

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.1755/Bang/2019
Assessment Year: 2016-17

M/s. Goyal Ispat Pvt. Ltd. 317, Auto Towers, 9, J.C. Road Bangalore-560 002	Vs.	ITO Ward-3(1)(3) Bangalore
PAN No.AAACG4161F		
APPELLANT		RESPONDENT

Appellant by	:	Shri S.V. Ravishankar, A.R.
Respondent by	:	Shri Priyadarshi Misra, D.R.

Date of Hearing	:	22.06.2020
Date of Pronouncement	:	24.06.2020

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The appeal filed by the assessee is directed against order dated 20.6.2019 passed by Ld. CIT(A)-3, Bangalore and it relates to the assessment year 2016-17. The assessee is aggrieved by the decision of Ld. CIT(A) in confirming the disallowance made by the A.O. u/s 14A of the Income-tax Act, 1961 ['the Act' for short].

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2. The facts relating to the issue are stated in brief. The assessee company is engaged in the business of trading in iron and steel. During the course of assessment proceedings, the A.O. noticed that the assessee company is a partner in a partnership firm named M/s. Goyal Bright Steels. It has received interest on the capital invested by it in the above said partnership firm and also received share of profit from the above said firm. The interest income was offered to tax and the share of profit was claimed as exempt u/s 10(2A) of the Act. The assessee did not make any disallowance of expenses relating to the exempt income u/s 14A of the Act. Hence, the A.O. computed the disallowance u/s 14A of the Act as per provisions of rule 8D of the I.T. Rules. The A.O. disallowed a sum of Rs.18.86 lakhs under Rule 8D(2)(ii) out of interest expenditure and a sum of Rs.1.17 lakhs under rule 8D(2)(iii) out of administrative expenses. Thus, a sum of Rs.20,04,323/- was disallowed in aggregate u/s 14A of the Act. The Ld. CIT(A) confirmed

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the same and hence the assessee has filed this appeal before us.

3. The Ld. A.R. submitted that the own funds available with the assessee is more than the value of investments and hence no disallowance u/s 14A of the Act is called for as per the decision rendered by Karnataka High Court in the case of Micro Labs Limited (383 ITR 490)(Kar) and also the decision rendered by Hon'ble Supreme Court in the case of Reliance Industries Limited 410 ITR 466. Accordingly, he submitted that the interest disallowance made by the A.O. under rule 8D(2)(ii) should be deleted.

4. On the contrary, the Ld. D.R. submitted that the assessee has made long term borrowings to the tune of Rs.3.51 crores while the investment made in the partnership firm is Rs.2.44 crores. Accordingly, he submitted that part of interest expenditure was rightly disallowed by the A.O.

5. We heard the rival contentions and perused the record. We have also gone through the Balance sheet filed by the assessee and noticed that the assessee is

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having own funds of Rs.3.94 crores and Rs.4.38 crores respectively as on 31.3.2015 and 31.3.2016, while the investment made in the partnership firm stands at Rs.2.66 crores and Rs.2.44 crores as on 31.3.2015 and 31.3.2016 respectively. Since the own funds available with the assessee is more than the value of investment, the presumption is that the own funds have been used to make investment in partnership firm. This is so held by Hon'ble Karnataka High Court in the case of Micro Labs Limited (supra). In this case, the Hon'ble Karnataka High Court extracted the order passed by the Tribunal on the issue of disallowance made u/s 14A of the Act and it reads as under:-

“40. We have heard the rival submissions. A copy of the availability of funds and investments made was filed before us which is at pages 38 to 42 of the assessee's paperbook and the same is enclosed as ANNEXURE-III to this order. It is clear from the said statement that the availability of profit, share capital and reserves & surplus was much more than investments made by the assessee which could yield tax free income.

41. The Hon'ble Bombay High Court in Reliance Utilities & Power Ltd. 313 ITR 340 (Bom) has held that where the interest free funds far exceed the value of investments, it should be considered that investments have been made out of interest free funds and no disallowance u/s. 14A towards any interest expenditure can be made. This view was again confirmed by the Hon'ble Bombay High Court in *CIT v. HDFC Bank Ltd.*, ITA No.330 of 2012,

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judgment dated 23.7.14, wherein it was held that when investments are made out of common pool of funds and non-interest bearing funds were more than the investments in tax free securities, no disallowance of interest expenditure u/s. 14A can be made.

42. In the light of above said decisions, we are of the view that disallowance of interest expenses in the present case of Rs.49,42,473 made under Rule 8D(2)(ii) of the I.T. Rules should be deleted. We order accordingly."

The Hon'ble Karnataka High Court agreed with the view taken by the Tribunal and held as under:-

"The aforesaid shows that the Tribunal has followed a decision of the Bombay High Court in the case of *CIT v. HDFC Bank Ltd.* [2014] 366 ITR 505/226 Taxman 132 (Mag.)/49 taxmann.com 335. When the issue is already covered by a decision of the High Court of Bombay with which we concur, we do not find any substantial question of law would arise for consideration as canvassed."

6. In the case of Reliance Industries Limited (supra), the Hon'ble Supreme Court upheld the view expressed by Hon'ble Bombay High Court that no disallowance out of Interest expenditure is called for u/s 36(1)(iii) of the Act, when the own funds is more than the value of investments. The same principle was followed for the purpose of disallowance to be made u/s 36(1)(iii) of the Act in the case of Reliance Utilities and Power Ltd (supra), which was in turn followed for the purpose of

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disallowance to be made u/s 14A of the Act in the case of HDFC Bank Ltd (supra).

7. Accordingly, we set aside the order passed by Ld. CIT(A) on the issue of disallowance made under rule 8D(2)(ii) and direct the A.O. to delete the disallowance made out of interest expenditure.

8. The A.O. has also made disallowance of Rs.1.17 lakhs from out of administrative expenses under rule 8D(2)(iii). Since no argument was advanced against the said disallowance, we confirm the order passed by Ld CIT(A) on this issue.

9. The assessee has also raised many other grounds. They are general in nature and do not require adjudication.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 24.6.2020

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 24th June, 2020.
VG/SPS

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Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.