IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.3442/Mum./2018
(Assessment Year : 2014–15)

Masitia Capital Services Ltd.
Unit no.S–13 & S–14
Pinnacle Business Park
Shanti Nagar, MIDC
Mahakali (Caves Road
Near Ahura Centre
Andheri (E), Mumbai 400 093
PAN – AACCM3929K

……. Appellant

v/s

Dy. Commissioner of Income Tax
Circle–10(2)(2), Mumbai

……. Respondent

Assessee by : Shri Anuj Kisnadwala
Revenue by : Shri D.G. Pansari

Date of Hearing – 09.07.2019	Date of Order – 20.09.2019

O R D E R

PER SAKTIJIT DEY, J.M.

Captioned appeal has been filed by the assessee challenging the order dated 16th August 2018, passed by the learned Commissioner of Income Tax (Appeals)–17, Mumbai, for the assessment year 2014–15.

2. Ground no.1 is against disallowance of interest expenditure of ₹.4,66,192.

3. Briefly the facts are, the assessee company is engaged in the business of trading in shares and securities. For the assessment year under dispute, the assessee filed its return of income on 30th September 2014, declaring loss of ₹ 31,07,502. In the course of assessment proceedings, the Assessing Officer noticing that the assessee has debited interest expenditure of ₹ 4,66,192, to the Profit & Loss Account called upon the assessee to justify such claim. In response, it was submitted by the assessee that out of the total interest expenditure of ₹ 4,66,192, an amount of ₹ 4,35,616, was paid to Blueline Finance Pvt. Ltd. in respect of loan taken during the year and the balance amount of ₹ 30,576, was paid to Classic Solvents Pvt. Ltd. towards unsecured loan availed during the year. It was submitted, since the aforesaid loans were availed for re–payment of existing loans, the interest expenditure is allowable. The Assessing Officer after perusing the material on record and the submissions made by the assessee found that the assessee had borrowed funds of ₹ 20,66,60,169. Whereas, the assessee has utilized its own fund and borrowed funds for making investment of ₹ 21,62,30,135, and provided interest free loans of ₹ 9,22,95,764. Further, he found that the funds were utilized for purchase of fixed assets, inventory and part of the fund also lies with the Bank as cash and cash equivalent. Further, he observed, during the year under consideration, the assessee has not earned any revenue from operations and had only

credited a part of the interest income to the Profit & Loss Account. Thus, holding that part of the borrowed funds has been diverted for non–business purpose, he disallowed the interest expenditure. The assessee challenged the aforesaid disallowance before the first appellate authority. However, learned Commissioner (Appeals) sustained the disallowance made by the Assessing Officer.

4. The learned Authorised Representative submitted, borrowed funds have also been utilized for the purpose of business, hence, the entire interest expenditure cannot be disallowed. He submitted, if a part of the borrowed fund was utilized for non–business purpose proportionate interest expenditure relatable to borrowed fund utilized for non–business purpose can be disallowed. In this context, the learned Authorised Representative furnished before us a working of proportionate interest relatable to utilization of borrowed fund for non–business purpose. However, he fairly submitted that such working was not filed before the Departmental Authorities.

5. The learned Departmental Representative submitted, the assessee has not credited any income from business to the Profit & Loss Account. Therefore, it is evident that entire borrowed fund was utilized for non business purpose. That being the case, the disallowance of interest expenditure was justified.

6. We have considered rival submissions and perused material on record. As could be seen from the assessment order, the assessee had sufficient own fund available with it. At the same time, it has also availed interest bearing loan during the year. The issue which requires consideration is, whether the entire interest bearing fund has been utilized for non–business purpose or a part of it has been diverted for such purpose. In this context, the assessee has furnished a working before us quantifying diversification of borrowed fund for non–business purpose to ₹ 9,22,95,764. The proportionate disallowance worked out by the assessee in this regard is ₹ 1,30,191. As per assessee's own admission, this working of proportionate disallowance of expenditure was not filed before the Departmental Authorities. Considering the above, we are inclined to restore the issue to the Assessing Officer to verify the correctness of assessee's claim of proportionate disallowance of interest expenditure as per the working noted above and decide the issue accordingly after due opportunity of being heard to the assessee. This ground is allowed for statistical purposes.

7. In ground no.2, the assessee has challenged disallowance of ₹ 6,16,033, under section 14A r/w rule 8D.

8. Brief facts are, noticing that the assessee had earned an exempt income by way of dividend of ₹ 99,727 during the year, whereas, it has not disallowed any expenditure for earning such income, the Assessing

Officer called upon the assessee to explain why disallowance should not be computed under rule 8D. After rejecting the explanation of the assessee in this regard, he proceeded to disallow an amount of ₹ 10,56,845, under rule 8D(2)(iii) r/w section 14A of the Act. The assessee challenged the aforesaid disallowance before the first appellate authority.

9. After considering the submissions of the assessee, learned Commissioner (Appeals) reduced the disallowance to ₹ 6,16,033.

10. The only submission of the learned Authorised Representative is, the disallowance under section 14A r/w rule 8D should not exceed the exempt income earned during the year. In support of such contention he relied upon the following decisions:–

i) *PCIT v/s State Bank of Patiala, 393 ITR 476 (P&H);*

ii) *Joint Investment v/s CIT, 372 ITR 694 (Del.); and*

iii) *Indus Valley Investments v/s DCIT, ITA no.3763/Del./2013, dated 29.04.2019.*

11. The learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

12. We have considered rival submissions and perused material on record. Undisputedly, in the year under consideration, the assessee had received exempt income by way of dividend amounting to ₹

99,777 only. Whereas, the Assessing Officer has disallowed an amount of ₹ 10,56,845, under section 14A r/w rule 8D, which has been reduced to ₹ 6,16,033, by learned Commissioner (Appeals). Now, it is fairly well settled that disallowance under section 14A r/w rule 8D cannot exceed the exempt income earned by the assessee during the year. The decisions relied upon by learned Authorised Representative clearly support this view. Following the ratio laid down in the judicial precedents noted above, we direct the Assessing Officer to restrict the disallowance to the exempt income of ₹ 99,727, earned by the assessee during the year. This ground is partly allowed.

13. In the result, assessee's appeal is partly allowed.

Order pronounced in the open Court on 18.09.2019

Sd/-	**Sd/-**
N.K. PRADHAN	**SAKTIJIT DEY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 18.09.2019

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.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai