

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "SMC" CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No.379/CHD/2021

निर्धारण वर्ष / Assessment Year : 2017-18

M/s Malbros Enterprises P.Ltd., Near Qilla Chowk, Faridkot.	Vs	The DCIT, Central Circle-II, Ludhiana.
स्थायीलेखासं./PAN NO: AAECM7096F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Sudhir Sehgal

राजस्व की ओर से/ Revenue by : Dr. Ranjeet Kaur, Sr.DR

सुनवाई की तारीख/Date of Hearing : 11.04.2022

उद्घोषणा की तारीख/Date of Pronouncement : 13.04.2022

आदेश/Order

The present appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-5 Ludhiana [in short referred to as CIT(A)] dated 27.09.2021 relating to A.Y. 2017-18.

2. The assessee in this appeal has preferred the following grounds of appeal :

1. a) *That the Ld.CIT (Appeal)-5, Ludhiana has erred in confirming the disallowance u/s 14A amounting to Rs. 7,81,240/-.*

b) *That while confirming the above said disallowance, the Ld. CIT(A) has failed to appreciate the fact that the assessee has earned the dividend of Rs. 7,81,240/- and that dividend income has been earned not from any borrowed funds, but out of own interest free funds.*

c) That the Ld Assessing Officer has failed to appreciate the submissions that the investment made for earning the dividend was prior to 31-03-2012 out of the interest free funds and whereas the interest bearing funds were raised in the Financial Year 2014-15.

d) That the income earned from interest bearing funds exceeds the amount of interest paid on the loan raised.

2. *That the Ld. CIT(A) has erred in giving enhancement notice u/s 251(2) of the Income Tax Act and, thereby enhancing the assessed income by way of disallowance of interest of Rs. 90,56,345/- paid to M/s Apex Fiber Pvt. Ltd.*
3. *That the Ld. CIT(A) has erred in not considering the submissions of the assessee that the enhancement notice u/s 251(2) is bad in law and since, it was a case of 'limited scrutiny' and, therefore, the enhancement notice is illegal and void and the CIT(A) is not competent to issue 'enhancement notice' on the issue, which is not there in the 'limited scrutiny case'.*
4. *That the Ld CIT(A) has wrongly relied on the treatment of interest paid in the books of accounts of the preceding years in the year under reference without talking into consideration the facts, circumstances and legality of the case and has wrongly disallowed the valid claim of interest in the year under reference.*
5. *Notwithstanding the above said grounds of appeal, the Ld. CIT(A) has erred in enhancing the income by way of disallowing the interest of Rs. 90,56,345/-, which is against the facts and circumstances of the case.*
6. *That the order appealed against is against the facts and legality of the case.*
7. *That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

Ground No. 1

3. The brief facts of the case are that the assessee during the year earned dividend income of Rs.7,81,240/- from the investments made in M/s Malbros International Pvt. Ltd. Further the assessee had not made any suo-moto disallowance relating to the expenses incurred for earning of the aforesaid tax exempt dividend income. The case of the assessee was selected for limited scrutiny to examine the issue relating to expenses incurred for earning of tax exempt income.

4. On being asked to explain in this respect, the assessee explained that the amount as invested in M/s Malbros International Pvt. Ltd. was an old investment and has been made from interest free funds as were available with the company at that time. It was also explained that no expenditure had been incurred by the assessee company during the year to gain the aforesaid tax exempt dividend income. However, the Assessing Officer (hereinafter referred to as 'the AO') did not accept the aforesaid explanation of the assessee and made the impugned disallowance of Rs. 7,55,070/- by way of invoking provisions of Section 14A of the Income Tax Act read with Rule 8D of the Income Tax Rules on account of expenditure that might have been incurred for earning tax exempt dividend income.

5. In appeal, the ld. CIT(A) upheld the disallowance so made by the AO.

6. The assessee, thus, has come in appeal before the Tribunal.

7. I have heard the rival contentions and have gone through the record. The ld. counsel for the assessee, at the outset has submitted that the investments were old investments and that no new investment was made during the year under

consideration. That the old investments were made by the assessee out of own funds available with the assessee at that time. The ld. counsel has further submitted that even otherwise the assessee was possessed of sufficient funds to meet the aforesaid investments.

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

9. I have considered the rival contentions. The ld. counsel for the assessee has placed reliance on page 48 of the Paper Book to submit that investments were old investments out of own funds of the assessee. However, as per the Balance Sheet placed on Paper Book page 4, the assessee had Share Capital of Rs. 5110100/- as on 31.03.2017 and Reserve and Surplus of Rs. 42973569/-, which means that Rs. 4.80 Crore was available with the assessee as its Share Capital and Reserve and Surplus, whereas, investments as on 31.03.2017 were much more. So far as the contention of the ld. counsel for the assessee that the investments in question were made in earlier years out of own funds of the assessee is concerned, in my view, that does not have much force because as per the Balance Sheet as on 31.03.2017, the assessee was not possessed of sufficient funds to meet the investment which means that the presumption would go that the assessee with the time has

withdrawn his own funds and some of the interest bearing funds have flown into the aforesaid investments. The ld. counsel, however, has relied upon the decision of the Hon'ble Supreme Court in the case of 'Hero Cycles P. Ltd Vs. CIT', 379 ITR 347 (SC), Hon'ble Punjab & Haryana High Court in the case of 'Bright Enterprises Pvt. Ltd Vs. CIT', 381 ITR 107 and of the Hon'ble Bombay High Court on in the case of 'CIT Vs. Reliance Utilities & Power Ltd.' 313 ITR 340 wherein the Hon'ble Courts have held that where the own funds of the assessee are sufficient to meet the investments, then the presumption would arise that such investments have been made out of the own funds of the assessee. The ld. counsel has further submitted that in view of the above stated proposition of law, the assessee may be given benefit to the extent the own funds/surplus funds were available with the assessee while computing disallowance u/s 14A read with Rule 8D.

10. In view of the above submissions and in the light of the aforesaid case laws, it is directed that out of the total investments yielding the tax exempt income, presumption will be that the assessee has invested its own funds upto the extent that were available with the assessee as on 31.03.2017 and the disallowance u/s 14A will be computed on the remaining investments made by the assessee and accordingly,

proportionate disallowance will be made. This ground is partly allowed in favour of the assessee.

GROUND NO. 2 to 5

11. Vide ground Nos. 2 to 5, the assessee has contested the enhancement of income made by the CIT(A) by way of making disallowance of interest expenditure debited into the Profit & Loss Account. The ld. CIT(A) noted that the assessee has claimed interest paid to M/s Apex Fibers Pvt. Ltd. for the year under consideration. The ld. CIT(A) further noted that in the earlier assessment year, the assessee though had incurred similar type of interest expenditure, but the same was not debited to the Profit & Loss Account. On being asked to explain in this respect, the assessee explained that the assessee did not routed the said interest expenditure through Profit & Loss Account in the earlier year because there was no profit during that year and that the assessee did not want to show losses so as to keep up its market value.

Whatever may be the reason for not claiming the interest expenditure in the earlier assessment year, but there is no doubt that the said expenditure claimed by the assessee for the year under consideration was an allowable interest expenditure. Merely because the assessee did not claim the

allowance of similar interest expenditure in the earlier year, that cannot be a ground of disallowance of interest expenditure incurred in the year under consideration. I, therefore, do not find justification on the part of the ld. CIT(A) in making the impugned disallowance and thereby enhancing the income of the assessee. The enhancement made by the ld. CIT(A), therefore, is set aside. These grounds are, therefore, allowed in favour of the assessee.

12. Ground Nos.6 & 7 are general in nature.

13. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 13th April, 2022.

Sd/-

(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

“Poonam.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar