

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "B" CHANDIGARH**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI R.L. NEGI, JUDICIAL MEMBER**

आयकर अपील सं./ITA Nos. 1160/Chd/2019

निर्धारण वर्ष / Assessment Year : 2014-15

Nahar Spinning Mills Ltd.,373, Industrial Area-A Ludhiana.	बनाम	Asstt. Commissioner Income Tax, Circle-7, Aayakar Bhawan, Rishi Nagar, Ludhiana.
स्थायी लेखा सं./PAN NO: AAACN5710D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

निर्धारिती की ओर से/Assessee by : Shri Navdeep Sharma, Advocate

राजस्व की ओर से/ Revenue by Sh. Ashok Kumar, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 09.02.2021

उद्घोषणा की तारीख/Date of Pronouncement : 06.05.2021

आदेश/Order

Per R.L. Negi, Judicial Member:

The assessee has filed the present appeal against the order dated 01/06/2019 passed by the Id. Commissioner of Income Tax (Appeal)-3 (hereinafter referred to as the Id. CIT(A) whereby the Id. CIT(A) partly allowed the appeal filed by the assessee against the assessment order passed U/s 143(3) of the Income Tax Act, 1961 (for short 'the Act') for the assessment year 2014-15.

2. Brief facts of the case are that the assessee engaged in the business of manufacturing and trading of cotton/ blended yarn, cloth and garments, filed its return of income for the year under

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consideration declaring total income of Rs. 137,51,95,480/-. The case was selected for scrutiny and accordingly, the A.O. passed assessment order U/s 143(3) of the Act determining total income of the assessee at Rs. 138,36,88,165/- under the normal provisions of the Act, after making addition of Rs. 22,44,117/- on account of disallowance U/s 14A read with Rule 8D of the Income Tax Rules, 1962 (in short, the Rules), addition of Rs. 57,26,985/- on account of disallowance U/s 36(1)(iii) of the Act and addition of Rs. 5,21,583/- on account of disallowance on unpaid commission. Further the A.O. determined the book profit of the assessee at Rs. 205,33,02,260/-.

3. The assessee challenged the assessment order before the Id. CIT(A). The Id. CIT(A) restricted the addition on account of disallowance U/s 14A read with Rule 8D of the Rules to the amount claimed as exempt U/s 10(34) of the Act, confirmed the addition of Rs. 57,26,985/- U/s 36(1)(iii) of the Act. Still aggrieved, the assessee is in appeal before this Tribunal.

4. The assessee has challenged the impugned order passed by the Id. CIT(A) on the following grounds:

1. a) *That the worthy CIT(A)-3, Ludhiana erred in law and on facts in upholding the applicability of rule 8D in spite of fact that the appellant itself computed the disallowance on proportionate basis u/s 14A of the Act.*

Directions may be given to compute the disallowance u/s 14A on proportionate basis as held in appellant own case in Assessment Year 2010-11.

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- b) *Without prejudice & in alternative, Worthy CIT(A)-3, Ludhiana,*
i) *further erred in law and on facts in not giving directions to compute the disallowance by taking the average total investment of Rs. 2,60,58,554/- on which the dividend exempt income accrued instead of total average investments of Rs. 6,85,93,500/-.*

Directions be given to compute the disallowance by considering only those investments on which exempt income is earned, as held by Hon'ble ITAT Special Bench in Vireet Investment Ltd...165 ITD 0027 (SB).

- ii) *further erred in law and on facts in not giving directions to compute the disallowance u/s 14A read with rule 8D, by excluding interest paid on term loan of Rs 27,51,22,000/-, interest on working capital loan of Rs. 36,23,57,000/- as well as other borrowing cost of Rs. 67,42,000/- and interest paid to parties Rs 5,05,000/- for business purposes which are directly attributable to business receipts subjected to tax.*

Directions be given to compute the disallowance by excluding the above-mentioned interest expenses while computing disallowance u/s 14A read with rule 8D.

- iii) *further erred in law and on facts in not giving directions to compute the disallowance u/s 14A read with rule 8D, by excluding proportionate administrative expenses or towards expenses directly relatable to earn the exempt income.*

Directions be given not to allocate any administrative expenses towards expenses directly relatable to earn the exempt income, since 0.5% of the total investments have already been considered for computing disallowance u/s 14A r.w.r.8D.

2. *That the Worthy CIT(A)-3, Ludhiana erred in law and on facts in upholding the addition/disallowance of Rs. 57,26,985 being disallowance of CC account, for purchase of fixed assets.*

Directions be given to delete the said disallowance as the appellant has sufficient own funds in the shape of capital and reserves."

5. At the outset, the Id. Counsel for the assessee submitted that the issue involved in this appeal is covered in favour of the assessee by the decision of the ITAT Chandigarh Bench rendered in the case of *Oswal Woolen Mills Vs ACIT ITA No. 37/Chd/2015* for the A.Y.

2010-11. In the said case, the authorities below had made addition on account of disallowance u/s 14A computed applying Rule 8D. During the course of arguments, the assessee furnished the working of the disallowance U/s 14A read with Rule 8D of the Rules on proportionate basis contending that the AO has wrongly applied the Rule 8D. The Tribunal after hearing the rival contentions of the parties, set aside the order passed by the Ld. CIT(A) confirming the addition on account of disallowance computed by the AO u/s 14A read with Rule 8D and directed the AO to restrict the addition to the working given by the assessee on proportionate basis. The Ld. Counsel further submitted that since the facts of the case and the issues involved in the aforesaid case are identical to the facts and the issues involved in the present case, the findings of the Ld. CIT(A) are contrary to the decision of the jurisdictional Tribunal. Therefore, the impugned order is liable to be set aside. The Ld. Counsel invited our attention to the working of disallowance placed on record in the present case and submitted that since the working is in accordance with the directions given by the Tribunal on identical set of facts in the case of *Oswal Woolen Mills Vs ACIT* aforesaid, the impugned order may be set aside and the AO may be directed to restrict the addition to the amount computed by the assessee in its working. Without prejudice, the Ld. Counsel for the assessee submitted that the disallowance should have been computed by taking average

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investment on which dividend income accrued instead of average of the total investment. The Id. Counsel relied on the decision of Special Bench of Delhi Tribunal in the case of *ACIT Vs Vireet Investment Ltd. ITA No. 165 ITD 07* (Special Bench), decision of Chandigarh Bench of the Tribunal in the case of *Ramesh Soft Solutions Pvt. Ltd. Vs ACIT ITA No. 477/Chd/2015* dated 14/08/2015 (Chandigarh) and *Nahar Polyfils Ltd. ITA No. 76/Chd/2017*. The Ld. counsel further contended that the disallowance should have been computed after excluding interest on working capital and termed loans. To substantiate his contention, the Id. Counsel relied on the judgments of the Hon'ble Supreme Court in the case of in the case of *Godrej & Boyce Manufacturing Co Ltd. Vs. DCIT 394 ITR 449 (SC)*, judgment of the Hon'ble High Court of Punjab and Haryana in the case of *CIT vs. Max India Ltd. 388 ITR 81 (Pb. & Haryana.)* decisions of the Mumbai Benches of the Tribunal in the case of *Bennett Coleman & Co Ltd. Vs. Addl. CIT 168 ITD 631 (Mum)* and *High Tech Engg. Vs. ITO 164 ITD 94 (Mum.)* and the decision of the Chandigarh Bench of the Tribunal in the case of *ACIT vs. Avon Cycles ITA No. 931/Chd/2013*.

6. On the other hand, the Ld. Departmental Representative (DR) supporting the order passed by the Ld. CIT(A) submitted that since the AO had computed the disallowance in accordance with the provisions of the Act and the Rules, the Ld. CIT has rightly upheld the addition made by the AO. However, the Ld. DR admitted that in the case of *Oswal Woolen Mills Ltd. Vs. ACIT* (supra) the

jurisdictional Tribunal has set aside the order passed by the Ld. CIT(A) upholding the disallowance computed under section 14A read with Rule 8D in the similar set of facts and directed the AO to restrict the disallowance to the amount computed by the assessee on proportionate basis.

7. We have heard the rival submissions of the parties and gone through the material on record including the cases relied upon by the Ld. Counsel for the assessee and the Ld. D.R. As pointed out by the Ld. counsel, the coordinate Bench of the Tribunal has dealt with the identical issue in case of *Oswal Woolen Mills Ltd. Vs. ACIT* (supra) and directed the AO to restrict the disallowance u/s 14A of the Act, to proportionate amount computed by the assessee. The findings of the coordinate Bench read as under: -

"4. Being aggrieved by the above order of the Assessing Officer, the assessee preferred appeal before the Ld. CIT(A). It was pleaded before the Ld. CIT(A) that the funds from which the investments were made were mixed funds. That the assessee was possessed of sufficient own / interest free funds to meet the investment in question. That as per law laid down by the Hon'ble jurisdictional High Court in the case of 'Bright Enterprises Ltd. vs CIT' (ITA No. 224 of 2013) dated 24.7.2015 (supra), wherein, it has been held that if there are interest free funds available to meet the investment, a presumption would arise that investment had been made out of the interest free funds generated or available with the company, therefore, no interest disallowance was attracted. It was also pleaded that the assessee had not incurred any expenses out of the administrative expenditure for the investment yielding dividend income. That the assessee made suo motu disallowance of administrative expenses incurred vis-a-vis total income earned by the assessee. However, the Ld. CIT(A) did not agree with the above contention of the assessee and upheld the disallowance made by the Assessing Officer.

5. Before us, the Ld. Counsel for the assessee has submitted a chart to show that the assessee was having sufficient interest free own funds in the shape of capital, reserves & surplus

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and cash accrual to meet the investments in question. A perusal of the said chart reveals that the total capital reserves and surplus of the assessee during the financial year under consideration 2009-10 were at Rs. 19405.71 lacs and the total cash accruals of the assessee during the year were at Rs. 11071.90 lacs. The total investment during the year including the own old investments were only at Rs. 5809.29 lacs, which shows that the own / interest free funds of the assessee were sufficient to meet the investments. The issue is, thus, covered by the various decisions of the Hon'ble High Courts including that of the Hon'ble Jurisdictional High Court in 'Bright Enterprises Ltd vs CIT' (ITA No. 224 of 2013) dated 24.7.2015, wherein, it has been held that if assessee has funds / interest free funds available with it to make investment, the presumption will be that investment made by the assessee is out of own funds. The issue is also squarely covered by the recent decision of the Hon'ble Supreme Court in 'CIT (LTU) Vs. Reliance Industries Ltd.' [2019] 410 ITR 466 (SC). We, therefore, do not find any infirmity in the order of the Ld. CIT(A) on this issue.

In view of the above, no disallowance of interest expenditure is attracted in this case.

6. So far as the administrative expenses are concerned, the assessee has given a scientific formula for calculating the disallowance out of administrative expenses. However, we find that the assessee while taking the total administrative expenses has not considered the personal expenses and other allowances. The authorized representative of the assessee, before us, has submitted another chart, wherein, the personnel expenses and other allowances have been included and thereby the proportionate of disallowance out of administrative expenses has been computed as under: -

"Disallowance u/s 14A

***Incase of regular computation
Amount***

(In Rs.)

1.Amount of dividend income	1065 6014
2. Operating income	6336 864325
3 % of dividend income	0.00168
4. Amount of expenses	556724538
5. Proportionate amount of disallowance of expensed to earn dividend	936183

Details of expenses

a. Interest paid to	21202161
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<i>others</i>	
<i>b. Administrative expenses</i>	<i>130240267</i>
<i>c. Personal expenses and other allowances</i>	<i>405282110</i>
	<i>556724538"</i>

7. *None of the lower authorities have pointed out any defect in the computation of proportionate disallowance computed by the assessee except that certain part of the administrative expenses were not taken into consideration which has been taken into consideration in the computation made above.*

Even the assessee has claimed that it has not incurred any administrative expenses for earning of tax-exempt income. The Assessing Officer in this respect has not recorded any dissatisfaction taking into consideration the accounts of the assessee. The Hon'ble Bombay High Court in the case of 'Godrej & Boyce Manufacturing Co.' 328 ITR 81 has held that under section 14A of the Act, resort can be made to Rule 8D of the Income Tax Rules for determining the amount of expenditure in relation to exempt income, if, the AO is not satisfied with the correctness of the claim made by the assessee in respect of such expenditure. The satisfaction of the Assessing Officer has to be arrived at, having regard to the accounts of the assessee. Sub section (2) does not ipso facto enable the Assessing Officer to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of such expenditure is correct. The satisfaction of the Assessing Officer must be arrived at on an objective basis. In a situation where the accounts of the assessee furnish an objective basis for the Assessing Officer to arrive at a satisfaction in regard to the correctness of the claim of the assessee, there would be no warrant for taking recourse to the method prescribed by the rules. An objective satisfaction contemplates a notice to the assessee, an opportunity to the assessee to place on record all the relevant facts including his accounts and in the event that he comes to the conclusion that he is not satisfied with the claim of the assessee. We may further observe that the Hon'ble Delhi High Court in a recent decision has further given a similar view in the case of "CIT vs. Taikisha engineering India Ltd." (supra) and has held that the AO having regard to the accounts of the assessee is required to record his satisfaction that the self or voluntarily expenditure offered by the assessee or claim that no expenditure has been incurred by the assessee in relation to earning of exempt income was not correct or the same was unsatisfactory on examination of the accounts of the assessee. Without recording such a satisfaction, he cannot proceed to apply Rule 8D for the computation of disallowance under section 14A. However, as

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observed above, in the case in hand, the Assessing officer has not followed the guidelines of objective satisfaction as laid down by the Hon'ble Bombay High Court in the case of 'Godrej & Boyce' (supra) while making the disallowance. Neither the Assessing Officer nor the Ld. CIT(A) has pointed out any defect in the working given by the assessee in computing suo motu disallowance except that a certain part of tax relating to the personnel expenditure and other allowances were not taken into consideration. In the working given before us, as reproduced above, whereby, the proportionate amount of disallowance of expenditure to earn dividend income has been computed at Rs. 9,36,183/- by including the personnel expenditure and certain other expenses, as noted above. In view of this, the disallowance of administrative expenses is restricted to Rs. 9,36,183/-. However, the assessee will get the benefit / set off at the suo motu disallowance offered by the assessee in the return of income at Rs. 1,33,928/- and accordingly the addition is restricted to Rs. 8,02,255/-."

8. In the said case assessee had raised the identical ground in its appeal before the Tribunal as the Ld. CIT(A) had confirmed the disallowance u/s 14A of the Act, computed by the AO under Rule 8D of the Rules. In respect of disallowance under Rule 8D(ii), the contention of the assessee was that it had sufficient own interest free funds to meet the investment in question. Contention of the assessee in respect of disallowance under Rule 8D(iii) was that it had not incurred any administrative expenses for earning exempt income. Since the AO had not recorded any dissatisfaction taking into consideration the accounts of the assessee, the coordinate Bench directed the AO to restrict the disallowance to the proportionate amount computed by the assessee after including the personal expenditure and certain other expenses. In the present case also, the contention of the Ld. Counsel is that there is no change in the facts of the present case and the assessee has submitted the working in this case in accordance with the order passed by the Tribunal in the case discussed above.

9. The Ld. DR did not controvert the contention of the Ld. Counsel that there is no material change in the facts of the present case. However, during the course of arguments, the Ld. DR submitted that even if the disallowance is to be computed as per the order of the Tribunal rendered in the case of *Oswal Woolen Mills* (supra), the working submitted by the assessee cannot be accepted as correct without verifying the same by the AO. Accordingly, the Ld. DR submitted that the issue may be sent back to the AO for determining the disallowance considering the plea of the assessee that the issue involved is covered by the order of the Tribunal. The assessee has placed on record the working of proportionate disallowance after including the personal expenditure. Under these circumstances, we do not find any reason to take a different view in this assessment year. Hence, respectfully following the decision of the coordinate Bench rendered in assessee's own case for the assessment year 2010-11, we send this issue back to the AO for determining the disallowance on proportionate basis in accordance with the direction given by the coordinate Bench in the case of *Oswal Woolen Mills Ltd. Vs. ACIT* (supra) or to restrict the disallowance to the amount computed in working furnished by the assessee if found in accordance with the order of the Tribunal.

10. Since, we have allowed the main ground of the appeal of the assessee for statistical purposes and send the issue back to the AO for further necessary action, the grounds raised by the assessee, without prejudice to the main ground do not require adjudication.

11. Vide ground No. 2, the assessee has challenged the action of the Ld. CIT(A) in affirming the disallowance of interest amounting to Rs. 57,26,985/-out of CC

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account for purchase of fixed assets. The Ld. Counsel submitted that since the assessee had own sufficient funds in the shape of capital and reserves and internal accruals, the Id. CIT(A) has wrongly confirmed the said addition. The Id. Counsel relied on the judgments of the Hon'ble Supreme Court in the case of *CIT vs. Reliance Ind. Ltd.* 410 ITR 466 (SC) and *Godrej & Boyce Manufacturing Co. Ltd vs. DCIT* 394 ITR 449, Judgments of the Hon'ble Punjab and Haryana High Court in the case of *Bright Enterprise (P) Ltd. vs. CIT* 381 ITR 107 (Pb.), *CIT vs. Kapson Associates* 381 ITR 204 (Pb.), *CIT vs. Max India Ltd.* 398 ITR 209 (Pb.), *CIT vs. Max India Ltd* 388 ITR 81 (P&H) and the decisions of the Chandigarh Bench of the Tribunal in the case of Group Company *M/s Monte Carlo Fashion Ltd.* ITANo.1341/Chd/2016 AY 2012-13. to substantiate his contention.

12. On the other hand, the Ld. DR supporting the action of the Ld. CIT(A) submitted that the assessee had made addition to fixed assets amounting to Rs. 186.80 Crore including plants and machinery and had capital work in progress amounting to Rs. 61.47 Crore. Further, the assessee had capitalized interest of Rs. 226.73 Lacs on assets capitalized. Hence, the AO disallowed the interest of Rs. 95,44,976/- and after applying the debt equity ratio of 60:40 computed interest disallowance, rightly holding that the disallowance is to be made in above ratio out of the interest paid on working

capital loan. The Ld. DR further submitted that the Ld. CIT(A) has rightly confirmed the action of the AO.

13. We have perused the material on record including the cases relied upon by the Ld. Counsel for the assessee and the authorities below. The contention of the assessee is that it had sufficient funds in the shape of capital reserve and surplus, therefore the findings of the Ld. CIT(A) are contrary to the settled principles of law. We notice that the authorities below have not rebutted the contention of the assessee that it had sufficient funds for acquiring assets in question. As pointed out by the Ld. Counsel, the coordinate Bench has dealt with the identical issue the case of Monte Carlo Fashions vs. AICT (supra) and set aside to the file of the AO holding that:

"The judgment of various Courts in the case of Hero Cycles(P) Ltd. Vs. CIT, Ludhiana C.A.No 514 of 2008 dt. 05/11/2015., Bright Enterprises Pvt Ltd. Vs. CIT Jalandhar (2016)381 ITR 107(P&H) held that no disallowance of interest is called for where the assessee has got sufficient own funds. The Assessing Officer is directed to go through the fund position namely capital and interest free advances, reserves and surplus to determine whether any borrowed funds have been utilized more than available own funds and take a decision keeping in view the decisions rendered above. If the sufficient own funds are available, no disallowance is called for. This ground may be treated as set aside to the file of Assessing Officer."

14. The coordinate Bench has dealt with the identical issue in the case of assessee's group company *M/s Monte Carlo Fashions Ltd* (supra). Further, the facts of the said case are similar to the facts of the present case. Therefore, we find merit in the contention of the

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Ld. Counsel for the assessee. Hence, respectfully following the decision of the coordinate Bench in the aforesaid case we set aside the findings of the Id. CIT(A) and send this issue back to the AO for deciding the issue afresh in accordance with the direction given by the coordinate Bench in the case discussed above, after giving a reasonable opportunity of being heard to the assessee.

In the result, the appeal filed by the assessee for the assessment year 2014-15 is allowed for statistical purposes.

Order pronounced on 06/05/2021.

Sd/-
(N.K. SAINI)
उपाध्यक्ष /Vice President

Dated: 06/05/2021

*Ranjan

Sd/-
(R.L. NEGI)
न्यायिक सदस्य/ Judicial Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar