

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI A.K GARODIA, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.796/Bang/2019
Assessment Year : 2014-15

McDowell Holdings Ltd., Level 12, UB Towers, UB City, 24k Vittal Mallya Road, Bengaluru-560 001. PAN – AAECH 1162 E.	Vs.	The Income-tax Officer, Ward-4(1)(3), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri K.R Pradeep, Advocate
Respondent by	:	Shri Muzaffar Hussain, CIT (DR)

Date of hearing	:	06.10.2020
Date of Pronouncement	:	27.10.2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against the order dated 22/02/2019 passed by Ld CIT(A)-9, Bangalore for assessment year 2014-15 on following grounds of appeal.

- “1. That the above order of the Authorities below in so far as it is against the assessee is against the law, facts, circumstances, natural justice, equity and all other known principles of law.*
- 2. That the total income computed and the total tax computed is hereby disputed.*
- 3. That the Learned authorities below erred in disallowing Rs. 5,97,95,329/- u/s 14A rwr 8D(2)(ii) of the Act.*
- 4. That the Learned authorities below erred in disallowing the interest without establishing that the borrowed funds and payment of interest had a direct nexus with exempt asset and income.*
- 5. That the Learned authorities below erred in disallowing Rs.31,45,250/- u/s 14A rwr 8D(2)(iii) of the Act solely on the premise that the same was disallowed by the assessee.*
- 6. That the Learned authorities below erred in failing to determine the exact disallowance as per law thereby overlooking the Circular No.014 (XL-35) dt.11.04.1955.*
- 7. The appellant denies the liabilities for interest u/s 234B and 234D of the Act. Further prays that the interest if any should be levied only on returned income.*
- 8. No opportunity has been given before the levy of interest u/s 234B and 234D of the Act.*
- 9. Without prejudice to the appellant's right of seeking waiver before appropriate authority the appellant begs for consequential relief in the levy of interest u/s 234B and 234D of the Act.*
- 10. For the above and other grounds and reasons which may be submitted during the course of hearing of this appeal, the assessee requests that the appeal be allowed as prayed and justice be rendered.”*

Brief facts of the case are as under:-

2. The assessee is engaged in the business of investment and financing. During the year under consideration, it earned dividend income of Rs.1,44,87,353/- and claimed the same as exempt. It was observed by Ld.AO in sec.154 proceedings that assessee disallowed sum of Rs.31,30,161/ u/s 14A of the Act. The AO noticed that the assessee held investments to the tune of Rs.62,60,32,177/- and had incurred interest expenditure of Rs.12,47,56,228/- on the loan of Rs.70,00,00,000/-. Ld.AO

took the view that, disallowance u/s 14A should be computed as per Rule 8D of the Income-tax. Rules. Ld.AO, accordingly, worked out disallowance u/s 14A R.w.R 8D2(ii) & (iii) at Rs.5,97,95,325/- and Rs.31,45,250/-respectively.

3. Aggrieved by order of Ld.AO, assessee preferred appeal before Ld.CIT(A).

4. Ld CIT(A) upheld the disallowance u/R 8D2(ii) since assessee failed to prove that interest expenditure was not attributable to exempt income earned. Ld.CIT(A) also opined that, assessee maintained mixed funds consisting of own and borrowed funds, and therefore it cannot be assumed that interest payment towards borrowed funds could not be attributable to investments made, from which assessee earned exempt income. Ld.CIT(A) also noted that assessee *suo moto* disallowed Rs.31,30,161/- and disallowance as u/s R.8.D2(iii) by Ld.AO was Rs.31,45,250/-. He thus restricted disallowance as computed by Ld.AO under R.8D(2)(iii).

5. Aggrieved by order of Ld.CIT(A) assessee is in appeal before us now.

6. At the outset we note that Ld.CIT(A) deleted disallowance u/R8D(2)(iii) and therefore Ground No.5-6 raised by assessee do not arise out of impugned order. Accordingly Ground No.5-6 becomes infructuous and dismissed.

7. The only issue that arises out of order passed by Ld.CIT(A) in respect of disallowance computed u/R8D(2)(ii) which is raised by assessee in Ground 2-3.

Ground No.2-3: Before us, Ld.AR submitted as under:-

(a) the investments are held by assessee since 2005-06 onwards and
(b) the inter corporate loan amounting to Rs.7000.00 lakhs was taken by the assessee during F.Y 2011-12.

8. It is also submitted that assessee repaid a part of secured loan during F.Y 2013-14 to Reliance Capital Ltd., amounting to Rs.11,56,830/-. The Ld A.R submitted that there is no nexus between interest expenditure and investments made in preceding year. He thus submitted that Ld.AO was not justified in invoking provisions of Rule 8D(2)(ii) for computing disallowance out of interest expenditure.

9. The Ld D.R, on the contrary, submitted that the Ld.AO rightly applied provisions of Rule 8D(ii) to compute disallowance and hence the disallowance. Ld.Sr.DR submitted that as assessee maintained mixed funds, it is the burden on assessee to establish the nexus. He further submitted that as the investments are old, the inter corporate loans taken by assessee are also in preceding year. He thus submitted no nexus needs to be established in the year of investments. However the year in which exempt income is earned nexus needs to be established. Ld D.R relied on decision rendered by *Hon'ble Supreme Court* in

the case of *Maxopp Investments Ltd. reported in 2018 91 taxmann.com 154* and also on decision rendered by *Hon'ble Punjab & Haryana High Court* in the case of *M/s Avon Cycle* in *ITA No.277 of 2013*.

10. We heard both sides and perused the record.

11. We notice that Ld.CIT(A) restricted disallowance to Rs.5,97,95,325/- u/R 8D(2)(ii) of the Income-tax Rule.

12. The Ld A.R took us through the paper book in order to demonstrate that investments held by assessee was purchased in preceding year and the assessee is holding them since 2005-06. He also took us through, the paper book to demonstrate the loan amounting to Rs.7000.00 lakhs were taken by it in January, 2012 and December, 2012. Accordingly, he submitted that the loan funds have not been used for making investments. We find some merit in the said contentions. We are of the view that there is no requirement to apply the provisions of Rule 8D(2)(ii), if assessee is able to prove that, there is no nexus between loan funds and investments. However, we notice that it is not clear as to whether assessee has raised these types of contentions before AO during the course of assessment proceedings. We notice that Ld.AO has not discussed these details. We are therefore of opinion that issue needs to be remanded to Ld.AO to examine details in order to find out existence nexus between the loan funds and investments, we restore this issue to the file of Ld.AO.

13. Ground No.7-9 becomes consequential in nature. Needless to say that Ld.AO is directed to grant proper opportunity of being heard to assessee in accordance with law.

14. In the result, the appeal filed by assessee stands party allowed for statistical purposes.

Order pronounced in the open court on 27th Oct, 2020.

Sd/-

(A.K GARODIA)
Accountant Member

Sd/-

(BEENA PILLAI)
Judicial Member

Bangalore,

Dated, the 27th Oct, 2020.

/Vms/

Copy to:

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

By order

Assistant Registrar, ITAT, Bangalore.

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-10-2020		Sr.PS
3.	Draft proposed & placed before the second member	-10-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-10-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-10-2020		Sr.PS/PS
6.	Kept for pronouncement on	-10-2020		Sr.PS
7.	Date of uploading the order on Website	-10-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-10-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS