

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI
BEFORE MS SUSHMA CHOWLA, VICE PRESIDENT
AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.5018/Del/2017
Assessment Year: 2011-12

ACIT,
Circle-3,
Nainital.

Vs. The Nainital Bank Ltd.,
Sevan Oakas,
Mallital, Nainital,
Uttarakhand.
PAN: AA ACT5714D

(Appellant)

(Respondent)

Assessee by : Shri K.R. Rastogi, CA
Deptt. By : Shri Saras Kumar, Sr. DR

Date of Hearing : 28.11.2019
Date of Pronouncement : 31.01.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against the order dated 16th May, 2017 of the CIT(A), Haldwani, relating to the assessment year 2011-12.

2. The grounds raised by the Revenue read as under:-

õ1. That Ld. CIT(A) has erred in law as well as in facts of the case, in deleting the addition made u/s 14A of the I. T. Act, 1961 read with Rule 8D of the I. T. Rules, 1962, being expenses relatable to income not includible in total income.

2. That Ld. CIT(A) has erred in law as well as in facts of the case, in not considering that investment was made by the assessee in tax free securities/funds, mostly out of its tax bearing fund.

3. That Ld. CIT(A) has erred in law as well as in facts of the case, in not considering that the assessee failed to establish the quantum of its tax bearing fund as well as tax free fund, which were invested in tax free securities/funds.ö

3. The facts of the case, in brief, are that the assessee company filed its return of income on 29.9.2011 declaring an income of Rs.56,11,19,400/-. The Assessing Officer in the order passed u/s 143(3)/263, made disallowance of Rs.3,78,67,952/- by invoking the provisions of section 14A of the IT Act r.w. Rule 8D of the IT Rules, 1962. The reason for invoking provisions of section 263 was for examination of expenditure incurred in relation to the exempt income and the Assessing Officer was directed to examine the assessee's estimate of expenditure incurred in relation to the exempt income. The assessee in its computation had disallowed the expenses as per the provisions of Rule 8D(2)(iii) of the Act at Rs.41,49,703/- only being expenses incurred for earning exempt income. It was further submitted that no interest bearing funds were utilized for the investments. However, the Assessing Officer was not satisfied with the explanation given by the assessee and made disallowance of Rs.3,78,67,952/- by invoking provisions of section 14A r.w.r. 8D.

3.1 In appeal, the Id.CIT(A), observed that the tax free investment is only 14.58% of the interest free funds available during the year and following the order of his predecessor for assessment year 2012-13 and various other decisions, deleted the disallowance made by the Assessing Officer.

4. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal.

5. After hearing both the sides, we find the Tribunal, following the order of the Tribunal for assessment year 2003-04 and 2004-05 vide *ITA No.258 & 4987/Del/2007* in assessee's own case under identical circumstances has dismissed the appeal filed by the Revenue by observing as under:-

6. We have carefully considered the submissions of both the sides and perused the material placed before us. We find that the ITAT in assessee's own case for assessment year 2003-04 and 2004-05 in *ITA No.258 & 4987/Del/2007* has deleted the disallowance u/s 14A holding that the investment in tax free bonds was out of own funds. Similar view was followed by the ITAT in assessment year 2005-06. Both the above decisions of ITAT were upheld by Hon'ble Jurisdictional High Court. That for the year under consideration, learned CIT(A) considered the earlier decisions of the ITAT and Hon'ble Jurisdictional High Court and also Rule 8D. After considering the earlier years position as well as Rule 8D, he held as under :-

"3.2 The findings of Id.AO and the averments of Id.AR have been considered. It is clear that the appellant had substantial interest free funds out of which there can be a valid presumption that the impugned investments could have been made since the said investments are demonstrably only 4.16% of the interest free funds available. This fact itself would cover this issue in favour of the appellant through the cases already decided in ITAT and thereafter the Hon'ble Jurisdictional High Court. It would be relevant to mention that though Rule 8D was introduced only from AY 2008-09, it merely represented a mechanism for working out the inadmissible expenses. Since Section 14A was already on the Statute Book much before the insertion of Rule 8D, the principles of disallowance were always there and Rule 8D merely crystallized the method of calculation. Thus the orders of ITAT and the Hon'ble High Court of Uttarakhand have binding force when it comes to the fact surrounding whether or not interest bearing funds were used to make the impugned investments. Thus just like in those previous years, it has been demonstrated that this year also there were interest free funds available in abundance to cover up for any investments yielding tax free income. Not only the Hon'ble Jurisdictional High Court in the appellant's own case (supra) but other High Courts have also affirmed this principle:

1. Dhampur Sugar Mills Ltd reported in 370 ITR 184 (All).

2. HDFC Bank Ltd reported in 366 ITR 505 (Bombay).
3. UTI Bank Ltd reported in 215 Taxman 8 (Gujarat).

Following this settled position of law and the admitted fact that of the total interest free funds available with the appellant, only 4.16% has been invested to yield the tax free income, the addition made is deleted in full. Once the interest component is removed then there could be no addition as the remaining values adopted by the Id.AO do not even amount to Rs.15.

3.3 Before parting with this issue, it needs to be mentioned that there are a plethora of case laws which mandate the disallowance of administrative expenses (for eg case of Teletronics Dealing Systems (P) Ltd reported in 228 Taxman 194 (Bombay). Since the appellant has already disallowed an amount representing 0.5% of average investment income (exempt), there is no need felt to disallow any further amount."

7. From the above, it is evident that learned CIT(A), after referring to the earlier decisions of ITAT as well as Hon'ble High Court, has arrived at the conclusion that no borrowed money was utilized for investment, yielding tax free income. The interest free funds available with the assessee were much more than the investment in tax free securities. The investment in tax free securities was only 4.16% of the interest free funds available. The above factual finding has not been disputed before us and, therefore, the decision of ITAT as well as Hon'ble Jurisdictional High Court would be squarely applicable to the extent of disallowance of interest under Rule 8D. The other part of disallowance under Rule 8D i.e., 0.5% of average investment has not been deleted by the learned CIT(A). In view of the above, we do not find any infirmity in the order of learned CIT(A). The same is sustained and Revenue's appeal is dismissed.ö

6. Since the facts of the impugned assessment year are identical to the facts of the case decided by the Tribunal in assessee's own case in the earlier years and the order of CIT(A) deleting the disallowance under identical circumstances in the immediately succeeding assessment year 2012-13 has been accepted by the Revenue, therefore, we find no infirmity in the order of the CIT(A) deleting the addition made by the Assessing Officer u/s 14A r.w.r. 8D for the impugned

assessment year. Accordingly, the order of the CIT(A) is upheld and the grounds raised by the Revenue are dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

The decision was pronounced in the open court on 31.01.2020.

Sd/-

(SUSHMA CHOWLA)
VICE PRESIDENT

Dated: 31st January, 2020.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Asstt. Registrar, ITAT, New Delhi