

IN THE INCOME TAX APPELLATE TRIBUNAL "B"
(Virtual Court Hearing) BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. No.393/Kol/2021
Assessment Year: 2014-15

Acme Chem Ltd.....Appellant
9A Saket Apartment,
2 Ho Chi Minh Saranai,
Kolkata - 700071.
[PAN:AACCA3931B]

vs.

DCIT, Circle-10(1), Kolkata.....Respondent

Appearances by:

Shri Akkal Dudhwewala, FCA, appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 22, 2022

Date of pronouncing the order : March 02, 2022

Hearing through Video Conferencing

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 17.08.2021 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The sole issue raised in this appeal is regarding the validity of the disallowance made/confirmed by the lower authorities u/s 14A r.w. Rule 8D(2)(ii) and 8D(2)(iii) of the I.T Rules on account of expenditure incurred for earning of tax exempt income.

3. So far as the disallowance u/s 14A of the Act r.w. Rule 8D(2)(ii) of the I.T. Rules is concerned, the Id. Counsel for the assessee has submitted that the assessee had sufficient owned funds to meet the investments. He, in this respect, has relied upon the balance sheet of the assessee for the year under consideration to submit that the assessee had share capital of Rs.5.86 crores and reserve and surplus of Rs.77.91 crores as on 31.03.2013 and these were share capital of Rs.5.86 crores and reserve and surplus of Rs.81.93 crores as on 31.03.2014. He has further invited our attention to the details of

investments to submit that non-current investments as on 31.03.2014 were Rs.47.73 crores and further current investments were Rs.1.95 crores. He has further submitted that the total investments of the assessee were about 51 crores and that the own/interest free funds of the assessee were sufficient to meet these investments. He has further relied upon the decision of the Hon'ble Supreme Court in the case of South Indian Bank Ltd. vs. CIT reported in [2021] 130 taxmann.com 178 (SC) dated 09.09.2021.

4. The Ld. DR, on the other hand, has relied on the findings of the lower authorities, however, has failed to submit any case law laying contrary position of law.

5. In this case, the assessee has relied upon the balance sheet to prove that the assessee was having own/interest-free funds available with it to meet the investments. We find that the issue is squarely covered in the decision of the Hon'ble Supreme Court in the case of South Indian Bank Ltd. vs. CIT (supra) wherein the Hon'ble Supreme Court framed following questions of law relating on the interpretation of Section 14A of the Act:

“Whether proportionate disallowance of interest paid by the banks is called for under [Section 14A](#) of 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”

The Hon'ble Supreme Court after detailed discussion on the issue has finally answered the aforesaid questions in favour of the assessee and against the Revenue holding that the proportionate disallowance of interest is not warranted under [Section 14A](#) of Income Tax Act for investments made in tax free bonds/ securities which yield tax free dividend and interest to Assessee Banks in those situations where, interest free/own funds available with the Assessee, exceeded the investments. Further reliance in this case can also be placed on the decision of the Hon'ble Supreme Court in the case of Hero Cycle (P) Ltd. Vs. CIT 379 ITR 347 (SC) and also the decision of the Hon'ble Supreme Court in the case of CIT (LTU) vs. Reliance Industries Ltd. (2019) 410 ITR 466 (SC) wherein it has been held that if the assessee is possessed of sufficient interest free funds to meet the investments, then, under the circumstances presumption will be that the interest free advances/investments have been made by the assessee out of owned funds/interest free

funds. In view of above discussion, no disallowance is attracted on account of interest expenditure u/s 14A of the Act read with Rule 8D(2)(ii) of the I. T. Rules.

6. So far as the disallowance u/s 14A r.w. Rule 8D(2)(iii) is concerned, the Id. Counsel for the assessee has submitted that as per the settled position of law, the Assessing Officer may be directed to consider only investments yielding tax exempt income for the purpose of calculating of disallowance under Rule 8D(2)(iii) of the Income Tax Rules. In this respect, the Id. counsel has placed reliance on the decision of the Coordinate Bench of the Tribunal in the case of M/s Kanoria Chemicals & Industries Ltd. vs. ACIT *in* ITA No.2184/Kol/2018 order dated 26.10.2021 and in the case of DCIT vs. M/s. Kesoram Industries Ltd. in ITA No.1777/Kol/2019 order dated 28.10.2021 .

The Id. DR, on the other hand, has relied upon the findings of the lower authorities.

7. We find that so far as the disallowance of administrative expenditure u/s14A of the Act read with Rule 8D(2)iii) is concerned, the issue is squarely covered by the decisions of the Hon'ble Delhi High Court in the case of Joint Investments Private Ltd vs. CIT ITA No.117/2015 dated 25.02.2015 and further in the case of ACB India Limited vs. ACIT ITA No. 615/2014 dated 24.3.2015 wherein it has been held that for computing the average value of investment u/s 14A of the Act read with rule 8D(2)(iii), only the investment yielding non-taxable income have to be considered and not the entire investment. In view of this, the Assessing Officer is directed, accordingly, to consider only the investments yielding tax exempt income for computation of disallowance under Rule 8D(2)(iii) of the I.T. Rules. In view of the above discussion, the impugned order of the CIT(A) is set aside.

8. In the result, the appeal of the assessee stands partly allowed.

Kolkata, the 2nd March, 2022.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 02.03.2022.

RS

Copy of the order forwarded to:

1. Acme Chem Ltd
2. DCIT, Circle-10(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches

1. Date of dictation- 22/02/2022
2. Date on which the typed draft is placed before the Dictating Member and Other member
24/02/2022
3. Date on which the approved draft comes to the Sr. P.S./P.S. - /02/2022
4. Date on which the fair order is placed before the Dictating Member for Pronouncement /02/2022
5. Date on which the file goes to the Bench Clerk /02/2022
6. Date on which the file goes to the O.S.
7. The date on which the file goes to the Assistant Registrar for signature on the
order.....
8. Date of Despatch of the Order.....