

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 533/Mum/2020
(Assessment Year 2013-14)

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| CCL Optoelectronics Private Limited EL-38, Electronic Zone MIDC, Mahape Navi Mumbai-400 710 PAN : AABCC4411H (Appellant) | Vs. | ITO-15(1)(3) Room No.15B, Ground Floor Aaykar Bhawan M.K.Road Mumbai-400 020 (Respondent) |
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| Assessee by | Shri Dhiren |
| Department by | Shri T.Shankar, Sr.AR |
| Date of Hearing | 30.12.2021 |
| Date of Pronouncement | 22.02.2022 |

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-24 dated 23.10.2019 and pertains to assessment year 2013-14.

2. Grounds of appeal read as under:-

1. Looking to the facts and circumstances of the case and in law the learned Commissioner of Income Tax Appeals is not justified in passing an ex parte order u/s 250 of the Income Tax Act, 1961 without issuing or serving any notice of hearing to the appellant in the matter.
2. Looking to the facts and circumstances of the case and in law the learned ITO 15(1)(3) is not justified in and the learned Commissioner of Income Tax Appeals is not justified in confirming the A O's action of adding an amount of Rs 11,76,422/- by taking recourse to the provisions of Sec 14A of the IT Act 1961 read with rule 8D of the IT Rules 1962 as:

- a) the provisions of the said section and the said rules are not attracted on the facts of the case of the appellant.
- b) neither any exempt income has been earned by the appellant during the year under consideration nor in the past nor till date.
- c) no interest bearing funds have been utilised by the appellant to make investments.
- d) expenditure incurred by way of interest is directly attributable to the business income of the assessee and as such the amount as ascertained under the provisions of rule 8D(2)(ii) should be Rs NIL.
- e) there is no expenditure incurred in relation to income which does not form part of the total income.
- f) the provisions of circular no 5/2014 dated 11.02.2014 are Not Applicable to AY 2013-2014.
- g) investments made by the assessee in Equity shares of Malkar Electronics Pvt Ltd and Lauren CCL Engineers Pvt Ltd are not capable of yielding any dividend income.

3. Brief facts of the case are that assessee is a limited company and engaged in the business of manufacturing of fiber optics products. On perusal of the perusal of the Balance Sheet filed by the assessee, the AO noticed that assessee had shown Long-Term borrowings at Rs.76,21,204/- and Short-Term borrowings at Rs.81,46,434/- as on 31.03.2013. Further, on perusal of Schedule 10 of the Balance Sheet, the AO noticed that assessee had made investment of Rs.3,36,39,900/- as on 31.03.2013 in equity shares of M/s.Maikar Electronics Pvt. Ltd. and M/s.Lauren CCL Engineer Pvt. Ltd. capable of yielding dividend income. The AO further noticed that assessee had debited interest to banks and interest to others aggregating to Rs.21,61,149/-in the P&L account under the head Financial Charges. However, the assessee had not disallowed any expenses attributable to the investment of Rs.336,39,900/- capable of earning exempt income to the assessee company as per the provisions of section 14A read with Rule 8D. The AO therefore asked the assessee to submit the working of disallowance u/s.14A of the Act. In response, the AR of the assessee contended that the assessee had not earned any exempt income, hence no disallowance needs to be made u/s 14A of the Act. However, the AR of the assessee submitted without prejudice working for disallowance u/s.14A read with Rule 80 of the Act wherein the disallowance U/S.14A r.w.r.8D had been worked out at Rs.11,76,422/-.

After considering the contention of the assessee that it had not earned any exempt income, the AO did not find the same to be tenable in view of CBDT Circular No.5/2014 dated 11.02.2014. He observed that in respect of provision of Section 14A of the Act, CBDT vide Circular No.5/2014 dated 11.02.2014 has clarified that Rule 8D read with Section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned exempt income. In view of the above, the AO was satisfied that the disallowance U/S.14A of the Act ought to be made in this case. In this regard, the AO placed reliance on the decision of Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. 234 CTR 1 (Bom). He further observed that prior to Rule 8D, the apportionment of expenditure was at the discretion of the Assessing Officer but now Rule 8D has prescribed a formula for calculation of disallowance u/s.14A and the same is binding in nature. Accordingly, he calculated the disallowance u/s.14A r.w.r.80 which worked out to Rs.11,76,422/-.

4. The Id.CIT(A) confirmed the AO's order by holding as under:-

“ I have perused the facts of the case and documents placed on record. The appellant has submitted that the investment in the companies does not earn any dividend and hence, the same should not be included while computing the average investment. It is pertinent to note that the appellant has not submitted any documentary evidence to prove and substantiate its claim either before this office during the course of the proceedings. In the absence of the substantial evidences on record, I find no infirmity in the AO's action of including the same while computing the average investment. These grounds of appeal are dismissed.”

5. Against the above order, assessee is in appeal before us.

6. I have heard both the parties and perused the records. I find that assessee's claim is that assessee has not earned any exempt income. Hence disallowance u/s. 14A

cannot be done. This is duly supported by the Hon'ble Supreme Court decision in the case of Maxopp Investment Ltd. 402 ITR 640. However, Id.CIT(A) has held that assessee has not proved whether assessee has earned any exempt income or not. I note that assessee has duly submitted that assessee has not earned exempt income before AO. AO had all the financial details of the assessee. He did not dispute the assessee's proposition. However, he only held that despite not having earned exempt income disallowance u/s. 14A can be made. Thus, the AO has not disputed the fact that assessee had not earned exempt income, there is no onus on the assessee to further show that he has not earned exempt income. In this view of the matter, I am of the considered opinion that disallowance u/s. 14A is not permissible in this case. The assessee has not earned any exempt income and the AO has not disputed the same. Hence, I set aside the orders of the authorities below and decide the issue in favour of the assessee.

7. In the result, this appeal by the assessee stands allowed.

Pronounced in the open court on 22.02.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 22.02.2022

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai