

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR

(Through Virtual Court)

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 332/RPR/2016

निर्धारण वर्ष / Assessment Year : 2012-13

G.R Sponge & Power Pvt. Ltd.  
Agrawal Complex, Opportunity. Pandey Nursing Home  
Samta Colony, Raipur (C.G.)  
PAN : AAACG8765H

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Circle-1(2), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Ramesh Singhania

Revenue by : Shri G.N Singh, DR

सुनवाई की तारीख / Date of Hearing : 09.02.2022

घोषणा की तारीख / Date of Pronouncement : 21.02.2022

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-I, Raipur dated 23.02.2016, which in turn arises from the order dated 30.09.2014 passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 ( in short 'the Act') for assessment year 2012-13. Before us the assessee has assailed the impugned order on the following grounds of appeal:

“1. That the disallowance of depreciation made by the Assessing Officer of Rs.5,36,771/- on account of flat at Mumbai used for the business purpose confirmed by Commissioner of Income Tax (A) the same is against the facts and also against the law, hence, may kindly be deleted.

2. That the Ld. AO has grossly erred on facts and in the circumstances of the case and bad in law in disallowing the interest expenditure of Rs.3,45,141/- worked as per provisions of section 14A read with rule 8D, Commissioner of Income Tax (A) erred in law as well as on facts while confirming the addition the case is against the facts & against the law hence may kindly be deleted.

3. The assessee craves leave to add, alter any of the ground of appeal before or at the time of hearing.”

2. Briefly stated, the assessee company which is engaged in the business of manufacturing of sponge iron and generation of power had e-filed its return of income for assessment year 2012-13 on 29.09.2012, declaring an income of Rs.7,54,55,970/-. Subsequently, the case of the

assessee was selected for scrutiny assessment u/s143(2) of the Act. Original assessment was thereafter framed by the Assessing Officer vide his order passed u/s.143(3) of the Act, dated 30.09.2014 wherein the income of the assessee was determined at Rs.7,67,25,305/- after, inter alia, making following disallowances:

- i). Disallowance u/s.14A r.w.r.8D : Rs.3,45,141/-
- ii). Disallowance out of depreciation : Rs.5,36,771/-

3. Being aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). In so far the disallowance made by the Assessing Officer u/s.14A of the Act was concerned, the CIT(Appeals) not finding any infirmity in the view taken by the Assessing Officer upheld the same. As regards the disallowance of the assessee's claim for depreciation on flat at Mumbai, the CIT(Appeals) not being persuaded to subscribe to the contentions advanced by the assessee upheld the same.

4. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter before us.

5. The Ld. Authorized Representative (in short 'AR') of the assessee took us through the respective issues involved in the present appeal. Adverting to the disallowance of assessee's claim for depreciation on building at Mumbai, it was submitted by the Ld. AR that as the said premises was

being used by the assessee for its business purpose; therefore, both the lower authorities losing sight of the said material fact had wrongly disallowed the assessee's claim for depreciation on the same. Elaborating on his aforesaid contention, it was submitted by the Ld. AR that the building in question was used by the assessee as a branch office and its various business activities were carried out there from, viz. liaising with the banks/financial institutions, sale of finished goods and follow up with the customers in western region etc. It was submitted by the Ld. AR that the claim for depreciation raised by the assessee company on a similar footing was dislodged by the Assessing Officer vide his order passed u/s.143(3) of the Act for the assessment year 2010-11, which thereafter was however on appeal restored by the CIT(Appeals). On a specific query as to whether the aforesaid order of the CIT(Appeals) was thereafter carried any further in appeal before the Tribunal, the Ld. AR answered in negative. Clarifying the aforesaid aspect, it was submitted by the Ld. Departmental Representative (in short 'DR') that no further appeal was filed against the order of the CIT(Appeals) considering the low tax effect therein involved. It was further submitted by the Ld. AR that the assessee's claim for depreciation on the aforesaid building in question had not been disturbed by the Assessing Officer while framing the assessment u/s.143(3) for immediately preceding year i.e. A.Y. 2011-12. In the backdrop of his aforesaid contentions, it was claimed by the Ld. AR that

following the rule of consistency the assessee's claim for depreciation on the building in question ought to have been allowed during the year under consideration. Adverting to the disallowance worked out by the Assessing Officer u/s.14A r.w Rule 8D of Rs.3,45,141/-, it was submitted by the Ld. AR that the same has been made/sustained by the lower authorities without appreciating the facts involved in the case. It was submitted by the Ld. AR that though the assessee has sufficient own funds, however, the Assessing Officer had disallowed part of the interest expenditure by triggering the mechanism contemplated under Rule 8D(2)(ii) of the Income-tax Rules, 1962, and determined the same at Rs.3,45,141/-. In order to support his aforesaid claim as regards availability of sufficient self-owned funds, the Ld. AR took us through the financials of the assessee company for the year under consideration. Our attention was specifically drawn by the Ld. AR to the balance sheet of the assessee company which revealed sufficient reserves and surplus of Rs. 20,00,17,139/- on 31.03.2012. Backed by his aforesaid contention, it was submitted by the Ld. AR that as the assessee company has sufficient self owned/interest free funds to explain the investments made in the exempt income yielding shares, therefore, no disallowance of any part of the interest expenditure was called for in its hands u/s.14A r.w.r.8D (2)(ii) of the Income Tax Rules, 1962. Alternatively, it was submitted by the Ld. AR that as the assessee had not received any exempt income during the year under consideration,

therefore, no disallowance u/s.14A could have been made in its hands. In support of his aforesaid contentions the Ld. AR had relied on the judgment of the Hon'ble Supreme Court in the case of South Indian Bank Limited Vs. CIT, Civil Appeal Nos. 9606, 9609, 9610, 9611, 9615 of 2011, dated 09.09.2021.

6. Per contra, the Ld. Departmental Representative (in short 'DR') relied on the orders of the Lower Authorities. It was submitted by the Ld. DR that as the assessee had earned exempt income during the year under consideration, therefore, the Assessing Officer had rightly triggered the provisions of section 14A r.w. Rule 8D and worked out the disallowance in the hands of the assessee. It was further submitted by the Ld. DR that no infirmity did emerge from the orders of the lower authorities who had rightly disallowed the assessee's claim for depreciation on the building at Mumbai.

7. We have heard the ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his aforesaid contentions. As is discernable from the orders of the lower authorities, the assessee's claim for depreciation on building at Mumbai was disallowed by the Assessing Officer, for the reason, that the assessee

had failed to establish a nexus *inter se* its business operations at Raipur and the establishment/office at Mumbai. As observed by us hereinabove, the Assessing Officer backed by his aforesaid conviction had disallowed the assessee's claim for depreciation of Rs.5,36,771/-. On appeal, the CIT(Appeals) not being persuaded to subscribe to the contentions advanced by the assessee had upheld the aforesaid disallowance of the assessee's claim for depreciation. After deliberating at length on the issue in hand, we concur with the claim of the ld. A.R that now when the assessee's claim for depreciation had been allowed by the A.O in the immediately preceding year and succeeding years i.e in A.Y 2011-12 and A.Y 2013-14, respectively, and that too vide orders passed u/s.143(3) of the Act, therein, the same could not have been disallowed on the basis of an inconsistent approach that was adopted during the year under consideration. Admittedly, the principle of res-judicata is not applicable in the income-tax proceedings, but then, we cannot remain oblivious of the settled position of law that an inconsistent approach on the part of the department qua an issue involving no shift in the factual position can be allowed. Our aforesaid view is fortified by the judgment of the Hon'ble Apex Court in the case of Radhasoami Satsang Vs CIT (1992) 193 ITR 321 (SC). Backed by our aforesaid observations, we are of a strong conviction that the assessee's claim for depreciation on building which was being used as a branch office at Mumbai merits acceptance. We, thus, not being

able to concur with the view taken by the lower authorities set-aside the order of the CIT(Appeals) and direct the Assessing Officer to allow the assessee's claim for depreciation of Rs. 5,36,771/- on the aforesaid building in question. The **Ground of appeal No.1** raised by the assessee is allowed.

8. Now, we shall deal with the assessee's grievance that the lower authorities had erred in triggering the provisions of section 14A r.w Rule 8D and disallowing a part of the assessee's claim for deduction of interest expenditure of Rs.3,45,141/- As is discernable from the assessment order, the assessee company had made an investment of Rs.92,10,679/- in unquoted shares of various companies. On being queried as to why the expenditure relatable to earning of the exempt dividend income may not be disallowed u/s.14A r.w Rule 8D, the assessee tried to impress upon the Assessing Officer that no part of the said expenditure was liable to be disallowed. However, the Assessing Officer was not inclined to accept the explanation of the assessee. Observing that the assessee had failed to establish that the investment in the shares was not made out of the borrowed funds, the Assessing Officer triggered the mechanism contemplated in Rule 8D(2)(ii) and worked out the disallowance u/s.14A at Rs.3,45,141/-. At this stage we may herein observe, that it was also observed by the Assessing Officer that the factthat the assessee company

was not in receipt of any exempt income during the year under consideration had no material bearing on the triggering of the disallowance under the aforesaid statutory provision. After having given a thoughtful consideration to the aforesaid issue in hand, i.e., the disallowance made by the A.O u/s.14Ar.w Rule 8D, as has been assailed by the assessee before us, we find substantial force in the claim of the ld. A.R that no part of the interest expenditure was liable to be disallowed u/s.14A of the Act. As observed by us hereinabove, the assessee had made an investment of Rs.92,10,679/- in exempt dividend income yielding shares of various companies. Admittedly, the reserves and surplus of Rs. 20,00,17,139/- on 31.03.2012 with the assessee company sufficed to explain the investments made by the assessee in exempt income yielding shares. In our considered view, where the interest-free funds available with an assessee exceeds the investment made in exempt income yielding shares, then, it is to be presumed that the same had been made out of such interest free funds and no disallowance u/s.14A of the Act would be warranted. Our aforesaid view is fortified by the judgment of the Hon'ble Apex Court in the case of South Indian Bank Limited (supra). Backed by our aforesaid deliberations, we are of the considered view, that now when the assessee company before us had sufficient interest-free funds available with it, which would justifiably explain the investments made by it in the exempt income yielding unquoted shares of various companies, therefore, no disallowance

of any part of interest expenditure was called for u/s. 14A r.w Rule 8D(2)(ii) of the Income Tax Rules, 1962. We, thus, not being able to persuade ourselves to subscribe to the view taken by the lower authorities set-aside the order of the CIT(Appeals) and vacate the disallowance of Rs.3,45,141/- made by the Assessing Officer u/s.14A r.w.r. 8D (2)(ii) of the Income Tax Rules, 1962. The **Ground of appeal No.2** raised by the assessee is allowed in terms of our aforesaid observations.

9. The **Ground of appeal No.3** is general in nature and hence, the same is dismissed as not pressed.

10. Resultantly, the appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in Open Court on 21<sup>st</sup> day of February, 2022.

Sd/-  
**JAMLAPPA D BATTULL**  
**ACCOUNTANT MEMBER**

Sd/-  
**RAVISH SOOD**  
**JUDICIAL MEMBER**

रायपुर/ RAIPUR ;

दिनांक / Dated : 21<sup>st</sup> February, 2022

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुरबेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	09.02.2022	Sr.PS/PS
2	Draft placed before author	10.02.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		