

आयकर अपीलिय अधीकरण, न्यायपीठ –“B” कोलकाता,  
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA  
[Before Hon’ble Shri J.Sudhakar Reddy, AM and Hon’ble Shri A. T. Varkey, JM

ITA No. 2091/Kol/2019  
Assessment Year: 2016-17

M/s. Aarkay Investments Pvt. Ltd. PAN: AACCA 2455N	Vs.	A.C.I.T, Cir-4(1), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	14.09.2020
Date of Pronouncement	23 .09.2020
For the Appellant	Shri A.K. Tulsyan, FCA, Ld. AR
For the Respondent	Smt. Ranu Biswas, Addl. CIT/Ld.DR

ORDER

Shri A. T. Varkey, JM

This is an appeal preferred by the assessee against the order of Ld. CIT(A), 2, Kolkata dated 06-08-2019 for the assessment year 2016-17.

2. Sole ground of appeal of assessee is against the action of the Ld. CIT(A) in confirming the impugned addition of Rs. 5,48,977/- made u/s. 14A of the Income-tax Act, 1961 (in short, hereinafter referred to as the ‘Act’)/ Read With Rule 8D(2)(ii) of the Income-tax Rules, 1962 ( in short, hereinafter referred to as the ‘ Rules’).

3. Brief facts of the case as noted by the AO are that the assessee company has declared its total income of Rs.6,13,67,670/-. Later on the case was selected for scrutiny through CASS. The AO notes that the assessee is a NBFC (Non-Banking Fiancé Company) registered by the Reserve Bank of India..The assessee company has income by way of interest on loans, dividend, profit on sale of investment etc. The AO also noted that the assessee had shown exempt income. However, assessee company has suo motu disallowed only at Rs. 3,17,748/-. So the AO applied Rule 8D and made addition of Rs.5,48,997/- u/s. 14 of the Act/Read With Rule 8D(2)(ii) of the ‘Rules’ . Aggrieved, the

assessee preferred an appeal before the Ld. CIT(A), who was pleased to confirm the said action of the AO. Aggrieved, the assessee is before us.

4. We have heard both the parties and perused the records. We note that assessee company had share capital of Rs.57,52,000/- and reserve & surplus of Rs.147,21,76,110/- as on 31-03-2016. Thus, assessee's total own funds comes to Rs.147,79,28,110/- and total investment made by the assessee is only to the tune of Rs. 34,42,94,039/-. From the aforesaid fact the assessee claimed that since its total own funds is much higher than the investment made by it, Rule 8D(2) (ii) read with section 14 of the Act does not arise. According to assessee, from the above facts discussed, the question of investment being made out of borrowed fund does not arise. It was also pointed out by Shri A.K. Tulsyan, FCA, the Learned Authorised Representative ( in short, the Ld. AR) of the assessee that no fresh investment has been made by the assessee during the assessment year under consideration and since the investment made in shares is fully covered by the assessee's own fund, disallowance of interest made by the AO by applying Rule 8D(2) (ii) is unwarranted . And cited the decision of the Hon'ble Bombay High Court in the case of *HDFC Bank Ltd. v. DCIT (2014) 366 ITR 505(Bom HC)* has held “ *where assessee's own funds and other non-interest bearing funds were more than investment in tax free securities, impugned order passed by the Assessing Officer disallowing a part of interest payments under section 14A of the Act ( read with rule 8D(2)(ii) of I.T Rules, 1962 ) needs to be set aside*”. We note that Hon'ble Bombay High Court in the case of *CIT v. Reliance Utilities and Power Ltd. (2009) 313 ITR 340(Bom HC)* and in the cases of *East India Pharmaceutical Works 224 ITR 627 (SC)* & *Woolcombers 134 ITR 219 (Cal)* have laid the proposition of law that when there are both interest free funds and interest bearing funds, the presumption is that interest free funds were utilized for interest free investment and advances. Thus, we note that factual matrix discussed supra, the assessee had total own funds more than Rs 147 crores and the total investment made only to the tune of Rs. 34 crores, therefore, the presumption in the cases of *Reliance Utilities & Power Ltd* supra is clearly applicable and the Ld. DR could not demonstrate that this presumption is factually incorrect, therefore, the disallowance made under section 14A/ Read With Rule

8D(2)(ii) of the Rules, was not warranted. Therefore, it is directed to be deleted.

5. In the result, the appeal of assessee is allowed.

Order is pronounced in the open court on 23 September 2020

Sd/-  
( J. Sudhakar Reddy)  
Accountant Member

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 23 September 2020

\*\*PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant –M/s. Aarkay Investments Pvt. Ltd P-46A, Radha Bazar Lane, Kolkata-700 001.
2. Respondent – The ACIT, Cir-4(1), Aaykar Bhawan, P-7 Chowringhee Sq., Kolkata-700 001.
3. CIT(A)-, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar