

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.6228/Mum/2019 (A.Y: 2014-15)

Alf Engineering Pvt Ltd., E-60 to 62, MIDC, Ambad, Nashik - 422010.	Vs.	DCIT - 12(1)(1) Room No. 128, Aayakar Bhavan, MK Road, Mumbai - 400020.
PAN/GIR No. : AAFCA6242G		
Appellant	..	Respondent

Appellant by :	Shri Shyam.C.Agrawal. AR
Respondent by :	Shri Mehul.B.Jain.DR

Date of Hearing	09.11.2021
Date of Pronouncement	15.11.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-, 20 Mumbai, passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

Disallowance u/s 14A Rs. 15,09,589/-

In the circumstance of the case the Ld. CIT(A) erred in confirming the addition of Rs. 1509589/- without appreciating the fact that:

- a. The appellant himself has voluntarily disallowed of 65000/- u/s 14A therefore there is no justification in further disallowing Rs. 1509589/- by applying rule 8D2(iii).*
- b. The CIT(A) erred in not following the decisions of Hon'ble Bombay High Court.*
 - i. PCIT Vs. Reliance Capital Management Ltd (2017) 86 Taxmann.com 200.*
 - ii. PCIT Vs. DSP Adiko holding pvt Ltd., 414 ITR 555 (Bom)*

2. The Brief facts of the case are that the assessee company is engaged in the business of manufacturing of automotive chassis. The assessee has filed the return of income electronically on 29.11.2014 for the A.Y 2014-15 declaring a total income of Rs. 37,70,34,764/-.The return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act are issued. In compliance, the Ld. AR of the assessee appeared from time to time and submitted the details and the case was discussed. The A.O on perusal of the balance sheet found that the assessee company has made investments in shares and the income on investments is not included in the total income of the assessee and the provisions of sec 14A r.w.r 8D of I T rules shall be applicable and a show cause notice was issued. In response to the notice, the assessee has filed a letter dated 25.11.2016

referred at Para 5.3 of the assessment order. The A.O was not satisfied with the explanations and correctness of the assessee claim, though the assessee has made suo-moto disallowance of Rs. 6,50,000/- in respect of the expenditure and the A.O. has applied third limb of Rule 8D(2)(iii) on the average investments and worked out the disallowance of Rs. 21,59,589/- since the assessee has already disallowed Rs.6,50,000/- the net disallowance worked out to Rs.15,09,589/- and assessed the total income of Rs. 37,85,44,350/- and passed the order u/s 143(3) of the Act on 30.11.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas, the CIT(A) has confirmed the action of the A.O and dismissed the assessee's appeal. Aggrieved by the order of the CIT(A) the assessee has filed an appeal before the Honble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in sustaining the addition of the A.O. irrespective of the fact that the assessee has voluntary made disallowance of Rs. 6,50,000/-.The assessee has made investments in Reliance Mutual

Fund units out of the own funds and there is no satisfaction recorded by the A.O in the assessment order on applying the provisions of sec14A r.w.r 8D(2) (iii) of the I T Rules and referred to the submissions and prayed for allowing the assessee appeal.

5. Contra, the Ld. DR supported the order of the CIT(A) and submitted that the A.O has made the observations in para 8.1 of the assessment order and there cannot be any dispute with respect to the satisfaction made in the assessment order.

6. We heard the rival submissions and perused the material on record. Prima-facie, the sole crux of the disputed issue is with respect to applicability of provisions of Sec 14A r.w.r 8D(2)(iii) by the A.O though the assessee has made suo moto disallowance of Rs. 6,50,000/-.The contentions envisaged by the Ld. AR that the A.O has not recorded the satisfaction in the assessment order before applying the provisions of Rule 8D(2)(iii) in the assessee's case. On perusal of the Assessement order, we found that the A.O. has only dealt on the facts at Para 5.1 to 5.2 of the order. and there is no satisfaction recorded on applicability of Rule 8D. The Ld. DR has referred to the assessment

order but could not substantiate that the satisfaction is recorded by the A.O. and the provisions are applicable. The Ld.AR's contentions are that the investments are made out of own funds and the dividend income is claimed exempted. The Ld.AR relied on the judicial decisions in respect of non recording of the satisfaction by the A.O. as under:

1) *Principal C.I.T. vs. DSP Adiko Holdings Private Limited - 414 1 T 555 (Bom.)*

Section 14A of ITA, 1961 r.w.r. 8D (2) (iii) of ITR 1962 - Exempt Income - Disallowance of expenditure relating to exempt income - Voluntary disallowance by assessee of expenditure incurred to earn exempt income - A 0 can-not disallow expenditure far in excess of what has been disallowed by assessee.

2) *P.C.I.T. vs. Reliance Capital Asset Management Limited (Bombay High Court) -*

Income Tax Appeal No. 487 of 2015, it was held that "S. 14A/Rule 8D: The Assessing Officer is not entitled to make any disallowance under rule 8D if he does not specifically record that he is not satisfied with the correctness of the assessee's claim. The fact that the C.I.T. (A) and I.T.A.T. were not satisfied with the assessee's disallowance and enhanced, it does not mean that Rule 8D becomes applicable and the disallowance should be computed as per the prescribed formula.

3) *South Indian Bank Limited vs. C.I.T. (Supreme Court of India) Civil Appeal No. 9606 of 2011.*

Sub - whether proportionate disallowance of interest paid by the banks is called for under section 14A of the Income Tax Act for investments made in tax free Bonds / Securities which

yield tax free dividend and interest to assessee Banks when assessee had sufficient interest free own funds which were more than the investments made".

7. We considering the overall facts and circumstances find that the submissions made by the Ld.AR are realistic and further evident from the assessment order, that there is no satisfaction recorded by the A.O for making further disallowance u/sec14A r.w.r 8D2(iii) of IT rules. Accordingly, we set aside the order of the CIT(A) and direct the A.O to delete the additional disallowance and allow the grounds of appeal in favour of the assessee.

8. In the result the appeal filed by the assessee is allowed.

Order pronounced in the open court on 15.11.2021

(M BALAGANESH)
ACCOUNTANT MEMBER

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 15.11.2021

KRK, PS

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)

4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai