

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.1700/Bang/2019 : Asst.Year 2016-2017

M/s.Alphagrep Securities Pvt.Ltd. Ground Floor, Frontline Grandeur No.14, Walton Road Bengaluru - 560 001. PAN : AAACW4533B.	v.	The Dy.Commissioner of Income-tax, Circle 1(1)(1) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.C.Ramesh, CA
Respondent by : Sri.Priyadarshi Mishra, JCIT-DR

Date of Hearing : 04.11.2020	Date of Pronouncement : 04.11.2020
-------------------------------------	---

ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 10.06.2019. The relevant assessment year is 2016-2017.

2. The solitary issue raised is whether the CIT(A) was justified in confirming the A.O.'s further disallowance of Rs.66,830, u/s 14A r.w.r. 8D(2)(ii) of the I.T.Rules (assessee had already disallowed u/s 14A of the I.T.Act of Rs.2,88,457).

3. The brief facts of the case are as follow:

The assessee is a company. It is engaged in the business of consultancy services and stock trading activities. For the assessment year 2016-2017, the return of income was filed on 01.10.2016 declaring total income of Rs.34,99,00,649. During the relevant year, the assessee had made investments in equity shares and mutual funds amounting to Rs.11,07,43,921.

Considering the above investment, the assessee in the statement of total assessable income, had disallowed expenditure u/s 14A of the I.T.Act as per the formula laid down in Rule 8D(2)(iii) of the I.T.Rules amounting to Rs.2,88,457.

4. The assessment was concluded u/s 143(3) of the I.T.Act vide order dated 14.12.2018, wherein the A.O. had made an additional disallowance of Rs.66,813 under the provisions of section 14A of the I.T.Act r.w.r. 8D(2)(ii) of the I.T.Rules. In doing so, the Assessing Officer rejected the contentions of the assessee that no portion of the borrowed funds was utilized for the purpose of investment and the assessee was having sufficient own interest free funds to cover up for the investment.

5. Aggrieved by the order of the assessment making further disallowance of Rs.66,813, the assessee filed an appeal to the first appellate authority. Before the first appellate authority, the assessee raised several contentions. The main contention was that the assessee was having substantial interest free funds which far exceeds the investment considered by the A.O. for disallowance of proportionate interest expenses under Rule 8D(2)(ii) r.w.s. 14A of the I.T.Act. The CIT(A), however, rejected the contentions of the assessee and held that the assessee has not maintained separate books of account and outflow is from the common pool. With these observations, the CIT(A) justified the disallowance of proportionate interest under Rule 8D(2)(ii) r.w.s. 14A of the I.T.Act.

6. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned Counsel for the assessee has filed a paper book enclosing therein the balance sheet, the profit and loss account along with the schedules and the notes on accounts, for the year ending 31.03.2016. The learned AR reiterated the submissions made before the Income Tax Authorities.

7. The learned Departmental Representative, on the other hand, strongly supported the orders of the A.O. and the CIT(A).

8. We have heard the rival submissions and perused the material on record. On perusal of the financials of the assessee, which is enclosed in the paper book filed by the assessee, it is clear that the interest free funds in possession of the assessee far exceeded the investments made during the current year and even in the immediately preceding assessment year. For the year ending 31.03.2016, the assessee's share capital, reserves and surplus together is Rs.33,70,22,076, whereas, the current year's investment is only Rs.11,07,43,921. The only justification of the CIT(A) was that the investments are from a common pool, and therefore, a portion of the interest disallowance is warranted. The Hon'ble jurisdictional High Court in the case of *CIT v. Microlabs Ltd. [(2016) 383 ITR 490 (Kar.)]* had held that even in a situation where investments are from common pool, if non-interest bearing funds are more than the investments in tax free securities, no disallowance can be made u/s 14A of the I.T.Act r.w.r. 8D(2)(ii) of the I.T.Rules. The Hon'ble jurisdictional High Court while laying down the above

ratio, had relied on the following judgments of the Hon'ble Bombay High Court, viz., (i) *CIT v. Reliance Utilities & Power Ltd.* 313 ITR 340 and (ii) *CIT v. HDFC Bank Limited [(2014) 366 ITR 505 (Bom.)]*. The ratio of the Hon'ble jurisdictional High Court and the Hon'ble Bombay High Court, cited supra, squarely applies to the facts of this case. Accordingly, we delete the disallowance made by the A.O. u/s. 14A of the I.T.Act r.w.r 8D(2)(ii) of the I.T.Rules amounting to Rs.66,813. It is ordered accordingly.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 04th day of November, 2020.

Sd/-
(B.R.Baskaran)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 04th November, 2020.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-1, Bengaluru.
4. The Pr.CIT-1, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore