

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' (SMC) BENCH: CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं

श्री एम. बाला गणेश, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2355/Chny/2016

निर्धारण वर्ष /Assessment Year: 2012-13

M/s.Gokaldas Kishore Kumar,
No.5, Marble Arch, Ground Floor,
Bishop Wallers Avenue (East)
Mylapore,
Chennai-600 004.

Vs. The Dy. Commissioner of Income
Tax,
Corporate Circle-4,
Chennai.

[PAN: AAKPK 6281D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr. R. Meenakshisundaram, Adv

प्रत्यर्थी की ओर से /Respondent by

: Mrs.Vijaya Prabha, JCIT

सुनवाई की तारीख/Date of Hearing

: 27.02.2020

घोषणा की तारीख /Date of pronouncement

: 28.02.2020

आदेश / ORDER

PER M. BALAGANESH, ACCOUNTANT MEMBER:

The assessee filed this appeal against the Order of the Commissioner of
Income Tax (Appeals)-8, Chennai, in ITA No.45/15-16 dated 17.06.2016 for
the AY 2012-13.

2. The Ground No.1 raised by the assessee is general in nature, therefore, does not require any specific adjudication.

3. The Grounds No.2 & 3 raised by the assessee is challenging the action of the Id. CIT(A) in confirming the disallowance made by the Id. Assessing Officer u/s.14A of the Income Tax Act, 1961 (in short "the Act") r.w.Rule 8D(2) of the Income Tax Rules, 1962 (in short "the Rules").

4. We have heard the rival submissions and perused the materials available on record. We find that the assessee had earned dividend income of ₹47.67 lakhs and claimed the same as exempt in the return of income. Assessee also stated before the Id. Assessing Officer that entire investments were out of own funds of the assessee represented by advance received from customers and borrowed funds were not utilized for the purpose of making investments. Assessee had also stated that the borrowing from ICICI Bank to tune of ₹10 Crores was made in the fag end of the accounting year i.e. 30.03.2012 and the said fund were not utilized for making investments. The Assessing Officer however disregarded the contention of the assessee by simply stating that no prudent businessman would utilize the customer's money i.e. advance received from customers in non-business activity and hence the contention of the assessee that investments were made out of own

funds was dismissed by the Assessing Officer. Thereafter, the Assessing Officer directly proceeded to make disallowance u/s.14A of the Act by applying computation mechanism provided in Rule 8D(2) of the Rules and worked out the disallowance of ₹51,460/- and ₹4,49,000/- in second and third limb of the said rule thereon. The action of the Assessing Officer was upheld by the Id. CIT(A).

5. We find that the Assessing Officer had not recorded any satisfaction in terms of Section 14A(2) and 14A(3) of the Act r.w.r 8D(1) of the Rules which is mandatory requirement provided in the statute, having regard to correctness of the accounts of the assessee, before resorting to apply the computation mechanism provided in Rule 8D(2) of the Rules. In the absence of such satisfaction, entire disallowance made u/s.14A of the Act would be vitiated. This view was endorsed by the decision of Hon'ble Supreme Court in the case of *Maxopp Investment Ltd vs. CIT, (2018) 402 ITR 640*. In view of the aforesaid observation and respectfully following the above decision, we direct the Assessing Officer to delete entire disallowance made u/s.14A of the Act in the sum of ₹5,00,460/- in the peculiar facts of the instant case. Accordingly, grounds 2 & 3 raised by the assessee are allowed.

6. The grounds No.4 to 6 raised by the assessee are with regard to action of the Id. CIT(A) in confirming the addition made towards notional interest income in the sum of ₹30,50,000/- made by the Assessing Officer.

7. We have heard the rival submissions and perused the materials available on record. We find that assessee had advanced loans to the following related parties as under-

<i>Harish Kumar</i>	:	<i>3.02 crores</i>
<i>Hand loan – Jaggy</i>	:	<i>0.07 crores</i>
<i>Hand loan- Rena Jaggy</i>	:	<i>0.03 crores</i>
<i>K.G Promoters</i>	:	<i>0.04 crores</i>
<i>K.K. Promoters</i>	:	<i>0.60 crores</i>
<i>C.K. Promoters</i>	:	<i>0.29 crores</i>

<i>Total</i>	:	<i>4.05 crores</i>

The Assessing Officer observed that assessee pays interest at 12% on borrowings from bank and others. Assessee had offered interest income at the rate of 5% per annum on the amounts of ₹3.02 crores and ₹0.60 crores in respect of loans advanced to Shri. Harish Kumar and M/s.K.K. Promoters. Accordingly, the Assessing Officer observed that assessee should have received interest income at the rate of 12% per annum being the cost of its borrowing and proceeded to assess the interest income at the rate of 12% per annum on the total amount lent by it. Accordingly, the Assessing Officer worked out the difference in interest rate of 7% on ₹3.62 crores, which worked out to ₹25.34 lakhs and applied notional interest income at the rate of 12% on the remaining ₹43 lakhs which worked out to ₹5.16 lakhs.

Accordingly, the Assessing Officer brought to tax the notional interest income of ₹30.50 lakhs in the assessment which was upheld by the Id.CIT(A).

8. We find that assessee is having sufficient own funds which is evident from the Balance Sheet itself. We find that assessee is having own capital of ₹3.74 crores and interest free funds in the form of advances from customers to the tune of ₹67.75 crores. We find from the Balance Sheet that assessee is having unsecured loans and borrowings were only to the extent of ₹42,60,000/-. Even the secured loan of ₹10.02 crores represent bank borrowings were made only on 30.03.2012 i.e. in the fag end of the year. Hence, obviously the money given to aforesaid six parties could not have been given out of the loan funds. Hence, it would be safely presumed that those loans were given only out of own funds of the assessee. In any case, no addition could be made on notional basis towards interest income by the Revenue without any statutory provisions in the Act to their support. Hence, we have no hesitation in directing the Assessing Officer to delete the entire notional interest income addition made in the sum of ₹30,50,000/-. Accordingly, grounds 4 to 6 raised by the assessee are allowed.

9. In the result, the appeal filed by the assessee in ITA No.2355/CHNY/2016 for assessment year 2012-2013 stands allowed.

Order pronounced in the Open Court on the 28th day of February, 2020, in Chennai.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated: 28th February, 2020.

KV

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF

Sd/-

(एम. बाला गणेश)

(M. BALAGANESH)

लेखा सदस्य/ACCOUNTANT MEMBER