



ITA Nos.6733-35/Mum/2018
Techprocess Payment Services Limited
Assessment Years: 2012-13 to 2014-15

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.6733/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2012-13)

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आयकर अपील सं./ I.T.A. No.6734/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2013-14)

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आयकर अपील सं./ I.T.A. No.6735/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2014-15)

Techprocess Payment Services Ltd. Mehra Industrial Estate Bdg. No. 1, 2 nd Floor J.K.Textile, LBS Marg Vikhroli (W), Mumbai – 400 079	बनाम / Vs.	DCIT-14(3)(1) Mumbai
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AABCB-5216-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ms. Krupa R. Gandhi – Ld. AR
Revenue by	:	Shri Amit Pratap Singh – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	12/12/2019
घोषणा की तारीख / Date of Pronouncement	:	17/12/2019

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeals by assessee for Assessment Years [in short referred to as ‘AYs’] 2012-13 to 2014-15 contest separate orders of



learned first appellate authority, Appeal Nos. CIT(A)22/IT/380/2015-16 dated 19/02/2018 AY 2012-13, CIT(A)22/IT/10464/2016-17 dated 06/08/2018 for AY 2013-14, CIT(A)22/IT/10571/2016-17 dated 19/02/2018 for AY 2014-15. The sole issue involved in all the 3 years is disallowance u/s 14A.

1.2 The appeals for AYs 2012-13 & 2014-15 has been filed with a delay of 179 days, the condonation of which has been sought by the assessee on the strength of condonation petition dated 22/11/2018 which is supported by the affidavit of *Manager-Accounts & Finance* of the assessee company. It has been submitted that learned first appellate authority, relying upon Tribunal order for AY 2010-11, upheld disallowance to the extent of Rs.10 Lacs. The assessee did not accept the part disallowance but considering the smallness of amount, to buy peace of mind and the cost of litigation, the assessee did not prefer any further appeal. However, subsequently, the Tribunal disposed-off assessee's appeal for AYs 2008-09 & 2009-10 and allowed assessee's appeal, which led the assessee to file appeals for these two years before the Tribunal. The Ld. DR, on the other hand, submitted that it was conscious decision on the part of the assessee not to prefer any further appeal and therefore, the assessee was unable to make a case of sufficient cause which would warrant condonation of delay. However, considering the fact that the issue of disallowance u/s 14A was subject matter of disallowance for several years, the bench formed an opinion that the delay was to be condoned and the appeal was to be adjudicated on merits. We order so.



1.3 In the above background, we have already considered the rival submissions advanced by both the parties, perused material placed on record and deliberated on decisions rendered by Tribunal in assessee's own case for different years. The Ld. AR has raised a preliminary issue to submit that Ld. AO did not reject the suo-moto disallowance offered by the assessee in the return of income and did not arrive at requisite satisfaction as envisaged by the provisions of Sec. 14A. The said lapse, as per submissions of Ld. AR, would oust the jurisdiction of Ld. AO in invoking the provisions of Sec. 14A r.w.r. 8D to make further disallowance. Reliance has been placed on the decision of this Tribunal rendered in assessee's own case for AYs 2008-09 & 2009-10, ITA Nos. 8547/Mum/2011 & others, common order dated 12/10/2018. The said order has been followed by Tribunal in AY 2011-12, ITA No.7026/Mum/2016 order dated 15/02/2019. The copies of the orders have been placed on record.

2. Facts from case records for AY 2012-13 would reveal that the assessee was saddled with disallowance u/s 14A for Rs.16.57 Lacs for year under consideration in an assessment framed u/s 143(3) on 30/03/2015. The disallowance stem from the fact that the assessee held huge investments in shares and mutual funds for Rs.2072.37 Lacs. The assessee also earned exempt dividend income of Rs.138.02 Lacs from units of mutual funds, against which the assessee offered *suo-moto* disallowance of Rs.2.21 Lacs in its computation of income. The said disallowance was aggregate of 40% of cost of one employee at Junior Management Level on *cost-to-company basis* and 1% of cost of salary of authorized signatory. However, not satisfied, Ld. AO invoking the



provisions of Rule 8D, computed expense disallowance u/r 8D(2)(iii) @0.5% of average investments which resulted into disallowance of Rs.18.79 Lacs. After adjusting suo-moto disallowance of Rs.2.21 Lacs as offered by the assessee, net disallowance thus worked out to be Rs.16.57 Lacs.

