



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA no.2803/Mum./2017
(Assessment Year : 2012-13)

Mutha Founders Pvt. Ltd.
807, Tulsiani Chambers
212, Nariman Point, Mumbai 400 021
PAN – AAACM0391N

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-4(2)(2), Mumbai

..... Respondent

Assessee by : Shri G.P. Mehta
Revenue by : Smt. Jothilakshmi Nayak

Date of Hearing – 20.01.2020

Date of Order – 05.02.2020

ORDER

PER SAKTIJIT DEY. J.M.

The captioned appeal has been filed by the assessee challenging the order dated 31st January 2017, passed by the learned Commissioner of Income Tax (Appeals)-9, Mumbai, pertaining to the assessment year 2012-13.

2. Ground no.1, being general in nature does not require adjudication.

3. In grounds no.2, 3 and 4, the assessee has challenged the addition of ₹ 31,91,853, on account of un-substantiated closing credit balance of trade creditors.

4. Brief facts are, the assessee, a resident company, is engaged in the business of manufacturing and sale of various types of raw, semi-finished, moulded, C.I. and S.G. Iron Castings i.e., Cylinder Blocks, Automobile Spare & Parts, Engine Parts, etc. For the assessment year under dispute, the assessee filed its return of income on 27th September 2012, declaring total income of ₹ 2,97,72,364. During the assessment proceedings, the Assessing Officer on verifying the Balance Sheet of the assessee noticed that the assessee has shown outstanding sundry creditors of ₹ 10,49,44,885. Noticing the above, the Assessing Officer called upon the assessee to furnish the details of sundry creditors. After perusing the details the Assessing Officer wanted to verify the genuineness of such sundry creditors on random basis. Accordingly, he issued notice under section 133(6) of the Act to Advait Distributors Pvt. Ltd., representing outstanding credit of ₹ 39,91,583. As observed by the Assessing Officer, the notice issued under section 133(6) of the Income Tax Act, 1961 (for short "*the Act*") to the concerned person in the current address returned back un-served. In view of the aforesaid, the Assessing Officer concluded that the purchases against which the outstanding sundry creditors are

appearing in the Balance Sheet are non-genuine. Thus, he held that 5% of such non-genuine purchases has to be disallowed. However, ultimately, the Assessing Officer disallowed a round figure of ₹ 90 lakh on ad-hoc basis. Contesting the aforesaid disallowance, the assessee filed appeal before the first appellate authority.

5. In the course of hearing before learned Commissioner (Appeals), the assessee submitted that since the assessment was getting barred by limitation, the Assessing Officer completed the assessment hurriedly without providing reasonable opportunity of being heard to the assessee. Further, to prove the genuineness of purchases made from Advait Distributors Pvt. Ltd., the assessee filed certain additional evidences such as photocopy of confirmation and some other documents. However, neither learned Commissioner (Appeals) was convinced with assessee's plea that proper opportunity of hearing was not granted by the Assessing Officer or with the additional evidences filed. Therefore, he observed that the additional evidences cannot be taken on record. Having held so, learned Commissioner (Appeals) was of the view that the disallowance of ₹ 90 lakh made by the Assessing Officer cannot be sustained as he has only doubted the outstanding sundry creditors of ₹ 39,91,853. Accordingly, he restricted the disallowance to ₹ 39,91,853.

6. Reiterating the stand taken before learned Commissioner (Appeals), the learned Authorised Representative submitted, in course of assessment proceedings the Assessing Officer did not allow reasonable opportunity to the assessee to prove the purchases effected from Advait Distributors Pvt. Ltd. He submitted, before learned Commissioner (Appeals), though, the assessee submitted certain additional evidences, however, learned Commissioner (Appeals) refused to admit them with a general observation that no fruitful purpose would be served. The learned Authorised Representative submitted, the assessee has furnished the PAN details, confirmation, ledger account copy relating to the transaction with Advait Distributors Pvt. Ltd. He submitted, without verifying the authenticity of assessee's claim, learned Commissioner (Appeals) should not have sustained the disallowance of ₹ 39,91,853.

