

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA
[Before Shri Sanjay Garg, Judicial Member & Shri Girish Agrawal, Accountant Member]**I.T.A. No. 2527/Kol/2019**
Assessment Year: 2013-14

M/s. Keventer Agro Limited (PAN: AABCK1716D)	Vs.	Deputy Commissioner of Income-tax, Circle-4(1), Kolkata.
Appellant		Respondent

Date of Hearing	10.03.2022
Date of Pronouncement	29.04.2022
For the Appellant	Shri Ravi Tulsian, AR
For the Respondent	Smt. Ranu Biswas, Addl. CIT, DR

ORDER**Per Girish Agrawal, Accountant Member:**

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-2, Kolkata dated 18.11.2019 for AY 2013-14 in appeal No.CIT(A), Kolkata-2/10227/2016-17 against the assessment order passed by DCIT, Circle-4(1), Kolkata u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) dated 02.03.2016.

2. The sole issue involved in this appeal of assessee is against the action of Ld. CIT(A) in directing the AO to recompute the disallowance u/s. 14A read with Rule 8D(2)(ii) & (ii) of the Income Tax Rules, 1962 (hereinafter referred to as the “Rules”).

3. Briefly stated, facts of the case as observed by the AO are that the assessee company claimed to have earned dividend of Rs.25,25,790/- in the previous year under consideration. This dividend income was claimed by the assessee as exempt from tax in its return of income and accordingly disallowed suo moto an expense of Rs.2,04,697/- in the computation of total income. According to the AO, on examination of related particulars available on records, it was found that the disallowance of expenses made by the assessee was not in conformity with Rule 8D of the Rules. In view of this fact, for the related expenditure as per the provision of section 14A of the Act read with Rule 8D of the Rules, the AO calculated the disallowance at Rs.3,12,81,060/-, which is available at page 4 of the assessment order. Since the assessee suo moto disallowed and added back Rs.2,04,697/- in

its computation of total income, the balance of expenditure in question i.e. Rs.3,10,76,363/- was disallowed by AO and accordingly added back to the returned income of the assessee for taxation purpose.

4. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who after considering the submission of the assessee, passed the order and directed the AO to recompute the disallowance u/s. 14A r.w. Rule 8D(2)(ii) & (iii) of the Rules following the decision of the Hon'ble Calcutta High Court in the case of REI Agro Ltd. in GA No. 3581 of 2013 by considering only those investments from which dividend income was earned. The Ld. CIT(A) in his appellate order has observed as under:

“As regards to disallowance of the expenses under rule 8D(2)(ii) and (iii), the Hon'ble jurisdictional ITAT in the case of REI Agro Ltd. vs. DCIT (144 ITD 141) (Kol-Trib) has held that it is only the Investments which yields dividend during the previous year that has to be considered while adopting the average value of investments for the purpose of Rule 80 (ii) and (iii) of the rules. The aforesaid view of the Tribunal has since been affirmed as correct by the Hon'ble Calcutta High Court in G.A. No 3581 of 2013 in the appeal against the order of the Tribunal in the case of REI Agro Ltd (Supra). Keeping in view, of above and by following the judgement of Hon'ble jurisdictional ITAT, the AO is directed to recalculate the disallowance of those shares, which has yielded dividend income while taking the investment.

In view of above, the appellant shall furnish before the AO the details in the matter. The AO is also directed to verify the same and accordingly re-compute the disallowance u/s 14A r.w. Rule 80(2) (ii) and (iii). The AO shall allow the appellant an opportunity of hearing before passing any order in this regard. The disallowance should not be less than the amount already added back by the appellate company if any. This ground is therefore allowed for statistical purposes.”

Aggrieved, against the aforesaid order of Ld. CIT(A), the assessee is in appeal before us.

5. At the time of hearing, the Ld. AR for the assessee has submitted that the assessee had earned dividend income of Rs.25,25,790/- which is exempt u/s. 10(34) of the Act. The AO in his assessment order has disallowed a sum of Rs.3,10,76,363/- u/s. 14A of the Act read with rule 8D(2)(ii) and (iii) of the Rules. The Ld. AR before the Ld. CIT(A) submitted that no disallowance of interest expenditure could have been made u/s. 14A of the Act read with Rule 8D(2)(ii) of the Rules as the investments were made out of the own funds of the assessee. In this regard he placed reliance on the decision of the Hon'ble Bombay High court in the case of CIT Vs. Reliance Utilities and Power Ltd. 313 ITR 340. He also submitted that the dividend income was earned from only one investment i.e. Metro Dairy Limited. He further submitted that the disallowance u/s. 14A of the Act read with rule

8D(2)(iii) of the Rules can be made by considering only those investments from which dividend income was earned by placing reliance on the decision of the ITAT, Kolkata in the case of DCIT Vs. REI Agro Ltd. (ITA No. 1811/Kol/2012) reported in 144 ITD 141 which was affirmed by the Hon'ble Calcutta High Court. He also submitted that the Ld. CIT(A) in his order has not discussed the argument of the assessee in relation to the own funds having been utilized for making investments. According to him, the ld. CIT(A) simply followed the decision of the Hon'ble Calcutta High Court in GA No. 3581 of 2013 in the appeal against the order of the Tribunal in the case of REI Agro Ltd. and directed the AO to recalculate the disallowance u/s. 14A r.w.r 8D(2)(ii) & (iii) of the Rules on those shares which had yielded dividend income during the year.

