

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "C-SMC" KOLKATA*

Before Shri Sanjay Garg, Judicial Member

आयकर अपील सं.य/ ITA No. 562/Kol/2020 Assessment Year:2012-13

Modern Hi-Rise Private Limited (Merger Company M/s. Himadri Dyes & Intermediates Ltd)23A Netaji Subhas road, 8 th Fl., Suite No.15, Kolkata-700 001. [PAN No.AAACH 7634Q]	बनाम/ V/s.	D.C.I.T,C.C-2(1), Kolkata
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

Hearing through video Conferencing

अपीलार्थी की ओर से/By Appellant	Mr. Ravi Tulsiyan, FCA, AR
प्रत्यर्थी की ओर से/By Respondent	Mr. Jayanta Khanra, JCIT, Sr.DR
सुनवाई की तारीख/Date of Hearing	10-02-2021
घोषणा की तारीख/Date of Pronouncement	10-02-2021

आदेश /O R D E R

The present appeal has been preferred by the assessee against the order dated 21-10-2020 of the Commissioner of Income-tax (Appeals)-20, Kolkata [hereinafter referred to as 'CIT(A)'].

2. The sole issue raised in this appeal is relating to the confirmation of the disallowance made by Learned Assessing Officer [hereinafter referred to as 'Ld. AO'] under section 14A of the Income-tax Act, 1961 [hereinafter referred to as the 'Act'] read with rule 8D of the Income-tax Rules 1962 [hereinafter referred to as the 'Rules']

in respect of expenditure relatable to earning of tax exempt dividend income.

3. At the outset, The Ld. Counsel for the assessee has submitted that the Ld. AO has not followed the prescribed procedure as envisaged in the provisions of section 14A of the Income-tax Act read with Rule 8D of the I.T Rules. That, the assessee itself computed the disallowance on account of administrative expenses. Considering the nexus between the investments and the expenditure attributable to such investments the assessee made suo motu disallowance of Rs. 61,692/-. However, the Ld.AO without following the mandate of the statute, computed the disallowance at Rs.69,32,909/- by straight way applying the formula of Rule 8D of the I.T Rules. That, as per provisions of section 14A of the Act, the Ld. AO firstly was required to go through computation made by the assessee in respect of suo motu disallowance made/disallowed by the assessee and before applying Rule 8D he should have recorded his dis-satisfaction to the method adopted by the assessee for making the suo motu disallowance.

4. The assessee preferred appeal before the Ld. CIT(A) and reiterated the same submissions. It was also contended before the Ld. CIT(A) that the total expenditure claimed by the assessee was at Rs. 39,10,766/-, therefore, the disallowance of expenditure in any manner cannot exceed the said amount. Considering the above submissions of assessee the Ld. CIT(A) restricted the disallowance to total expenditure claimed at Rs.38,49,074/-.

Being aggrieved by the order of the Ld. CIT(A), the assessee has come in appeal before this Tribunal.

5. I have heard the rival contentions of both the parties and gone through the record. Ld. Counsel for the assessee has submitted that only fresh investments of Rs. 10,67,692/- were made during the year under consideration. All the investments were old investments made in assessee's group company. That, no extra effort or day to day monitoring was required in respect of said investments. Considering the overall scenario, the assessee has made appropriate disallowance at Rs. 61,692/- .The Ld. AO without application of mind and without considering the assessee's computation of suo motu disallowance, has applied Rule 8D straight way in a mechanical manner.

Ld. Counsel for the assessee at this stage has prayed that some reasonable disallowance may be confirmed on this issue.

The Ld. DR, on the other hand, has relied on the findings of the lower authorities.

6. I have heard the rival contentions and gone through the record. After considering the rival contentions, I am of the view that the Ld. AO straight way applied Rule 8D of the I.T Rules without considering the method / calculation adopted by the assessee for making the suo motu disallowance. Considering the overall facts and circumstances of the case, in my view the disallowance of Rs. 2,00,000/- on account of administrative expenses relatable to earning of tax exempt dividend income will be justified. The disallowance made by the lower authorities is, therefore, restricted to Rs. 2,00,000/-

The appeal of the assessee stands partly allowed.

Order pronounced in open court at the close of the hearing on
Wednesday, 10th February, 2021.

दिनांक/Date- 10/02/2021
कोलकाता/kolkata
**PP/Sr.PS

Sd/-
(Sanjay Garg)
Judicial Member

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Modern Hi-Rise Pvt. Ltd (Merger Company M/s. Himadri Dyes & Intermediates Ltd.) 23A, Netaji Subhas Road, 8th Fl., Suite No. 15, Kolkata-700 001.
2. प्रत्यर्थी/Respondent-D.C.I.T, Central Circle-2(1), Aaykar Bhavan Poorva, 110 Shantipally,Kolkata700 107.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/ By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,कोलकाता ।