

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 772 /Ahd/2019
Assessment Year 2012-13**

JCIT(OSD), Circle-1(1)(1), Ahmedabad (Appellant)	Vs	Mieza School Pvt. Ltd. (Formerly Known as Arihant Arcade Pvt. Ltd.), F.P. No. 29 Virtuous Retail, Nr. Dumas Resort, Surat Dumas Road, Magdalla, Surat-395007 PAN: AAGCA2476H (Respondent)
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**Assessee by: Shri P.D. Shah, A.R.
Revenue by: Shri Mohd Usman, CIT-D.R.**

Date of hearing : 02-06-2022
Date of pronouncement : 24-06-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-1, Ahmedabad in Appeal no. CIT(A)-1/DCIT Circle-1(1)(2)/10339/2015-16 vide order dated 20/02/2019 passed for the assessment year 2012-13.

2. The revenue has filed the following grounds of appeal:

“(1) The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.5,29,28,517/- made u/s 68 of the Act.

(2) The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.8,34,886/- made on account of disallowance made u/s 14A r.w. Rule 8D(2)(ii) of the Act.

(3) On the facts and circumstances of the case, Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

(4) It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer Be restored.”

3. The brief facts of the case are that during the course of the assessment proceedings for the impugned year, the AO noted that the assessee had made investments in shares, the income from which is exempt from tax. Further, as per the profit and loss account, the assessee has claimed interest on the loans and also incurred other expenses. However, the assessee has not deducted such interest payment/expenses relating to the investment in shares for earning interest. Therefore, expenditure relatable to investments in shares and securities is required to be disallowed under section 14A of the Act. The assessee submitted that the investment during the year has been made from share equity capital, share premium and free reserves only and hence, there is no scope for disallowance of expenses under section 14A of the Act since no interest bearing funds were utilized to buy shares. The AO however rejected the assessee submission by holding that the assessee has made investments in shares and securities, income from which is exempt from tax. The motive of such investment was to earn dividend income which is

exempt from tax. The assessee also failed to substantiate with evidence for its claim that it has not incurred any expenditure for the investment activity. Further, as held in the case of **Cheminvest Ltd. ITAT Delhi (SB) in ITA number 87/Del/2008**, in order for the expenditure to be disallowed under section 14A of the Act, 'actual income' need not be earned. Accordingly, the AO disallowed a sum of ₹ 35,17,822/- u/s 14A of the Act. Secondly, the AO also noted that during the year the assessee has received a sum of ₹ 5,29,28,587/- from Sandesh Procon LLP. However, despite several opportunities, the assessee did not furnish the confirmation, identity, creditworthiness and genuineness of the credit appearing the balance sheet in the name of Sandesh Procon LLP. The AO held that the assessee has no evidence to prove the credit appearing in the balance sheet. Accordingly, the AO treated the sum of ₹ 5,29,28,587/- as unexplained credit under section 68 of the Act.

4. The assessee filed appeal against the above assessment order. In respect to the disallowance of ₹ 5,29,28,587/- as unexplained cash credit under section 68 of the Act, the assessee filed formal confirmation from Sandesh Procon LLP along with other supporting documents to establish identity, creditworthiness and genuineness of the loan. The assessee accordingly submitted confirmation from the creditor, bank statement, audited balance sheet of Sandesh Procon LP and the loan agreement with Sandesh Procon LLP in support of genuineness of the transaction. The assessee further submitted that he has repaid the loan along with interest on which TDS has also been deducted. Therefore, identity, creditworthiness and genuineness of the transaction cannot be doubted. Accordingly, in light of

the above submissions Ld. CIT(Appeals) allowed the assessee's appeal with the following observations:

“4.5 Appellant has taken a loan of Rs.5,29,28,517/- from M/s. Sandesh Procon LLP. The appellant has submitted copy of loan agreement, bank statement and audited balance sheet of M/s. Sandesh Procon LLP evidencing the above transaction. The loan along with interest of Rs.5,56,65,401 /- has been repaid on 13/06/2012 which is duly reflected in the bank statement and books of account. In view of the above, the identity, creditworthiness and genuineness as required u/s. 68 of the I. T. Act, 1961 has been proved by the appellant. Therefore, the addition made by the AO is uncalled for and deleted.”

5. Regarding the additions under section 14A of the Act, the Ld. CIT(Appeals) gave partial relief to the assessee by deleting the 14A disallowance as per Rule 8D (ii) of ₹ 18,23,172/- on the ground that the assessee was having sufficient interest-free funds available at its disposal for making investment and further the assessee had interest income of ₹ 2, 61, 42, 321/-against the interest expense of ₹ 23, 62, 370/-and therefore there is net interest income and according to decision of the jurisdictional High Court in the case of **Nirma Credit and Capital Private Limited [2017] 85 taxmann.com 72 (Gujarat)** which has held that for purpose of applying clause (ii) of sub-rule (2) of rule 8D, prior to its amendment with effect from 2-6-2016, amount of expenditure by way of interest would be interest paid by assessee on borrowings minus taxable interest earned during financial year, disallowance under Rule 8D(ii) was set aside. As regards disallowance of administrative expenses under Rule 8D(iii), Ld. CIT(Appeals) set aside the matter to the AO to take average of investment from where non-taxable income has been earned and accordingly re-compute the disallowances for

the purpose of Rule 8D(iii). While passing the order, Ld. CIT(Appeals) made the following observations:

“5.3. I have carefully considered the assessment order and submission filed by the Appellant. The AO has made disallowances of Rs.35,17,822/- as per Rule 8D u/s. 14A as appellant has not allocated any expenditure towards the exempt income. The appellant has contended that the AO while making disallowances under Rule 8D has computed the disallowance of interest as per Rule 8D(2)(ii) of Rs.18,23,172/- and administrative expenses as per Rule 8D(2)(iii) of Rs.16,94,650/-. Appellant has submitted that company has sufficient interest free funds in the form of share capital of Rs.2.78 crore and reserve and surplus of Rs.27.69 crore and FCCD of Rs. 12.19 crore to make the investment of Rs.4.86 crore from which dividend income has been earned. Therefore, in view of decision of jurisdictional High Court in the case of CIT Vs. Torrent Power (supra), disallowance of interest is uncalled for. Appellant also has submitted that during the year there is a interest income of Rs.2,61,42,321/- as against interest expenses of Rs.23,62,310/-, and therefore, there is a net interest income and according to decision of jurisdictional High Court in the case of Pr. CIT- 3 Vs. Nirma Credit and Capital Pvt. Ltd.-(supra), disallowance of interest under Rule 8D(2)(ii) is uncalled for. I agree with the submission made by the appellant that there is a net interest income, and therefore, in view of the order of jurisdictional High Court, disallowance of interest under Rule 8D(2)(ii) is uncalled for. As regard to disallowance of administrative expenses under Rule 8D(2)(iii) of Rs.16,94,650/-, the appellant has submitted that Assessing Officer has considered total investment of Rs.33,89,30,028/- for computing 0.5% of average investment. The AO was required to consider average of only those investments which has yielded non taxable income. The appellant has submitted the average investment at Rs.8,51,40,803/- being average of Rs.4,86,66,810/- and Rs.12,16,14,795/-. I agree with the submission of appellant. AO is required to take the average of investment from where non taxable income has been earned. AO is therefore directed to verify the appellant's claim and re-compute the disallowances for the purpose of computation under Rule 8D(2) (iii).”

The grounds of appeal are accordingly partly allowed.”

6. The Revenue is in appeal before us against the aforesaid order of the Ld. CIT(Appeals). Regarding the addition under section 68 of the Act, the Ld. DR primarily relied upon the observations made by the Ld. Assessing Officer and argued that the genuineness and creditworthiness of the transaction is questionable. The counsel for the assessee relied on the observations made by the Ld. CIT(Appeals) who accepted the genuineness of the creditors in view of the facts placed on record viz. loan agreement with M/s Sandesh Procon LLP, bank statement, audited balance sheet of M/s Sandesh Procon LLP evidencing the above transaction. Further counsel for the assessee submitted that the genuineness of the loan is further supported by the fact that the amount of loan was repaid back along with interest on which TDS has also been deducted. In view of the above, the identity, creditworthiness and genuineness as required under section 68 of the Act has been proved by the assessee. With respect to the additions under section 14A of the Act, the Ld. DR relied upon the observations made by the Ld. Assessing Officer. The counsel for the assessee, in response, relied upon the observations of the Ld. CIT(Appeals).

7. We have heard the rival contentions and perused the material on record. With regards to addition under section 68 of the Act, we are of the considered view that the Ld. CIT(Appeals) has after appreciation of evidence placed on record by the assessee during the course of appeal proceedings has deleted the additions. During appeal, the assessee was able to produce the confirmation from the creditors in support of genuineness of

the transaction, loan agreement with M/s Sandesh Procon LLP, bank statement and audited balance sheet of M/s Sandesh Procon LLP evidencing the above transaction were also placed on record to prove the genuineness of transaction. Further, the fact that the loan was repaid back with interest, on which TDS was duly deducted also lends support to the genuineness of transaction. In the case of **Shree Samruddhi Overseas Trading Co. v. DCIT in ITA Number I.T.A. Nos. 909 & 910/Ahd/2018**, the Ahmedabad ITAT held that repayment of loan points towards genuineness of transaction in the following words:

The repayment of loan exists as a strong mitigating circumstance and transcends all considerations. We thus find that the documents placed by the assessee before the Revenue authorities sufficiently discharge the onus towards the identity and genuineness of the transaction and creditworthiness of the lender contemplated under s.68 of the Act.

7.1 In the case of **Ayachi Chandrashekhar Narsangji [2014] 42 taxmann.com 251 (Gujarat)**, Hon'ble Gujarat High Court held that where department had accepted repayment of loan in subsequent year, no addition was to be made in current year on account of cash credit. In view of the above facts and the judicial precedents by the jurisdictional High Court, we are of the considered view that Ld. CIT(Appeals) has not erred in facts and in law in deleting the additions made by the Ld. Assessing Officer u/s 68 of the Act.

7.2 In the result, ground number 1 of the Revenue's appeal is hereby dismissed.

7.3 So far as the additions in relation to section 14A of the Act are concerned, we are of the considered view that there is no infirmity in the order of the Ld. CIT(Appeals). The assessee has been able to demonstrate that he was in possession of substantial interest-free funds (in the form of share capital of ₹ 2.78 crores and reserves on surplus of ₹ 27.69 crores and CCD of ₹ 4.19 crores to make the investment of ₹ 4.86 crores from which dividend income has been earned) from which investments are made so as to be able to earn exempt income. Further, Ld. CIT(Appeals) observed that during the year, the assessee earned interest income of ₹ 2,61,42,321/- as against interest expenditure of Rs. 23,62,310/- and therefore there is a net interest income during the year. The jurisdictional Gujarat High Court in the case of **Torrent Power [2014] 44 taxmann.com 441 (Gujarat)** held that where it was apparent from records that assessee had sufficient funds for making investments in shares and interest free bonds and it had not used borrowed funds for such purpose, Assessing Officer was not justified in invoking provisions of section 14A in order to disallow one per cent of interest expenses incurred for earning exempt income. Also, the Mumbai Tribunal in the case of **Doha Bank QSC [2021] 124 taxmann.com 70 (Mumbai - Trib.)** held that disallowance made under section 14A read with rule 8D is to be carried out on basis of netting of interest expenditure. The Hon'ble High Court of Gujarat in the case of **Pr. CIT v. Nirma Credit & Capital (P.) Ltd. [2017] 85 taxmann.com 72** it was observed by the Hon'ble High Court that for the purpose of working out the disallowance under rule

8D(2)(ii) the amount of expenditure by way of interest would be interest paid by the assessee on borrowings minus taxable interest earned during the year. Further, as regards disallowance of administrative expenditure of ₹ 16,94,650/- under Rule 8D(2)(iii) is concerned, Hon'ble Delhi High Court in **ACB India Ltd. vs. CIT (2015) 374 ITR 108 (Del)** has held that the average value of investments, for the purposes of Rule 8D(2)(iii), should be confined to those securities in respect of which exempt income is earned and not the total investments. Similar view has been taken by the Special Bench of the Tribunal in the case of **ACIT vs. Vireet Investments (P) Ltd. (2017) 165 ITD 27 (Del) (SB)** and also the case of **Poonawalla Finance Pvt. Ltd. Vs DCIT (ITAT Pune) ITA No. 1589/PUN/2019**. Accordingly, we find no infirmity in the order of the Ld. CIT(Appeals) when he held that if the assessee had sufficient funds for making investments in shares and interest free bonds and it had not used borrowed funds for such purpose, no disallowance can be made under section 14A of the Act and also that AO is required to take the average of investment from where non-taxable income has been earned in order to make disallowance under Rule 8D(2)(iii). In view of the above, we are of the considered view that Ld. CIT(Appeals) has not erred in facts and law in giving part relief to the assessee in respect of disallowance made by the Ld. Assessing Officer under section 14A of the Act.

7.4 In the result, ground number 2 of the Revenue's appeal is hereby dismissed.

8. The other grounds of appeal of the Revenue's Appeal are general in nature and do not require any specific adjudication.

9. In the combined result, the Revenue's appeal is dismissed.

Order pronounced in the open court on 24-06-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 24/06/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद