the assessee company out of its borrowed funds and the disallowance made by the AO and confirmed by the Ld. CIT(A) on account of interest u/s 14A read with Rule 8D(ii) is not sustainable. I accordingly delete the said disallowance and allow this appeal of the assessee.

6. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 13th September, 2019.

Sd/-
(P.M. Jagtap)
VICE PRESIDENT

Dated: 13/09/2019

Biswajit, Sr. PS

Copy of order forwarded to:

1. Saumas Mercantiles Pvt. Ltd., P-36, 2nd Floor, R. No. 42, India Exchange Place, Kolkata – 700 001.
2. ITO, Ward – 5(2), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata