

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'SMC' BENCH MUMBAI**

**BEFORE: SHRI M.BALAGANESH, AM
&
SHRI PAVAN KUMAR GADALE, JM**

**ITA No.4301/Mum/2019
(Assessment Year :2016-17)**

M/s. RST India Private Limited Ground Floor 7, Rahimtulla House, Homji Streer, Fort Mumbai - 400001	Vs.	Assistant Commissioner of Income Tax Circle-2(3)(1) Mumbai
PAN/GIR No.AACR1838C		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Sanjay Sethi
Date of Hearing	17/02/2021
Date of Pronouncement	08/03/2021

आदेश / ORDER

PER M. BALAGANESH (A.M.):

This appeal in ITA No.4301/Mum/2019 for A.Y.2016-17 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-6, Mumbai in appeal No.CIT(A)/IT-42/2018-19 dated 27/05/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/11/2018 by the Id. Circle 2(3)(1), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance made u/s.14A of the Act amounting to Rs.5,35,981/- in the facts and circumstances of the instant case.

3. None appeared on behalf of the assessee. We have heard the Id. DR and perused the materials available on record. We find that the assessee is a private limited company deriving income from agriculture business, lease rent income and income from other sources. We find that the Id. AO had observed that assessee had earned income from agriculture as well as from non-agriculture division during the year. The receipts from agriculture business was Rs.5,11,643/-. The assessee had disallowed loss incurred from agri-division of Rs.31,77,677/- in the return. When show-caused by the Id. AO as to why the provisions of Section 14A of the Act r.w. Rule 8D of the Rules be not imposed on the assessee, the assessee vide reply dated 26/11/2018 and 28/11/2018 submitted the working of disallowance u/s.14A along with summary of assets of agri and non-agri division, separate profit and loss account for agri division and the details of administration expenses incurred in both the divisions. The assessee pleaded that the loans on which interest was paid were not related to agri business of the assessee and that the interest paid on overdraft facility had been used only for non-agri division. It was further submitted that for agricultural activities, interest free loans were taken from Shri Dilip De, who is one of the Directors of the company. It was also stated that the lease rent paid for agricultural activities were also disallowed by the assessee. Accordingly, he pleaded that no disallowance of interest could be made under the second limb of Rule 8D(2) of the Rules. The Id. AO observed on perusal of the separate profit and loss accounts of the agri and non-agri division that assessee has incurred

Rs.36,89,320/- as expenses. He observed that total expenses related to agri division should have been disallowed by the assessee as this expenditure is directly related for earning exempt income but the same was not done according to the Id. AO. Apart from this, the Id. AO observed that assessee had incurred common expenses such as postage, courier and transportation etc which are also to be apportioned proportionately in the agri division. Additionally the assessee has not made any disallowance of expenses for managing the investments. So on going through the books of accounts of the assessee together with separate profit and loss account, the Id. AO finally proceeded to make disallowance u/s.14A of the Act r.w.Rule 8D(2) of the Rules in all the three limbs and arrived at the disallowance as under:-

Under Rule 8D(2)(i)	-	Rs.36,89,320/-
Under Rule 8D(2)(ii)	-	Rs.4,65,123/-
Under Rule 8D(2)(iii)	-	Rs. 70,858/-
		=====
Total		Rs.42,25,301/-
Less expenses disallowed by the assessee towards agricultural income		Rs.31,77,677/-
Less exempt income from agri business		Rs.5,11,677/-
		=====
Remaining amount for disallowance		Rs.5,35,981/- (u/s.14A)
		=====

3.1. We find that the Id. CIT(A) placed reliance on the order passed by his predecessor in assessee's own case for A.Y.2015-16 and by following the same, upheld the disallowance made u/s.14A of the Act r.w.Rule

8D(2) of the Rules. Before us, none appeared on behalf of the assessee to drive home the point as to whether any appeal has been preferred by the assessee against the order passed by the Id. CIT(A) for A.Y.2015-16 before the Tribunal. When this was put to Id. DR , the Id. DR also expressed his inability to address the same. Hence we are constrained to adjudicate this issue for this assessment year afresh.

3.2. It is not in dispute that the only activity of the assessee which is exempt from tax is the agriculture activity and that during the year assessee had incurred loss from agricultural activity amounting to Rs. 31,77,677/- which was duly disallowed by the assessee in the return of income. This goes to prove that the entire expenses attributable to the agricultural division had already been subject matter of voluntary disallowance by the assessee. Hence, the other expenses incurred are only expenses attributable to the regular business of the assessee and it could be safely concluded that the same cannot be construed to have incurred for the purpose of earning any exempt income. We find that assessee had vehemently pleaded before the lower authorities that interest paid on loans are used only for the purpose of non-agri division activities of the assessee which does not require any apportionment towards the agri division. This fact has not been controverted by cogent evidences by the lower authorities. Hence, there cannot be any disallowance of interest under second limb of Rule 8D(2) of the Rules. As far as the disallowance made under first and third limb of rules, the same gets subsumed in the disallowance of loss incurred from agricultural division which had already been made by the assessee in the return of income. Accordingly, there cannot be any disallowance of expenses separately u/s.14A of the Act in the peculiar facts of the instant case. Accordingly, the ground No.1 raised by the assessee is allowed.

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

Order pronounced on 08/03/2021 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 08/03/2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai