

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

SHRI PRAMOD KUMAR, VICE PRESIDENT
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 7136/MUM/2018
(ASSESSMENT YEAR: 2012-13)

Anthea Aromatics Private Limited,
R-81/82, Rabale TTC Industrial Area,
Navi Mumbai - 400701
[PAN: AAACA6031G]

..... Appellant

Vs

ACIT 15(1)(1), Mumbai,
Ayakar Bhavan,
Mumbai - 400020

..... Respondent

Appearances

For the Respondent/ Assessee : Shri S. Jana (AR)
For the Appellant/Department : Shri Mehul Jain (DR)

Date of conclusion of hearing : 14.02.2022
Date of pronouncement of order : 29.03.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 14.09.2018, passed by the Commissioner of Income Tax (Appeals)-55, Mumbai [hereinafter referred to as 'the CIT(A)'] in appeal (55/IT-74/2017-18) for the Assessment Year 2012-13, whereby the CIT(A) had partly allowed the appeal filed by the Assessee against the Assessment Order, dated 28.03.2015, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised the four grounds of appeal, all pertaining to disallowance/addition of INR 2,24,876/- made by the Assessing Officer (AO) under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (hereinafter referred to as 'the Rules') which has been confirmed by the CIT(A) vide the order impugned herein.

3. The facts in brief relating to the issue before us are that the Appellant, a private limited company, held investments in the form of equity shares of DRT Athena Aroma Chemicals Pvt. Ltd. (INR 95,56,000/-) and Crown Chemicals Private Limited (INR 47,92,000/-). No investments were made during the financial year relevant to the Assessment Year 2012-13. The Assessing Officer has in paragraph 4.4. of the Assessment Order, dated 28.03.2005, (hereinafter referred to as 'the Assessment Order') taken opening and closing value of investments as INR 1,43,48,000/- (INR 95,56,000/- + INR 47,92,000/-).

4. For the Assessment Year 2012-13, the Appellant filed return of income on 26.09.2012 declaring a loss of INR 85,02,676/-. The Appellant had voluntarily offered a disallowance of INR 71,740/- under Section 14A of the Act read with Rule 8D(iii) of the Rules in the aforesaid return of income being one-half percent of the average value of investment (INR1,43,48,000/-). However, the Assessing Officer rejected the same and made an addition of INR 2,24,876/- under Section 14A of the Act. The relevant extract of the Assessment Order reads as under:

"4.1 On perusal of the computation of income, it is seen that the assessee company has shown an amount of 3,59,51,583 as dividend income which has been claimed as exempt u/s 10 of the Income-tax Act, 1961, During the course of assessment proceedings the Assessee Company was asked to furnish the details of the same and to furnish the details of expenditure directly incurred or attributable for earning of this exempt income, in view of the provisions of Secn.14A of the Income-tax Act, 1961 read with Rule 8D.

4.2 xx xx

4.3 I have gone through the submissions of the Assessee Company. The contention of the assessee that they have not incurred any direct expenses attributable to earning of the exempt income cannot be accepted as they have not furnished any evidence to prove that PMS Fees incurred are not for

earning of exempt income. Hence, having regard to the accounts of the Assessee-Company, I am satisfied that the claim of the assessee in respect of expenditure in relation to income which does not form part of the total income under the Income-tax Act, 1961, is not correct. Hence, the disallowance under section 14A of the Income Tax Act, 1961 has to be computed under the provisions of Rule 8D of the Income –tax Rules, 1962.” (Emphasis supplied)

5. It is pertinent to mention that while the AO concluded that the aforesaid amount of INR 2,24,876/- was to be added to book profits for the purpose of computing Minimum Alternate Tax under Section 115JB of the Act, the assessment was framed under the normal provisions of the Act.
6. Being aggrieved the Appellant took this issue in appeal before the CIT(A) and contended that (a) the addition/disallowance under section 14A is based on incorrect fact as the Appellant had not made any investment during the relevant financial year and had not incurred any fee for Portfolio Management Services (PMS) as the Appellant was holding share in physical form; (b) the investments were made into associate/subsidiary company out of own funds for strategic reasons; (c) entire borrowings from the bank were for working capital and entire interest paid during the year was with respect to the working capital loans; and that the Appellant had much larger interest free own funds and therefore, the case of the Appellant was covered by the decision of the jurisdictional High Court in the case of HDFC Bank Ltd. Vs. DCIT-2(3), Mumbai : 366 ITR 505 (Bombay). The CIT(A) brushed aside all the contention of the Appellant to hold as under:

“4.3. I have considered the facts of the case, AO’s order and submissions of the appellant. The facts of the case is the appellant has claimed dividend income of Rs.3,59,51,583/- exempt u/s.10 of the IT Act, 1961 during the year under consideration. The AO asked the appellant to furnish the details of expenditure attributable for earning of this exempt income.

The appellant failed to furnish any evidence to prove the same and hence, the AO worked out the disallowance u/s.14A r.w. Rule 8D at Rs.2,24,876/- after taking into consideration an amount of Rs.71,740/- being 0.5% of average value of investments voluntarily offered by the appellant. During the course of appellate proceedings, the appellant's AR submitted before the undersigned that the appellant did not spend any sum for earning the dividend income and has also not incurred the PMS fees. Further it was submitted that the shares of subsidiary company were held not for the purpose of earning dividend but to maintain control over its joint ventures or subsidiaries. On perusal of appellant's submission, I am of the opinion that even during the appellate stage, the appellant has not produced any proof to substantiate that it did not incur any expenses in earning the income. As regards the claim of the appellant that it is holding the shares of subsidiary company to have control over its joint venture is concerned, reliance is placed on the decision of Supreme Court in the case of Maxopp Investment Ltd. Vs.CIT (2018) 91 taxmann.com 154(SC) wherein it was held that "(1) when the shares are held by the assessee not to earn exempt income but to retain controlling stake in the investee company, the dominant purpose test cannot be said to be relevant for the purpose of Section 14A and disallowance u/s.14A can be made. It is not the dominant purpose test but the principle of apportionment which is ingrained in the provisions of Section 14A. When the assessee itself makes disallowance of certain expenditure incurred to earn dividend income and if the AO does not accept such disallowance, it is necessary for the AO to record satisfaction before rejecting the same. (2) Section 14A would be applicable only to income arising from the investment portfolio and not from stock-in-trade."

In view of the above facts and the decision relied upon, I am of the opinion that the facts of the case relied upon is squarely applicable to the appellant's case and the AO has recorded his satisfaction that the claim of the assessee in respect of expenditure in relation to income which does not form part of the total income under the I.T. Act, 1961 is not correct, Thus, the appellant's contentions are not acceptable and I do not find

any infirmity in the action of the AO. The grounds of appeal are dismissed."

7. Assessee is now in appeal before us against the order of the CIT(A) confirming the addition of INR 2,24,876/- made by the AO under Section 14A of the Act.
8. The Ld. Authorised Representative of the Appellant reiterated submission made before CIT(A) and relied upon the written submissions, while the Ld. Departmental Representative relied upon the orders passed by the AO and CIT(A) to oppose the contentions raised by the Appellant.
9. We have heard the parties, perused the records and the order passed by AO and CIT(A). We find merit in the contentions raised by the Appellant. The authorities below have rejected the contentions/submission of the Appellant/Assessee summarily without appreciating the correct legal position. The jurisdictional High Court has, in the case of **HDFC Bank Ltd. Vs. DCIT-2(3), Mumbai : 366 ITR 505 (Bombay)**, held that where interest free funds and interest-bearing funds are available, and the interest free funds are more than the investments, the presumption is that such investments would be made from the interest free funds. The aforesaid view stands approved by the Hon'ble Supreme Court in the case of **South Indian Bank Ltd. Vs. Commissioner of Income-tax : 438 ITR 1 (SC)**.
10. In paragraph 5 of the Assessment Order the AO has made following observations:

" It was seen from the balance sheet that.....

The reply of the assessee company have been carefully perused. However, the same is not acceptable. Perusal of the balance sheet of the assessee company reveals that the assessee company has a mixed bag of both own funds and borrowed funds. Out of the total funds of Rs.28.43 crores, the assessee's own funds are

Rs.22.54 crores and the balance amount of Rs.5.89 crore is borrowed funds." (Emphasis supplied)

11. The above observations, though made by the AO while dealing with the disallowance under Section 36(1)(iii) of the Act, are relevant for the issue before us. It is admitted fact that the Appellant had own funds of around 22.5 Crores which were more than sufficient for making investments of INR.1,43,48,000. In view of the abovesaid judgments of the Hon'ble Bombay High Court and the Hon'ble Supreme Court, there is presumption in favour of the Appellant investments would be made from the interest free funds which stands unrebutted. Further, AO and CIT(A) have called upon the Appellant to discharge the onus of proving the negative while brushing aside the contentions of the Appellant that entire interest expense incurred during the relevant previous year pertained to the working capital loans and that no PMS expenses have been incurred as the shares were held in physical form. Such an approach, in our considered view, cannot be countenanced in the present case. Accordingly, in the facts and circumstances of the present case, no disallowance can be made under Section 14A of the Act read with Rule 8D(ii) of the Rules. The addition of INR2,24,876/- made by the Assessing Officer by invoking provisions of Section 14A of the Act read with Rule 8D(ii) of the Rules is deleted.
12. In result, the appeal of the Assessee is allowed.

Order pronounced on 29.03.2022.

Sd/-
(Pramod Kumar)
Vice President

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29/03/2022
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai