

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

ITA NO. 1444/MUM/2020 : A.Y : 2016-17

Metmin Investment and Trading Private Limited
161/162, Mittal Court, A Wing, 16th floor, Nariman Point, Mumbai 400 021.
PAN : AACCM2480P (Appellant)

Vs. Asstt. Commissioner of Income Tax – 3(2)(1), Mumbai.
(Respondent)

Appellant by : Ms. Shruti Agarwal
Respondent by : Shri Vivek Perampurna

Date of Hearing : 28/10/2021
Date of Pronouncement : 05/11/2021

ORDER

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-8, Mumbai (in short 'CIT(A)') in Appeal No. CIT(A), Mumbai-8/10226/2018-19 dated 15.01.2020. The assessment was framed by Asstt. Commissioner of Income Tax, Circle – 3(2)(1), Mumbai for Assessment Year 2016-17 vide his order dated 12.12.2018 under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The only issue in this appeal of assessee is as regard the order of CIT(A) confirming the disallowance made by the Assessing Officer of expenses relating to exempt income by invoking the provisions of Sec. 14A of the Act

read with Rule 8D of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules'). For this, assessee has raised the following ground of appeal :-

"1. GROUND NO. 1 : DISALLOWANCE U/S. 14A R.W.R 8D OF THE INCOME TAX RULES, 1962 ("THE RULES") :

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in disallowing a sum of Rs.9,46,012/- under section 14A of the Act r.w.r. 8D of the Rules.

2. The Appellant prays that the disallowance of Rs.9,46,012/- be deleted."

3. I have heard the rival contentions and gone through the facts and circumstances of the case. The brief facts are that during the year under consideration, assessee has claimed dividend income of Rs.23,16,114/- as exempt. The assessee in its computation of income has made *suo moto* disallowance of expenses relatable to exempt income amounting to Rs.2,75,115/- under Section 14A of the Act. According to the Assessing Officer, the disallowance *suo moto* computed by the assessee is not in consonance with Rule 8D of the Rules. Therefore, the Assessing Officer recomputed the disallowance and made further disallowance. The Assessing Officer recomputed the disallowance under Rule 8D(2)(ii) of the Rules, i.e. interest disallowance of Rs.8,91,910/- and under Rule 8D(2)(iii) of the Rules, i.e. 0.5% of the average investments being administrative expenses amounting to Rs.3,29,217/- totalling to Rs.12,21,127/-. Thus, the Assessing Officer made further addition of Rs.9,46,012/- after giving credit to *suo moto* disallowance of Rs.2,75,115/-. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) also confirmed the action of the Assessing Officer. Aggrieved, assessee has come in appeal before the Tribunal.

4. I have heard the rival contentions and gone through the facts and circumstances of the case. The learned counsel for the assessee, Ms. Shruti Agarwal first of all drew my attention to the fund position of the company for making argument on the disallowance of interest by invoking provisions of Sec. 14A of the Act read with Rule 8D(2)(ii) amounting to Rs.8,91,910/-. The learned counsel stated that own funds available for making investment was to the tune of Rs.15,60,72,327/- which was in the shape of Share Capital amounting to Rs.20,99,23,200/- and Reserves & Surplus amounting to Rs.5,38,50,873/-. She stated that the total investment in shares was to the tune of Rs.5,22,75,562/-. She stated that neither the Assessing Officer nor the CIT(A) has given any finding that interest bearing funds have been invested in these investments. She further stated that assessee has borrowed Rs.20 crores from M/s. Deutche Investment India Pvt. Ltd. @ 11.25% and this fund was lent to M/s. Spykar Lifestyles Pvt. Ltd. and earned interest @ 14.25%. She stated that this loan amount on which interest is paid was invested in giving loan to M/s. Spykar Lifestyles Pvt. Ltd. on a higher rate. As against 11.25%, it was lent at 14.25%. Even otherwise, neither the Assessing Officer nor the CIT(A) has given a finding that interest bearing funds have been invested in the instrument of shares giving rise to exempt income. Hence, she stated that the Hon'ble Bombay High Court in the case of *HDFC Bank Ltd. vs DCIT [2016] 67 taxmann.com 42 (Bombay)* has categorically held that in case the nexus is not proved, then, presumption goes in favour of the assessee where assessee's own funds are more than the investments giving rise to exempt income. When these facts were confronted to the learned Sr. DR, he relied on the assessment order and the order of CIT(A).

5. Having heard the rival contentions and after going through the facts and circumstances of the case, I am of the view that the presumption drawn by Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (supra) is clearly in favour of the assessee because assessee's own funds, which are to the tune of Rs.15,60,72,327/- is more than the total investment of Rs.5,22,75,562/- and hence the presumption will go in favour of the assessee. I hold that the Assessing Officer as well as the CIT(A) erred in making and confirming the disallowance and hence reverse the orders of the lower authorities. This issue of assessee's appeal is allowed.

6. As regards the disallowance of administrative expenses by invoking the provisions of Rule 8D(2)(iii) of the Rules, i.e. 0.5% of the average investment amounting to Rs.3,29,217/-, the learned counsel for the assessee stated that the assessee has *suo moto* disallowed Rs.2,75,115/- but the Assessing Officer has computed the disallowance under Rule 8D(2)(iii) of the Rules on the investment which gave rise to exempt income as well as on the investment which did not give rise to any exempt income. For this, she requested that the matter can be sent back to the Assessing Officer for verification and the Assessing Officer be directed to restrict the disallowance to the extent of investment giving rise to exempt income only. When this was confronted to the learned Sr. DR, he fairly agreed that the matter can be referred back to the file of the Assessing Officer for verification as stated by the learned counsel. I find the plea of the assessee reasonable and hence direct the Assessing Officer to verify the investment which have given rise to exempt income and restrict the disallowance under Rule 8D(2)(iii) of the Rules to that extent only. This direction is in terms of the decision of the Special Bench of this Tribunal in the

case of *ACIT vs Vireet Investment (P.) Ltd. [2017] 82 taxmann.com 415 (ITAT Delhi-Special Bench)*).

7. In the result, appeal of the assessee is partly allowed as indicated above.

Order pronounced in the open court on 5th November, 2021.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai, Date : 5th November, 2021

SSL

Copy to .:

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar/Sr. PS
I.T.A.T, Mumbai