

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'SMC' BENCH, MUMBAI**

[Coram: Pramod Kumar (Vice President)]

ITA No. 7317/Mum/2019
Assessment Year: 2016-17

M/s. C.G Parivar Pvt Ltd.

*EL-86, MIDC Industrial Area Mahape,
Thane 4007014 [PAN: AACCC5307R]*

..... **Appellant**

Vs.

**Income Tax Officer-15(1)(3)
Mumbai.**

.....**Respondent**

Appearances:

Veerkumar Shah *for the appellant*

Sunil Deshpande *for the respondent*

Date of concluding the hearing : May 13, 2021

Date of pronouncement : August 4, 2021

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee-appellant has challenged the correctness of the order dated 23rd August 2019, passed by the learned CIT(A) in the matter of assessment u/s. 143(3) of the Income Tax Act, 1961 for the assessment year 2016-17.

2. Grievances raised by the assessee are as follows:

1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax Appeal erred in retaining the disallowance u/s 14A of a sum of Rs. 10,11,166/- made by the Income Tax Officer being interest paid on Capital overdrawn from some Partnership firms without considering the fact that there was interest of Rs.10,50,124 earned by your appellant from capital / loan contributions from firms wherein he is a partner and the net result was income earned by way of interest from firms amounting to Rs. 1,29,529/- and no part of interest paid was for earning any tax free income.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not considering the fact that the said Investment has not earned any exempt income.

3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in not considering the fact that the assessee has received Interest on Capital u/s 40(b) of the Act Rs.10,50,124/- which is taxable and has correspondingly paid interest on overdrawn capital in other firms amounting to Rs.9,20,595/- which is disallowed.

3. The assessee before me is in the business of providing Vaastu Consultancy and certain other activities. As a part of this business it enters into partnership to local trained expert in Vaastu Sastra. The assessee provides capital for capital expenditure of the firm and when the surplus withdraw the funds from the same to invest in other new ventures. This firms required funds only for the initial capital expenditure in the beginning. The assessee gets interest on capital so invested in the firms and paid interest on over drawings of capital wherever it's so happen. The short point which is the point of dispute is whether the interest income to be taken into account for the purpose of disallowance has to be on the gross basis i.e. interest earned on the capital or on the net basis i.e. interest earned on capital minus interest paid on over drawings. The authorities below have proceeded to compute the disallowance by taking interest on gross basis. Aggrieved by the order of the Assessing Officer has also learned CIT(A) the assessee in appeal before me.

4. I have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.

5. I find that the issue in appeal is covered by several decisions of the coordinate benches including in the case of **Doha Bank QSC vs DCIT (IT)**, wherein the coordinate bench has, *inter alia*, observed as follows:-

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements that have been pressed into service by them. As regards the interest income received by the assessee from its H.O is concerned, we find, that it is matter of fact borne from the records that the Tribunal and also the Hon'ble High Court of Bombay had in the assessee's own case for A.Ys. 1996-97 to 1999-2000 held, that the interest income received by the assessee from its H.O could not be brought to tax in its hands, for the reason, that one cannot earn income from self. But then, at the same time, we find that the Tribunal while disposing off the appeals of the assessee for the aforesaid preceding years was of the view that as the provisions of Sec.14A would be applicable to the exempt interest income earned by the assessee from its H.O/Overseas branches, had thus, restored the matter to the file of the A.O for quantification. Admittedly, the aforesaid facts are not in dispute before us. Insofar, the claim of the ld. A.R that the disallowance made by the A.O under Sec.14A was liable to be vacated, for the reason, that he had failed to record his satisfaction prior to working out of the aforesaid disallowance, we find, that the said issue as fairly admitted by the ld. A.R had been decided against the assessee by the Tribunal while disposing off its appeal for A.Y.2011-12, wherein identical facts were involved. Accordingly, finding no reason to take a different view, we respectfully follow the order of the Tribunal for A.Y 2011-12 and reject the aforesaid claim of the assessee. As regards the claim of the ld. A.R that the disallowance of the interest expenditure under Sec. 14A r.w Rule 8D(2)(ii) was to be worked out by the A.O after netting of the interest income received and interest expenditure incurred, we find substantial force in the same. Admittedly, the disallowance of the interest expenditure under sec. 14A r.w Rule 8D(2)(ii) has to be carried

out after netting of the interest income and interest expenditure. Our aforesaid view is fortified by the order of the Hon'ble High Court of Bombay in the case of CIT v. Jubilant Enterprises (P.) Ltd. [2019] 110 taxmann.com 257/416 ITR 58 (Bom.). In the said case, the Hon'ble High Court approving the view taken by the Tribunal that the disallowance made under sec.14A r.w rule 8D was to be carried out on the basis of netting of the interest expenditure had dismissed the appeal of the revenue. Also, a similar view had been taken by the Hon'ble High Court of Gujarat in the case of Pr. CIT v. Nirma Credit & Capital (P.) Ltd. [2017] 85 taxmann.com 72. It was observed by the Hon'ble High Court that for the purpose of working out the disallowance under rule 8D(2)(ii) the amount of expenditure by way of interest would be interest paid by the assessee on borrowings minus taxable interest earned during the year. In terms of our aforesaid observations, we find ourselves to be in agreement with the claim of the ld. A.R that the disallowance under sec. 14A r.w rule 8D(2)(ii) as regards the interest expenditure has to be carried out after netting of the interest paid by the assessee on borrowings and the taxable interest income earned during the year under consideration. Accordingly, we direct the A.O to recompute the disallowance under sec. 14A r.w rule 8D(2)(ii) in terms of our aforesaid observations. We shall now advert to the claim of the ld. A.R that as the assessee had not made any investment for earning of the interest income from its H.O, therefore, no disallowance of any part of the administrative expenses was called for under sec. 14A r.w rule 8D(2)(iii). We find that a somewhat similar claim was raised by the assessee in its appeal before the Tribunal for A.Y. 2011-12, which, however, was rejected by the Tribunal. In its case for the aforementioned preceding years, it was the claim of the assessee that the disallowance of administrative expenses under rule 8D(2)(iii) may be restricted to the extent of 1% to 2% of its exempt income. However, the Tribunal taking cognizance of the fact that from A.Y. 2008-09 onwards disallowance under sec. 14A was to be computed in accordance with rule 8D, had thus, rejected the aforesaid claim of the assessee. In our considered view as there is no substance in the claim of the assessee that de hors any investment made for earning of the interest income from its H.O no disallowance was called for under sec. 14A r.w. rule 8D(2)(iii), we decline to accept the same.

6. I see no reasons to take any other view of the matter then the view so taken by the division bench. Respectfully following the same I uphold the claim of the assessee and to compute the disallowance if any accordingly. The assessee gets relief on that basis.

7. In the result, this appeal is allowed. Pronounced in the open court today on the 04th day of August 2021.

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 04th day of August 2021.

Copies to: (1) The Applicant (2) The respondent
 (3) CIT (4) CIT(A)
 (5) DR (6) Guard File

By order

*Assistant Registrar/Sr.PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*