



ITA No.4275/Mum/2018
M/s. Nowrosjee Wadia & Sons Ltd.
(Successor to NW Exports Ltd.)
Assessment Year-2014-15

आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.4275/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. Nowrosjee Wadia & Sons Ltd. (successor to NW Exports Ltd.) 4 th Floor, Neville House J.N. Heredia Marg, Ballard Estate Mumbai-400 001.	बनाम/ Vs.	ACIT -2(2)(2) Aaykar Bhavan M.K.Road Mumbai-400 020.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAACN-2021-P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
Assessee by	:	Shri Ronak G. Doshi and Ms. Ayushi Modani-Ld. ARs
Revenue by	:	Ms. Samatha Mulla mudi-Sr.DR
सुनवाई की तारीख/ Date of Hearing	:	18/10/2019
घोषणा की तारीख / Date of Pronouncement	:	13/11/2019

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by assessee for Assessment Year 2014-15 contest the order of Ld. Commissioner of Income-Tax (Appeals)-5, Mumbai, [in



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short referred to as 'CIT(A)'], *Appeal No. CIT(A)-5/ITO-2(2)(2)/IT-430/2016-17* dated 23/03/2018 on following grounds of appeal:-

“GROUND I: DISALLOWANCE U/S. 14A OF THE ACT: .

1. On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in not considering the working of suo moto disallowance u/s 14A as submitted by the Appellant. The Appellant therefore prays that the said working be considered and disallowance be restricted to the amount as worked out in the said working.

2. Without prejudice to 1. above, on the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in not considering net interest expense after setting the interest income earned by the Appellant for the purpose of disallowance under rule 8D(2)(ii). The Appellant therefore prays the disallowance be computed u/s 14A, if any, after set off of interest income from the interest expense.

3. Without prejudice to 1. above, on the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in not considering only those expenses which have a direct nexus with earning exempt income for the purpose of disallowance u/s 14A. The Appellant therefore prays that disallowance u/s 14A, if any, be made only of those expenses which are directly related in earning exempt income.

4. Without prejudice to 1. above, on the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in disallowing an amount exceeding the total expenses actually claimed by the Appellant. The Appellant therefore prays that for the purpose of disallowance u/s 14A, if any, the disallowance be restricted to amount actually claimed by the Appellant.

GROUND II: INTEREST U/S 234B:

1. The Ld. AO erred in charging interest u/s 234B of the Act. The Appellant therefore prays that the Ld. AO be directed to delete the same.”

The erstwhile assessee namely M/s. N.W. Exports Ltd. has been succeeded by another entity i.e. M/s Nowrosjee Wadia & Sons Ltd. and accordingly, Form No. 36 has been filed in the name of new entity. Finding the same in order, we proceed to adjudicate the appeal as argued before us.

2.1 Facts in brief are that assessee being resident corporate assessee stated to be engaged in distribution of mutual funds and registered with Association of Mutual Fund in India (AMFI), was assessed for year under



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consideration u/s. 143(3) on 19/12/2016 wherein the income of the assessee was determined at Rs.120.66 Lacs after sole disallowance u/s. 14A for Rs.205.54 Lacs as against loss return of Rs.84.88 Lacs filed by assessee on 30/09/2014. The assessee earned brokerage under AMFI code on investments made during the year.

2.2 During assessment proceedings, it transpired that the assessee earned exempt income of Rs.5.97 Crores. The assessee reflected closing investments of Rs.262.25 Crores in exempt-income yielding assets. Accordingly, the assessee offered *suo-moto* disallowance u/s 14A for Rs.11 Lacs in its computation of income. The assessee submitted that it was holding shares in group companies as strategic investment for controlling interest and not with an intention of earning dividend income and therefore, no further disallowance was required. However, not satisfied, Ld. AO, invoking Rule 8D, computed aggregate disallowance of Rs.216.54 Lacs u/r 8D which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.85.42 Lacs and expense disallowance at 0.5% of average investment u/r 8D(2)(iii) for Rs.131.12 Lacs. After adjusting *suo-moto* disallowance of Rs.11.00 lacs as offered by assessee in its computation of income, the differential i.e. Rs.205.54 Lacs was added to the income of the assessee as additional disallowance u/s 14A r.w.r. 8D.

3. Aggrieved, the assessee contested the disallowance before Ld. CIT(A) by way of written submissions wherein the assessee, *inter-alia*, contended that no expenditure was incurred to earn exempt income and



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further, Ld. AO's satisfaction was pre-requisite for application of Rule 8D. The assessee further contended that only those investments which yielded exempt income during the year, were to be considered for the purpose of computation of disallowance. However, rejecting the plea of strategic investments in terms of latest decision of Hon'ble Supreme Court in **Maxopp Investment Ltd. Vs. CIT (CA No. 104-109 of 2015)**, Ld. CIT(A) directed for exclusion of investment in shares of unlisted companies since these investments would not give rise to exempt income. The Ld. AO was also directed not to include those investments which have not yielded any exempt income during the year.

4. Aggrieved, the assessee is in further appeal before us. We have heard the rival submissions and perused assessee's financial statements as well as deliberated on judicial pronouncements as cited before us.

5. The Ld. AR has raised a plea that Ld. AO did not record requisite satisfaction before proceeding to apply Rule 8D. However, we find that except for finance cost of Rs.11 Lacs, the assessee did not offer any disallowance on account of indirect expenditure and therefore, there could be no occasion to consider the basis of allocation of indirect expenditure. Proceeding further, we find that Ld. AO, after due consideration of assessee's reply, did not accept the interest disallowance as offered by the assessee and proceed to compute the disallowance as per Rule 8D. Therefore, we do not find much force in this argument of Ld. AR.



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6. The Ld. AR has drawn our attention to the fact that own funds in the shape of share capital and free reserves were far more than the investments made by the assessee and unless the nexus of borrowed funds vis-à-vis investment made by the assessee was established, a presumption was to be drawn in assessee's favor that the investments were out of own funds. Finding substance in this plea keeping in view the ratio of decision of Hon'ble Supreme Court in **CIT V/s Reliance Industries Ltd. (410 ITR 466)**, we direct Ld. AO to consider the availability of own funds vis-à-vis investments made by the assessee and adjudicate the issue of interest disallowance after considering the same. The directions of Ld. CIT(A) shall also be kept in mind while computing interest disallowance. The plea of Ld. AR that disallowance was to be computed on *net of interest* basis may also be considered by the Ld. AO, if the nexus between the two is established.

7. Regarding expense disallowance, Ld. AR has asserted that Ld.AO, in the process of computation of disallowance, has made disallowance which far exceed indirect expenditure claimed by the assessee in the Profit & Loss Account. It has further been submitted that only those expenses may be considered which has direct nexus with earning of exempt income. Finding force in the same, besides direction of Ld. CIT(A), we direct Ld. AO to consider these aspects also while recomputing disallowance u/r 8D(2)(iii).



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8. Ground No.2 *qua* interest u/s 234B being consequential, would not require any adjudication on our part.

9. Resultantly, the appeal stands partly allowed.

Order pronounced in the open court on 13th November, 2019.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 13/11/2019

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.