

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.904/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Kalyani Steels Ltd.,  
Mundhwa, Pune-411036.

PAN : AAACK7315D

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle-14.  
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak  
Revenue by : Shri Vishwas Mundhe

सुनवाई की तारीख / Date of Hearing : 05.07.2019

घोषणा की तारीख / Date of Pronouncement : 27.08.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of CIT(A)-7, Pune dated 11.11.2016 for the Assessment Year 2012-13.

2. During the proceedings before us, ld. Counsel for the assessee filed an **additional ground** and submitted that if the said additional ground is allowed in favour of the assessee, the adjudication of other regular grounds becomes academic exercise only. Accordingly, the said additional ground filed by the assessee is extracted as under :-

"1] The assessee submits that the investments on which no tax free income has been earned during the year should be excluded for the purposes of computing the disallowance u/s 14A r.w.r. 8D(iii)."

3. From the above, it is evident that the additional ground being legal ground relates to the requirement of restricting the disallowance u/s 14A of the I.T. Act, 1961 read with Rule 8D(2) of the I.T. Rules, 1962 to the extent of the sum of exempt income and dividend yielded – investments instead of entire investments made by the assessee. Considering the legal nature of the said additional ground, the same is admitted and adjudicated in the following paragraphs.

4. Briefly stated the relevant facts include that the assessee is a company engaged in the business of manufacturing and selling of Hot Metal, Pig Iron, Steel Billets, Blooms and Rolled Products and generation of power etc. The assessee filed the return of income declaring total income of Rs.13,91,59,547/- after claiming of deduction under Chapter VI-A of the Act. At the end of the assessment order u/s 143(3) of the Act, the Assessing Officer computed the total income of the assessee at Rs.13,95,75,732/-. In the assessment, the Assessing Officer scrutinized the accounts of the assessee and found that the assessee *suo-motu* disallowed a sum of Rs.37,99,500/- u/s 14A r.w. Rule 8D(2)(iii) in the computation. The computation for the said *suo-motu* disallowance given in para 33 of the Paper Book. According to the said computation, the average investments was originally worked out by the assessee amounts to Rs.75,98,99,970/- and 0.5% of the average investment works out to Rs.37,99,500/-. The Assessing Officer accepted the said computation of disallowance u/s 14A r.w. Rule 8D(2)(iii) and made the assessment.

5. However, during the first appellate proceedings, the assessee raised an alternate ground stating that the disallowance should be restricted only to 5,00,000/- on ad-hoc basis as done in the assessee's own case in the earlier assessment year 2008-09. The CIT(A) rejected the said alternate ground of the assessee and dismissed the appeal of the assessee.

6. Aggrieved with the said decision of the CIT(A), the assessee is in appeal before us with the above extracted additional ground.

7. As evident from the additional ground, the limited prayer before us now relates to the modification of the average investments in the light of the various decisions including the decision of this Tribunal in the case of M/s. Quick Heal Technologies Ltd. vide ITA Nos.1500 & 1710/PUN/2017 for the assessment years 2012-13 & 2014-15, order dated 12.03.2019. On this issue, ld. Counsel for the assessee brought our attention to the said page 33 of the Paper Book and submitted that only dividend yielded investments is preference shares of Kalyani Investment Company Limited, which yielded exempt income of Rs.8,06,40,000/-. Otherwise, rest of the investments in equity shares of (i) Bharat NRE Coke Limited, (ii) Kalyani Mukand Limited, (iii) Lord Ganesha Minerals Private Limited, and (iv) Hospet Steels Limited never yielded dividend. Therefore, these investments in these companies should be excluded for the purposes of computing 'average investments' of the assessee.

8. On hearing both the sides, we find the similar issue was adjudicated by the Tribunal in various decisions such as (i) Kumar Urban Development Pvt. Ltd. Vs. DCIT vide ITA No.66/PUN/2015 for the assessment year 2008-09 dated 28.06.2017 and (ii) M/s. Quick Heal Technologies Ltd. (supra). For the sake of completeness, we find the contents of para 6 of the order of the Tribunal in the case of M/s. Quick Heal Technologies Ltd. (supra) are relevant and the same are extracted hereunder :-

*“6. The Hon'ble Delhi High Court in ACB India Ltd. vs. CIT (2015) 374 ITR 108 (Del), has held that the average value of investments, for the purposes of Rule 8D(2)(iii), should be confined to those securities in respect of which exempt income is earned and not the total investments. Similar view has been taken by the Special Bench of the Tribunal in the case of ACIT vs. Vireet Investments (P) Ltd. (2017) 165 ITD 27 (Del) (SB) holding that only those investments should be considered for computing average value of investments which yield exempt income during the year. In view of the afore referred precedents, we set aside the impugned order to this extent and remit the matter to the file of Assessing Officer for re-computing the disallowance under Rule 8D(2)(iii) by considering **only such investments in calculating the average value of investments, which have yielded exempt income during the year.** The assessee will be allowed hearing opportunity in fresh proceedings.”*

9. From the above, it is evident that the Hon'ble Delhi High Court in the case of ACB India Ltd. vs. CIT, 374 ITR 108 (Del) and the Special Bench of the ITAT in the case of ACIT vs. Vireet Investments (P) Ltd., 165 ITD 27 (Del) (SB) have given a categorical finding for computing the average investments only to the exempt income yielded investments should be considered. Therefore, following the parity of reasoning, we set-aside the order of the CIT(A) to the extent of remit the matter to the file of the Assessing Officer for re-computing the disallowance under Rule 8D(2)(iii) of the Rules by considering only such investments in calculating

the average value of investments, which is yielded exempt income during the year. The Assessing Officer shall grant a reasonable opportunity of being heard to the assessee in the fresh proceedings. Accordingly, the additional ground raised by the assessee is allowed for statistical purposes.

10. Considering the relief granted to the assessee by way of additional ground, in our opinion, the adjudication of the other grounds becomes academic exercise only. Therefore, the same are dismissed as academic.

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

Order pronounced on 27<sup>th</sup> day of August, 2019.

Sd/-  
(विकास अवस्थी / **VIKAS AWASTHY**)  
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-  
(डी. करुणाकरा राव/**D. KARUNAKARA RAO**)  
लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 27<sup>th</sup> August, 2019.  
Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-7, Pune.
4. The CCIT, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.