7. The learned Departmental Representative relied upon the observations of learned Commissioner (Appeals).

8. We have considered rival submissions and perused the material on record. On a perusal of the assessment order, it is very much clear that the Assessing Officer has restricted his enquiry only with regard to the purchases made from Advait Distributors Pvt. Ltd. amounting to ₹ 39,91,853, which has been shown as outstanding sundry creditor. Doubting the aforesaid transaction, the Assessing Officer has treated

the entire purchases as non-genuine and disallowed ₹ 90 lakh on purely ad-hoc basis. Whereas, learned Commissioner (Appeals) has restricted the addition to the amount shown in respect of Advait Distributors Pvt. Ltd. i.e., ₹ 39,91,853. Undisputedly, in the course of hearing before learned Commissioner (Appeals), the assessee did produce certain additional evidences to prove the transaction with Advait Distributors Pvt. Ltd. From the materials placed in the paper book it is noticed that the additional evidences furnished before learned Commissioner (Appeals) included PAN details of Advait Distributors Pvt. Ltd., copy of confirmation obtained from the said party, copy of ledger account of concerned party in assessee's books, copy of assessee's account in the books of Advait Distributors Pvt. Ltd. However, learned Commissioner (Appeals) has declined to look into the aforesaid evidences filed by the assessee with a general statement that no fruitful purpose would be served by admitting the evidences. The very fact that the assessee has furnished the PAN details of the supplier as well as confirmation establishes the identity of the concerned party. Further, the assessee has furnished ledger account copy of the concerned party in the assessee's books as well as assessee's account in the concerned party's books to prove the genuineness of the transaction. In our view, it cannot be said that the additional evidences filed by the assessee is either irrelevant or will have no bearing on the disputed issue. Before rejecting the additional

evidences, learned Commissioner (Appeals) should have verified their authenticity himself or could have directed the Assessing Officer to verify them. Without examining the nature and authenticity of the additional evidences, learned Commissioner (Appeals) was wholly unjustified in rejecting them at the threshold. Therefore, in our considered opinion, assessee's claim with regard to the transaction with Advait Distributors Pvt. Ltd. has to be examined in the light of the additional evidences filed by the assessee. Accordingly, we are inclined to restore the issue relating to the addition of ₹ 39,91,853, to the file of the Assessing Officer for fresh adjudication after providing reasonable opportunity of being heard to the assessee. These grounds are allowed for statistical purposes.

9. In grounds no.5, and 6, the assessee has challenged the disallowance made under section 14A r/w rule 8D.

10. Brief facts are, during the assessment proceedings the Assessing Officer noticed that in the year under consideration the assessee has earned exempt income by way of dividend amount to ₹ 98,585. Whereas, the assessee has not disallowed any expenditure attributable to such income. Therefore, the Assessing Officer called upon the assessee to explain as to why disallowance under section 14A r/w rule 8D should not be made. In reply, it was submitted by the assessee that since no expenditure was incurred for earning the exempt income,

no disallowance under section 14A should be made. Not being satisfied with the explanation of the assessee, the Assessing Officer proceeded to compute the disallowance under rule 8D at ₹ 78,546, comprising of interest expenditure under rule 8D(2)(ii) for an amount of ₹ 69,514, and administrative expenses under rule 8D(2)(iii) for an amount of ₹ 9,032. The assessee challenged the aforesaid disallowance before the first appellate authority. However, learned Commissioner (Appeals) sustained the disallowance made by the Assessing Officer.

11. The learned Authorised Representative submitted, in the year under consideration the assessee had sufficient interest free fund available with it to take care of investments. Therefore, the disallowance of interest expenditure under rule 8D(2)(ii) should not have been made. As regards the disallowance of administrative expenditure under rule 8D(2)(iii), the learned Authorised Representative conceded the issue.

12. The learned Departmental Representative submitted, assessee's claim of having sufficient interest free refund requires verification. Therefore, the issue may be restored back to the Assessing Officer.

13. We have considered rival submissions and perused the material on record. On a perusal of the Balance Sheet of the assessee as at 31st march 2012, a copy of which is placed at Page-26 of the paper book,

it is noticed that surplus fund available with the assessee by way of share capital, reserve and surplus, etc., is far in excess of the investments held which may give rise to exempt income. Therefore, the contention of the learned Authorised Representative that due to availability of surplus interest free funds, no disallowance of interest expenditure under rule 8D(2)(ii) is to be made is acceptable keeping in view the legal position on the issue. Accordingly, we delete the disallowance of interest expenditure amounting to ₹ 69,514, made under rule 8D(2)(ii). However, as regards the disallowance of administrative expenditure under rule 8D(2)(iii) amounting to ₹ 9,032, since, no convincing arguments have been advanced on behalf of the assessee, we confirm the said disallowance. Accordingly, disallowance u/s 14A r/w rule 8D is restricted to ₹ 9,032. These grounds are partly allowed.

14. Ground no.7, being general in nature does not require adjudication.

15. In the result, appeal is partly allowed.

Order pronounced in the open Court on 05.02.2020

Sd/-
G. MANJUNATHA
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 05.02.2020

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.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai