

आयकर अपीलीय अधीकरण, न्यायपीठ –“A” कोलकाता,
 IN THE INCOME TAX APPELLATE TRIBUNAL “A “ BENCH: KOLKATA
 [Before Hon’ble Shri J. Sudhakar Reddy, AM and Hon’ble Shri A. T. Varkey, JM

ITA No.2379/Kol/2019
 Assessment Year: 2011-12

M/s. Williamson Magor & Company Ltd PAN: AAACW2369P	Vs.	DCIT, Cir-6, Kolkata
Appellant		Respondent

AND

ITA No.2429/Kol/2019
 Assessment Year: 2011-12

ACIT, Cir-6(2), Kolkata	Vs.	M/s. Williamson Magor & Company Ltd. PAN: AAACW2369P
Appellant		Respondent

Date of Hearing	02-03-2021
Date of Pronouncement	15.03.2021
For the Appellant/Assessee	Priyanka Salapurua, Ld. AR
For the Respondent/Assessee	Shri Mithilesh Kr. Jha, CIT, Ld.DR

ORDER

Shri J.Sudhakar Reddy, AM

These are cross appeals filed by the assessee and revenue both are directed against the order of the Learned Commissioner of Income-tax (Appeals), 2, Kolkata dated 29-08-2019 for the assessment year 2011-12 passed u/s. 250 of the Income-tax Act, 1961 (hereinafter, referred to as the ‘Act’)

2. There was a delay of 07 days in filing this Revenue’s appeal. After perusing the petition for condonation of delay, we are convinced that the Revenue was prevented by sufficient cause from filing this appeal in time before this Tribunal. Thus, we condone the delay and admit this appeal.

We have heard Shri Mithilesh Kr. Jha, CIT, Ld.DR and Priyanka Salapurja, Ld. Counsel for the assessee.

3. On a careful consideration of the facts and circumstances of the case and perusal of the papers on record and the orders of the authorities below we hold as follows:-

4. We first take up the revenue's appeal-ITA No. 2429/Kol/2019 for the A.Y 2011-12.

Grounds of appeal read as follows:-

“ 1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in giving direction for re-computation the disallowance u/s. 14A r.w Rule 8D of the Income Tax Rules, 1962 made by the AO relying on the judicial pronouncement of the Hon'ble ITAT, Kolkata without appreciating the fact that interest bearing loan fund was utilized in dividend earning investment made in group companies.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact as stated in CBDT's Circular No. 05/2014 that those investments may be taken into consideration for computation under Rule 8D which have not earned any exempt income during the year.

3. That the appellant craves for leave to add, delete, amend or modify any ground or at the time of appellate proceedings.

5. The Ld. CIT(A) has applied the ratio of decision of Hon'ble Jurisdictional High Court in the case of REI Agro Ltd Vs. DCIT in G.A No. 3581 of 2013 and had given the directions to the Ld. AO to compute the disallowance u/s. 14A of the Act as per the proposition of law laid down in that judgment. Thus, we find no infirmity in the order of the Ld. CIT(A). We uphold the same and dismiss these grounds of revenue's appeal.

6. Now, we take up the assessee's appeal-ITA No. 2379/Kol/2019 for the A.Y 2011-12.

Grounds appeal raised by the assessee reads as under:-

1. For that the order dated 29th August, 2019 passed by Ld. Commissioner of Income Tax (Appeals)-2, Kolkata u/s. 250 of the Income Tax Act, 1961 ("the Act") is against the principle of natural justice and bad in law.

2.(a) For that the Ld. Commissioner of Income Tax (Appeals) erred in confirming the calculation with regard to disallowance of expenses under Rule 8d(2)(i) made by the Assessing Officer in the Order under section 143(3) of the Act.

(b) For that on the facts and in circumstances of the case, the order passed by the Ld. Commissioner of Income Tax (Appeals) did not mention about considering the net interest expenses while calculating the

disallowance under Rule 8D(2)(ii) ignoring the fact that this same proposition was accepted by the Assessing Officer in the earlier Assessment Years.

3. (a) For that the order passed by the Ld. Commissioner of Income Tax (Appeals) failed to appreciate the fact that the Hon'ble High Court has struck down section 43B(f) of the Act which deals with the Leave Encashment in the case of Exide Industries Ltd vs. Union of India [292 ITR 470] and thus the same is not disallowable.

4. For that the Appellant craves leave to amend, add or delete any of the ground mentioned above at any time before the final hearing of the Appeal.

7. Ground no. 1 is general in nature. It requires no adjudication. The same is dismissed.
8. Ground no. 2(a) is the issue of disallowance made u/s. 14A r.w Rule 8D(2)(i) and 8D(2)(ii).
9. After hearing the rival contentions, we find that in absence of any cogent material/evidence on record, the order of the Ld. AO was upheld by the ld. CIT(A) on this issue. We find that the assessee in this case has suo motu disallowed Rs.4,86,664/- u/s. 14A of the Act. The Ld. AO held that he was not satisfied with the explanation given by the assessee and was not satisfied with the correctness of the claim made by the assessee. The Ld. AO stated that direct expenditure relatable to earning of exempt income as per appendix 4(b) of the Tax Audit Report is Rs. 1,60,950/-. This quantum of disallowance was challenged by the assessee under Rule 8D(2)(i) of the I.T Rules. Smt. Priyanka Salapurua, Ld. Counsel for the assessee has submitted that the Ld. AO made this disallowance without any calculation and without any basis. On an examination of facts, we find that the Ld. AO made the disallowance, based on Tax Audit Report. Thus, we uphold the order of the Ld. CIT(A) on this issue and dismiss ground no. 2(a) of assessee's appeal.
10. Vide Ground no. 2(b) the assessee seeks direction from the Bench that net interest expenditure should be considered while calculating the disallowance made under Rule 8D(2)(ii) of the I.T Rules, 1962. Ms. Priyanka Salapurua, Ld. Counsel for the assessee has not submitted any calculation or other information in support of this ground. The Ld. AO at page-3 held that interest on borrowing obtained for specific purposes is deleted from the total interest expenses of the assessee and only the balance is disallowed under Rule 8D(2)(ii). In the absence of any cogent material filed by the assessee, we uphold the

order of the Ld. CIT(A) on this issue and dismiss ground no. 2(b) of assessee's appeal.

11. Ground no. 3(a) of assessee's appeal has to be rejected as this issue has been adjudicated by the Hon'ble Supreme Court against the assessee in the case of Exide Industries Ltd Vs. U.O.I (2020) 425 ITR 1(SC). Respectfully following the same, we dismiss this ground (3a) of assessee's appeal. Ground no. 4 is general in nature.

12. In the result, both the cross appeals of revenue and assessee are dismissed.

Order is pronounced in the open court on 15th March, 2021

Sd/-
 (Aby. T. Varkey)
 Judicial Member

Dated : 15th March, 2021

Sd/-
 (J. Sudhakar Reddy)
 Accountant Member

**PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Revenue: The DCIT, Cir-6/ACIT, Cir-6, Aaykar Bhawan, P-7 Chowringhee Square, Kolkata-700 069.
2. Responder /Assessee-M/s. Williamson Magor & Company Ltd, Four Mangoe Lane, Surendra Mohan Ghosh Sarani, Kolkata-700 001.
3. CIT(A)-, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

By order,

/True Copy,

Assistant Registrar