

आयकर अपीलीय अधिकरण, 'डी' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI
श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.470/Chny/2018

(निर्धारणवर्ष / Assessment Year: 2012-13)

M/s. Spincotech Pvt.Ltd., New no.4, Vaidyaram Street, T.Nagar, Chennai-600 017.	Vs	The Deputy Commissioner of Income Tax, Corporate Circle -6(2), Chennai-600 034.
PAN:AAFCS9992P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. R.Vijayaraghavan, Advocate
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. AR.V.Sreenivasan , Addl.CIT

सुनवाई की तारीख/Date of hearing	:	27.10.2020
घोषणा कीतारीख /Date of Pronouncement	:	27.10.2020

आदेश / ORDER

PER G.MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-15, Chennai dated 27.11.2017 and it pertains to assessment year 2012-13.

2. The assessee has raised the following grounds of appeal:-

“1. The order of The Commissioner of Income tax (Appeals) is contrary to law, facts and circumstances of the case.

2. The Commissioner of Income tax (Appeals) erred in confirming the disallowance u/s.14A of ₹9,06,067/-.

3. The Commissioner of Income tax (Appeals) ought to have appreciated that no part of the borrowed funds were utilised for making investments and hence no part of the interest payable on borrowing can be disallowed.

4. The Commissioner of Income tax (Appeals) ought to have appreciated that investment of Rs.7,35,02,8951 - was in a firm M/s.Chiral Solutions in which the Assessee had made initial investment of Rs.1, 50,00,0001 - for the assessment year 2009-10 and other increments were on account of share of profit of the firm accruing to the Appellant and not fresh investment.

5. The Commissioner of Income tax (Appeals) ought to have appreciated that investment in the firm was for strategic reasons and hence there cannot be disallowance u/s.14A in respect of strategic investments.

6. The Commissioner of Income tax (Appeals) ought to have appreciated that investments in mutual funds were out of own funds and in fact profit for the year was more than the investments made in mutual funds and hence no part of the interest can be disallowed under Section 14A.

7. The Commissioner of Income tax (Appeals) ought to have appreciated that as the Appellant had not spent any amount for receiving income from the firm or mutual fund and hence there can be no disallowance of expenditure for earning the exempted income."

3. Brief facts of the case are that the assessee company is carrying business of suppliers of specialized scientific & laboratory equipments filed its return of income for the assessment year 2012-13 on 28.09.2012 declaring total income of ₹ 12,34,51,680/-. The case was selected for scrutiny and during the course of assessment proceedings, it was noticed that the assessee has earned exempt income from units to the tune of ₹ 22,43,917/-, however, not made any disallowance towards expenses relatable to exempt income, therefore called upon the assessee to file necessary details of exempt income including expenses incurred in relation to exempt income. The assessee has also submitted the

details of exempt income and has also furnished total investments as on 31.03.2012 at Rs. 9.91 crores and total value of assets on 31-03-2012 which was at Rs. 39.09 crores/-. The Assessing Officer after considering the submissions of the assessee observed that although the assessee has earned huge exempt income but has failed to disallow expenses relating to exempt income and hence was of the opinion that it is unrealistic to state that none of the expenses including salary, administrative expenses can be attributable to earning of exempt income and accordingly invoked Rule 8D of Income Tax Rules and determined the disallowance of interest of ₹ 49,96,777/- under Rule 8D(2),(ii) and ₹ 4,09,920/- under Rule 8D(2)(iii) and thus made total disallowance of ₹ 9,06,067/-

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the Commissioner of Income-tax (Appeals), the assessee has challenged the disallowances computed by the Assessing Officer u/s.14A towards interest expenditure on the ground that the assessee is having interest free funds being equity share capital and free reserves as on 31.12.2012 at ₹ 25,77,00,000/- as against total value of investments as on 31.03.2012 was at ₹ 9.9 crores,

which is far less than the interest free funds available with the assessee and therefore no disallowance of interest expenditure is called for. As regards disallowance of other expenses, it was submitted that the Assessing Officer has taken total value of investments including investments in partnership firm and investments in mutual funds and to compute average value of investments, but fact remains that the value of investments in partnership firm in the year when it made was at Rs.1.50 crores only and the said investment was further increased on account of profits from the investments accrued on every year. It was further submitted that although dividend is exempt from investments in mutual funds, but profit from sale of investments is taxable under the head capital gains and hence no disallowance is called for in respect of investments made in mutual funds under Rule 8D(2)(iii) of I.T.Rules, 1962. The learned CIT(A) after considering the submissions of the assessee and has taken note of certain judicial precedents including the decision of ITAT., Chandigarh Bench in the case of ACIT Vs.Anil Kumar Singhania (2014) 51 ITR 98) observed that there is no error in the findings recorded by the Assessing Officer to disallow the interest expenditure under the 2nd limb of Rule 8D on pro rata basis because from assessment year 2008-09

onwards disallowance u/s.14A needs to be computed in accordance with prescribed formula provided under Rule 8D of I.T.Rules, 1962, whether or not the assessee is having interest free funds. Similarly, as regards disallowance under 3rd limb of Rule 8D, the learned CIT(A) observed that when the assessee is having common expenses, it cannot be ruled out the possibilities that certain portion of expenditure would have been incurred for the purpose of investments which yield exempt income, accordingly rejected the arguments of the assessee and confirmed the addition made by the Assessing Officer. Aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

5. The learned AR for the assessee submitted that the CIT(A) has erred in confirming interest disallowance under 8D(2)(ii) of I.T.Rules, 1962, despite the fact that the assessee is having sufficient own funds which is more than the amount of investments which yield exempt income. In this regard, he relied on the judgement of Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (2014) 366 ITR 505. As regards disallowance under 3rd limb of Rule 8D, the learned AR submitted that investments in partnership firm and investments in mutual funds which are short term and debt funds

liable for capital gains cannot be considered for the purpose of determining average value of investments.

6. The learned DR on the other hand, submitted that from the assessment year 2008-09 onwards disallowance contemplated under section 14A should be computed in accordance with prescribed method provided under Rule 8D of I.T.Rules,1962 and accordingly there is no error in the computation of disallowance by the Assessing Officer and hence, the learned CIT(A) was right in confirming the addition towards disallowance u/s.14A of the Act.

7. We have heard both the parties, perused the material on record and gone through the orders of authorities below. As regards disallowance of interest expenditure under Rule 8D(2)(ii), it is well settled principle of law that when sufficient own fund is available, which is over and above the value of investments, then the question of disallowance of interest expenditure does not arise. This principle is supported by the decision of the Hon'ble Bombay High Court in the case of HDFC Bank Ltd.(supra), where it was held that assessee's capital, profit, reserves, surplus and current account deposits were higher than the investments in tax free securities would have to be presumed that investments made by the

assessee would be out of interest free funds available with the assessee and no disallowance was warranted u/s.14A of the Act. In this case, the assessee has made out a case with necessary evidence that it has interest income free funds being share capital and surplus reserve in excess of investments which yield exempt income. Therefore, we are of the considered view that the Assessing Officer as well as CIT(A) have erred in disallowing interest expenditure under Rule 8D(2) of Income Tax Rules, 1962. Accordingly, we direct the AO to delete interest disallowances under rule 8D(2)(ii) of IT Rules 1962.

8. As regards disallowance of expenditure @ 0.5% average value of investment under 3rd limb of Rule 8D(2)(iii), we find that the assessee has made an argument in light of investments in the partnership firm in the year 2008 and further stated that initial investment at ₹ 1.50 crores only to be taken for computing average value of investments. Similarly as regards investments in mutual funds, it was the contention of the assessee that when gain from transfer of mutual fund is taxable under the head capital gains even though dividend is exempt from tax, those investments should be excluded from the purview of average value of investments. We find that the Assessing Officer has taken value of investments in

partnership firm as on 31.03.2012 on the basis of amount disclosed in the financial statements, whereas the assessee claimed that original investment was at ₹ 1.5 crores only and remaining balance was out of accrued profit of the firm which needs to be excluded while computing average value of investments. This aspect needs verification from the Assessing Officer because the facts are not clear as the Assessing Officer stated that investments in partnership firm is at ₹ 7.35 crores, whereas the assessee claimed investment in partnership firm is ₹ 1.5 crores. Similarly, as regards investments in mutual funds, the assessee claims that investment in mutual funds which suffers capital gain tax needs to be taken out of average value of investments. We have given our thoughtful consideration to arguments of the assessee in light of provisions of section 14A of the Act, and we are of the considered view that what is to be considered in exempt income in form of dividend received by an assessee, but not capital gain derived on transfer of such investments to decide applicability of disallowances of expenditure. If dividend from mutual fund is exempt from tax, then certainly expenditure relatable to such exempt income needs to be disallowed. In this case, there is no clarity whether any exempt

income is received from such investments from mutual funds. Further, receipt of exempt income is a precondition for including investments in average value of investments, because investments which do not generate exempt income for the year cannot be included in average value of investments. In this case, the fact with regard to nature of investments and whether any exempt income was earned from investment is not clear from the orders of the lower authorities. Therefore, to ascertain correct facts with regard to nature of investments, the issue needs to be go back to the file of the Assessing Officer. Therefore, we remit issue relating to computation of disallowances under 3rd limb of Rule 8D regarding 0.5% of average value of investments to the file of the Assessing Officer to reconsider the issue. The Assessing Officer, is therefore, directed to consider the investments made in partnership firm as well as mutual funds while computing average value of investments in accordance with law.

10. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 27th October, 2020

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष / Vice-President

Sd/-
(जी.मंजुनाथ)
(G. Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 27th October, 2020
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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