3. Before Ld. CIT(A), the assessee, *inter-alia*, submitted that Ld. AO did not record objective and judicious satisfaction before proceeding to apply Rule 8D. However, disregarding the same, Ld. CIT(A), relying upon Tribunal's order in assessee's own case for AY 2010-11, ITA No. 589/Mum/2015 order dated 14/09/2016, restricted the disallowance to Rs.10 Lacs. Aggrieved, the assessee is under appeal before us with following grounds of appeal: -

- i. The Hon'ble CIT(A) erred in upholding the disallowance u/s 14A of the Income Tax Act, 1961 ("the Act") made by the AO to the extent of Rs. 10,00,000/- despite his specific finding that the AO has not recorded his dissatisfaction as regards the suo-moto disallowance before invoking Rule 8D of the Income Tax Rules, 1962 ("the Rules").
- ii. He failed to appreciate and ought to have held that disallowance u/s 14A of the Act can either be made based as per the working made by the Assessee or as per the provisions of Rule 8D of the Rules and not on any ad-hoc basis.
- iii. The Appellant prays that the disallowance u/s 14A of the Act made by the AO and to the extent upheld by the CIT(A) be deleted. The Appellant craves leave to add, amend, alter and/or delete any/all of the above ground of appeal.

4. Upon careful consideration, we find that the assessee had offered suo-moto disallowance in its return of income, the basis of which was submitted to Ld.AO during assessment proceedings. However, Ld. AO did not consider the same and rejected the methodology adopted by the assessee to arrive at the said disallowance, having regards to the accounts of the assessee. It was incumbent on the part of Ld. AO to arrive at judicious and objective satisfaction as to why the disallowance offered / computed by the assessee was not acceptable. In para-5 of



quantum assessment order, Ld. AO has merely recorded a fact of non-satisfaction without adducing cogent reasons / elaborations as to why the methodology adopted by the assessee was not acceptable. Reliance could be placed on the recent decision of Hon'ble Supreme Court in **Maxopp Investment Ltd. V/s CIT (2018 402 ITR 640)** wherein it has categorically been held that recording of satisfaction is a pre-requisite before invoking disallowance u/s 14A r.w.r. 8D. The pertinent observations of Hon'ble Court were as under: -

41) Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.

Similar view has been taken by coordinate bench of this Tribunal in assessee's own case for AYs 2008-09 & 2009-10, ITA Nos. 8547/Mum/2011 & others, common order dated 12/10/2018, which has been followed in AY 2011-12. Therefore, respectfully following the same, we delete the additional disallowance of Rs.16.57 Lacs as made by Ld. AO in the quantum assessment order. The appeal stands allowed.

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5. In AY 2013-14, the assessee has offered suo-moto disallowance of Rs.5 Lacs which has been revised to Rs.19.06 Lacs by Ld.AO in quantum assessment order dated 29/01/2016, invoking Rule 8D. Similarly, in AY 2014-15, the assessee has offered suo-moto disallowance of Rs.5.28 Lacs which has been revised to Rs.16.28 Lacs



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by Ld.AO in quantum assessment order dated 24/11/2016, invoking Rule 8D. Upon perusal of quantum assessment orders for both the years, we find that Ld. AO has failed to consider the suo-moto disallowance offered by the assessee and without rejecting the same, proceeded to compute disallowance as per Rule 8D. Facts being pari-materia the same, taking the same view, we delete additional disallowances made for both these years. Both these appeals stand allowed.

Conclusion

6. All the appeal stands allowed.

Order pronounced in open court on 17th December, 2019.

Sd/-

(C.N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 17/12/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/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/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.