6. In this connection, the Ld. AR also submitted that the assessee had total own funds of Rs.78,12,59,137/- as on 31.03.2013 and the total investment standing in the books of the assessee was Rs.58,81,17,048/-. According to him, it is evident from the audited financial statement placed on record that the assessee had sufficient own funds for making investments from which dividend was earned. According to him, it is a settled principle of law that if the own funds are sufficient to cover the investments which are subject matter of consideration for applicability of sec. 14A of the Act, then a presumption has to be drawn that own funds were used for making such investments. For this purpose, he relied on the decision of ITAT, Kolkata in the case of Balarampur Chini Mills Ltd. Vs. DCIT (2011) 140 TTJ (Kol) 73. He also placed reliance on the decision of Hon'ble Bombay High court in the case of CIT Vs. Reliance Utilities and Power Ltd. 313 ITR 340 (Bom). Therefore, according to him, when there is a common pool of funds, presumption would arise that investments which yield tax free returns were made by the assessee out of its own funds. He, therefore, submitted that the interest expenses incurred were directly attributable to the business income of the assessee and no disallowance should have been made u/s. 14A of the Act r.w.r. 8D(2)(ii) of the Rules on this account.

7. Per contra, the Ld. DR vehemently supported the orders of the lower authorities and urged before the bench to confirm the actions of the lower authorities. The Ld. DR opposed the submission of the Ld. AR and contended that assessee had interest

expenditure of Rs.15.90 cr. and was not maintaining separate accounts, so the AO inferred that Rule 8D(2)(ii) & (iii) of the Rules was applicable, so he does not want us to interfere.

8. We have heard rival submissions and gone through the facts and circumstances of the case. Facts are not repeated here again for the sake of brevity. We find force in the submission of the Ld. AR that no disallowance of interest expenditure could have been made u/s. 14A of the Act read with Rule 8D(2)(ii) of the Rules as the investments were made out of the own funds of the assessee. In this regard he placed reliance on the decision of the Hon'ble Bombay High court in the case of CIT Vs. Reliance Utilities and Power Ltd. (supra). Considering the facts on record and the judicial precedents as noted herein, we hold that no disallowance of interest expenditure is warranted under Rule 8D(2)(ii) of the Rule r.w.s. 14A of the Act. Accordingly, the disallowance of Rs.2,84,43,090/- computed by the AO under Rule 8D(2)(ii) is deleted.

9. We find that the dividend income was earned from only one investment i.e. Metro Dairy Limited. We also find force in the submission of the Ld. AR that the disallowance u/s. 14A of the Act read with rule 8D(2)(iii) of the Rules can be made by considering only those investments from which dividend income was earned by placing reliance on the decision of the ITAT, Kolkata in the case of DCIT Vs. REI Agro Ltd. (supra) which was further affirmed by the Hon'ble Calcutta High Court. We also find that the Ld. CIT(A) in his order has not discussed the argument of the assessee in relation to the own funds having been utilized for making investments. The Ld. CIT(A) simply followed the decision of the Hon'ble Calcutta High Court in GA No. 3581 of 2013 in the case of REI Agro Ltd. and directed the AO to recalculate the disallowance u/s. 14A r.w.r. 8D(2)(ii) and (iii) of the Rules on those shares which had yielded dividend income during the year.

10. We also find that the assessee had total own funds of Rs.78,12,59,137/- as on 31.03.2013 and the total investment standing in the books of the assessee was Rs.58,81,17,048/-. From the audited financial statement on record, it is discerned that the assessee had sufficient own funds for making investments from which dividend was earned. It is a settled position of law that if the own funds are sufficient to cover the investments which are subject matter of consideration for applicability of sec. 14A of the Act, then a presumption has to be drawn that own funds were used for making such investments. For

this purpose, reliance is placed on the decision of coordinate bench of ITAT, Kolkata in the case of Balarampur Chini Mills Ltd. Vs. DCIT (supra). Reliance is also placed on the decision of Hon'ble Bombay High court in the case of CIT Vs. Reliance Utilities and Power Ltd. (supra). Considering these judicial precedents, when there is a common pool of funds, presumption would arise that investments which yield tax free returns were made by the assessee out of its own funds. We also find that no new investment during the year has been made in the shares of Metro Dairy Ltd. as the opening value as on 01.04.2012 was Rs.9,60,50,074/- and closing value of investment as on 31.03.2013 was Rs.9,60,50,074/-. Accordingly, by taking the investments which yielded the exempt income for computing disallowance under Rule 8D(2)(iii) of the Rules @ 0.50% of the dividend earning investment of Rs.9,60,50,074/- comes to Rs.4,80,250/-. The assessee has already made a suo moto disallowance of Rs.2,04,697/- in its return, thus, balance amount of Rs.2,75,553/- (Rs.4,80,250-Rs.2,04,697) is sustained as disallowance u/s. 14A r.w.r. 8D(2)(iii) of the Act. The appeal of the assessee is, therefore, partly allowed.

11. In the result, the appeal of assessee is allowed in part.

Order is pronounced in the open court on 29th April, 2022.

Sd/-

(Sanjay Garg)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 29.04.2022

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant– M/s. Keventer Agro Limited, Sagar Estate, 4th floor, Unit-1, 2, Clive Ghat Street, Kolkata-700 001.
2. Respondent – DCIT, Circle-4(1), Kolkata.
3. CIT(A)-2, Kolkata. (sent through e-mail).
4. CIT , Kolkata.
5. DR, ITAT, Kolkata, (sent through e-mail).

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata