

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: HON'BLE JUSTICE P P BHATT, PRESIDENT
&
SHRI M.BALAGANESH, AM**

**ITA No.1704/Mum/2019
(Assessment Year :2015-16)**

DCIT-14(3)(1), Mumbai R.No.455, 6 th Floor Aayakar Bhavan Mumbai-400020	Vs.	M/s. Reliance Infrastructure 3 rd Floor, Reliance Centre Near Prabhat Colony Off. W.E. Highway Santacruz East Mumbai – 400 055
PAN/GIR No.AACCR7446Q		
(Appellant)	..	(Respondent)

Revenue by	Shri Vatsalya Saxena
Assessee by	Shri Jitendra Sanghvi
Date of Hearing	09/02/2021
Date of Pronouncement	27/04/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1704/Mum/2019 for A.Y.2015-16 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-22, Mumbai in appeal No. CIT(A)-22/DCIT-14(3)(1)/IT-10192/2017-18 dated 28/12/2018 (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 25/10/2017 by the Id. Dy. Commissioner of Income Tax-14(3)(1), Mumbai (hereinafter referred to as Id. AO).

2. The ground Nos. 1-3 raised by the Revenue are challenging the deletion of disallowance made u/s.14A of the Act.

2.1. We have heard rival submissions and perused the materials available on record. We find that assessee company is engaged in the business of generation, transmission and distribution of electricity. The assessee is a leading player in the country in the Engineering, Procurement and Construction (EPC) segment of the power and infrastructure sectors. The assessee is also engaged in implementation, operation and maintenance through Special Purpose Vehicles in various infrastructural areas.

2.2. We find that assessee had earned dividend income of Rs.27,55,59,525/- which was claimed as exempt u/s.10 of the Act in the return of income. We find that assessee had made suo moto disallowance of Rs.16,09,800/- towards expenses attributable to earning exempt income. We find that the Id. AO proceeded to apply the computation mechanism provided in Rule 8D(2) of the Rules and made disallowance under second and third limb thereon. Accordingly, total disallowance made by the Id. AO after reducing the suo moto disallowance made by the assessee u/s.14A of the Act r.w.Rule 8D(2) was worked out to Rs.208,38,55,287/-. We find that assessee has sufficient interest free funds in the form of share capital and reserves and surplus as tabulated in page 14 of the order of the Id. CIT(A), which is much more than the investments that had actually yielded exempt income to the assessee. Hence, following the ratio decidendi of the Hon'ble Jurisdictional High Court, in the case of HDFC Bank reported in 366 ITR 505, we hold that the Id. CIT(A) had rightly deleted disallowance of interest under second limb of Rule 8D(2) of the Rules. With regard to 8D(2)(iii) of the Rules, the

Id. CIT(A) had only directed the Id. AO to consider only investments which had actually yielded exempt income. This we find is in consonance with the decision of the Hon'ble Special Bench decision of Delhi Tribunal in the case of Vireet Investments reported in 165 ITD 27 and hence, we do not find any infirmity in the order of the Id. CIT(A) granting relief to the assessee in this regard. Accordingly, we direct the Id. AO to consider only those investments which had actually yielded exempt income for the purpose of making disallowance under Rule 8D(2)(iii) of the Rules and recompute the disallowance accordingly and thereafter reduce the voluntary disallowance made by the assessee in the return of income. Accordingly, the ground Nos. 1 – 3 raised by the Revenue are partly allowed.

3. The ground No.4 raised by the Revenue is challenging the deletion of expenses incurred on replacement of electricity meters amounting to Rs.7,66,72,484/-.

3.1. We have heard rival submissions and perused the materials available on record. We find that assessee had capitalised in its books of accounts, the cost of 88,186 meters amounting to Rs.12,02,86,487/-, out of which Rs.7,66,72,484/- pertaining to replacement of 63,619 meters. The assessee, however, claimed cost of Rs.7,66,72,484/- on replacement of old meters as deduction in its computation of income. The Id. AO by disregarding the entire contentions of the assessee in this regard, proceeded to treat the expenditure incurred on replacement of these old meters amounting to Rs.7,66,72,484/- as capital expenditure and granted depreciation amounting to Rs.86,25,654/- while completing the assessment.

3.2. We find that this issue has been decided in favour of the assessee for all the earlier assessment years by various orders of this Tribunal and various orders of the Hon'ble Jurisdictional High Court on the similar facts and circumstances in assessee's own case. We find that Id. CIT(A) had relied on the decision of the Hon'ble Jurisdictional High Court for A.Yrs 1999-2000 to 2004-05 wherein the Hon'ble Bombay High Court did not admit the departmental appeals in respect of this issue of expenditure on replacement of meters. We also find that this issue is also decided in favour of the assessee in assessee's own case in A.Y.2011-12 in ITA No.4345 and 3407/Mum/2015 dated 20/12/2017. Hence, by respectfully following the said decisions, we do not find any infirmity in the order of the Id. CIT(A). Accordingly, the ground No.4 raised by the Revenue is dismissed.

4. The ground No.5 raised by the Revenue is challenging the action of the Id. CIT(A) deleting the addition made on account of proportionate apportionment and allocation of head office expenses while calculating deduction u/s.80(IA) of the Act.

4.1. We have heard rival submissions and perused the materials available on record. We find that during the course of assessment proceedings, the Id. AO sought explanation from the assessee as to why the head office expenses should not be allocated among the various units to arrive at the correct profits derived from the eligible undertakings. The Id. AO disregarding the contentions of the assessee proceeded to allocate the head office expenses of Rs.114,00,77,526/- to various units and accordingly, deduction u/s.80IA of the Act was reduced to Rs.828,92,70,272/- as against Rs.942,93,47,798/- claimed by the assessee in the return of income. We find that this issue is squarely

covered in favour of the assessee in its own case for A.Y.2013-14 & 2014-15 in ITA No.1839 and 1840/Mum/2018 dated 06/11/2019 wherein it was held as under:-

“3.1 We have heard the rival submissions. We find that the Ld. AO had called for explanation from the assessee company as to why the head office expenses should not be allocated among the various units to arrive at the correct profits derived from the eligible undertakings for the purpose of computing deduction u/s 80IA of the Act. The assessee submitted that this issue has already been decided in its favour in earlier years. Since the department had not accepted the decision of appellate authorities and appeals preferred before the higher appellate forum were pending, the Ld. A.O in order to maintain judicial consistency and in order to keep the issue alive resorted to reduce the claim of deduction u/s 80IA of the Act in respect of these two eligible units to the extent of allocation of head office expenses. At the outset, we find that there is no dispute that these units are eligible for claiming deduction u/s 80IA of the Act. We find that the Ld. CIT(A) had granted relief to the assessee in respect of impugned issue by placing reliance on various decisions of this Tribunal in assessee’s own case passed up to A.Y 2010-11 and also on the decisions of Hon’ble Jurisdictional High Court in the assessee’s own case passed up to A.Y 2008-09. We find that the Ld. CIT(A) had also relied on the order passed his predecessor for A.Y 2012-13 and granted relief to the assessee. We find that Hon’ble Jurisdictional High Court in assessee’s own case for A.Y 2006-07 in Income Tax Appeal No. 2180 of 2011 dated 17.04.2014 had decided this issue in favour of the assessee, wherein it was held as under:

“5. In so far as the question (c) in relation to head office expenses is concerned, the findings of the facts by the ITAT for the prior assessment years have been referred to and if at all any reference needed, paragraphs 17 and 18 of the ITAT’s order are complete answers”. Therefore, the factual findings do not raise any substantial question of law in relation to disclaim as well.

3.2 Respectfully following the said decision, we do not find any infirmity in the order of the Ld. CIT(A) in granting relief to the assessee. Accordingly the ground No. 2 raised by the revenue is dismissed.”

4.2. Respectfully following the same, ground No.5 raised by the Revenue is dismissed.

5. The ground No.6 raised by the Revenue is challenging the action of the Id. CIT(A) as to whether the deduction u/s.80IA of the Act is allowable to the extent of gross total income or only to the extent of business income.

5.1. We have heard rival submissions and perused the materials available on record. We find that this issue has already been considered by the Hon'ble Jurisdictional High Court in assessee's own case for A.Y. 2001-02 in ITA No.1688 of 2009 dated 24/06/2013 wherein the question raised before the Hon'ble Bombay High Court and the decision rendered thereon by the Hon'ble Bombay High Court is as under:-

d) Whether on the facts and the circumstances of the case and in law, the ITAT is right in holding that the respondent is entitled to set off the deduction u/s.80IA of the Act against the gross total income computed and not against the net business income only?

The Hon'ble High Court at para 4 of order held as under:-

4) As regards Question (d), the learned Counsel for the parties agree that the said question is covered by the Judgment of this Court dated 4 February 2010 in Income Tax Appeal No.2432 of 2009 in the matter of CIT v/s. M/s. Tridors Laboratories Ltd. and the Judgment dated 25 March 2010 in Income Tax Appeal No.184 of 2007 in the matter of CIT v/s. M/s. Eskay KNIT (India) Ltd.. In view of the above, the issue being concluded in favour of the respondent assessee by the decision of this Court, we see no reason to entertain Question (d).

5.2. Since this issue is already covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court in assessee's own case, which has been followed by the Id. CIT(A), we do not find any infirmity in the order of the Id. CIT(A) in this regards. Accordingly, the ground No.6 raised by the Revenue is dismissed.

6. The ground No.7 raised by the Revenue is challenging the deletion of disallowance made u/s.14A of the Act while computing book profit u/s.115JB of the Act.

6.1. We have heard the rival submissions and perused the materials available on record. We find that assessee had made voluntary disallowance of expenses of Rs.16,09,800/- under clause (f) of Explanation -1 to Section 115JB (2) of the Act in the return of income. We find that the Special bench of Delhi Tribunal in the case of Vireet Investments reported in 165 ITD 27 had categorically held that computation mechanism provided in Rule 8D(2) of the Rules cannot be applied for making disallowance of expenses under Clause (f) of Explanation 1 to Section 115JB(2) of the Act. We find that the Special Bench of Delhi Tribunal had held that actual expenses debited to profit and loss account which are incurred for the purpose of earning exempt income need to be disallowed under Clause (f) of Explanation 1 to Section 115JB(2) of the Act. As stated supra, we find that assessee had already made disallowance of Rs 16,09,800/- voluntarily in the return of income which alone need to be considered for the purpose of computation of book profits u/s 115JB of the Act. Hence, no further disallowance need to be made thereon. Accordingly, we find that the Id. CIT(A) had rightly deleted the disallowance made by the Id. AO in this regard. Accordingly, the ground No.7 raised by the Revenue is dismissed.

7. The ground No.8 & 9 raised by the Revenue are general in nature and does not require any specific adjudication.

8. In the result, the appeal of the Revenue is partly allowed.

Order pronounced on 27/04/2021 by way of proper mentioning in the notice board.

Sd/-
(JUSTICE P P BHATT)
PRESIDENT

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 27/04/2021
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