

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 831/Del/2019
(Assessment Year : 2014-15)

| | | |
|---|-----|---|
| Addl. CIT Circle – 19, New Delhi PAN No. AACCB 4137 E (APPELLANT) | Vs. | M/s. Sindhu Trade Links Ltd. 129, Transport Centre, Rohtak Road, Punjabi Bagh, New Delhi-110 035 (RESPONDENT) |
|---|-----|---|

AND

CO No.99/Del/2019
(Assessment Year : 2014-15)

| | | |
|--|-----|---|
| M/s. Sindhu Trade Links Ltd. 129, Transport Centre, Rohtak Road, Punjabi Bagh, New Delhi-110 035 (APPELLANT) | Vs. | Addl. CIT Circle – 19, New Delhi (RESPONDENT) |
|--|-----|---|

| | |
|-------------|-------------------------------|
| Assessee by | Shri Karan Kumra, Adv |
| Revenue by | Shri Abhishek Kumar, Sr. D.R. |

| | |
|------------------------|------------|
| Date of hearing: | 12.07.2022 |
| Date of Pronouncement: | 25.07.2022 |

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the Revenue along with the Cross Objection by the assessee is directed against the order dated 29.11.2018 passed by the Commissioner of Income Tax (Appeals)-27, New Delhi relating to Assessment Year 2014-15.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company who filed its return of income for A.Y. 2014-15 declaring total income at Rs.32,19,77,336/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 29.12.2017 and the total income was determined at Rs.34,35,06,549/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 29.11.2018 in Appeal No.247/17-18 granted partial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now in appeal before us and has raised the following grounds:

- “1. *Learned CIT(A) has erred in law and on facts of the case in not accepting the methodology adopted by the Assessing Officer for computation of interest rate and subsequently in deleting the disallowance of Rs.2,12,94,303/- on account of interest expenses.*
2. (a) *The order of the CIT(A) is erroneous and not tenable in law and on facts.*
 (b) *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

4. On the other hand, the assessee vide CO No.99/Del/2019 has raised the following grounds.

- “1. *That the appeal filed by the ACIT Central Circle 19 Delhi is defective, deficient and void an initio.*
2. *That the Ld CIT(A) has rightly accepted the contentions of the respondent and deleted the erroneous disallowance of interest of Rs.2,12,94,303/- made by the AO in the assessment order.*
3. *That the Ld CIT(A) has erred in upholding the AO’s approach of using the ratio of interest earned to compare the ratio of interest allowable as business expenditure.*

4. *That the Ld CIT(A) has erred in upholding the disallowance u/s 14A of Rs.2,34,910/-.*
5. *That the Ld CIT(A) and AO have grossly erred in not accepting the claim of the respondent that it did not incur any expenditure for earning exempt income during the year.*
6. *That the Ld CIT(A) has erred in ignoring the fact that the AO has not recorded proper satisfaction before rejecting the respondent's claim of not incurring any expenditure for earning exempt income.*
7. *That without prejudice, the AO has grossly erred in including investments in mutual funds for computing disallowance u/s 14A where the reasons for applying provisions of section 14A in the assessment order was investment in equity shares.*
8. *That the respondent craves leave to add, alter, modify, amend any of the above grounds or raise any fresh grounds of cross objection at any time before or during the hearing before Hon'ble Appellate Tribunal."*

We now first proceed with disposing of Revenue's appeal:

5. During the course of assessment proceedings, AO noticed that assessee had borrowings (Short Term as well as Long Term) from banks and institutions and it was paying interest around 13% per annum. He also noticed that assessee had advanced loans/advances to various parties including share application money, loans to group companies etc., on which either assessee had not charged any interest or had charged very less interest as compared to the interest paid by the assessee. Assessee was asked to explain as to why interest paid on loans taken corresponding to interest received from advances should not be disallowed to which assessee made the submissions which was not found acceptable to AO. AO thereafter, on the basis of calculation made at page 5 to 7 of his order worked out the average rate of interest paid by the assessee @ 16.59% and the

average interest earned by the assessee @ 13.80%. He thereafter, concluded that assessee was paying interest @ 16.59% on the loan taken and that the interest bearing loans was diverted as loan to group companies and others wherein assessee was charging interest @ 13.80%. AO was of the view that by the diversion of interest bearing funds, assessee was claiming business expenditure of high interest paid for the funds borrowed. AO was of the view that assessee should have charged interest rate at least 16.59% on loan and advances given. He thereafter worked out differential interest that it should have charged on the amount advanced at Rs.2,12,94,303/- and made its additions.

6. Aggrieved by the order of AO, assessee carried the matter before CIT(A). Before CIT(A) assessee *inter alia* submitted that the AO had made calculation error for working of average rate of interest paid by the assessee @ 16.59%. Assessee filed the correct working of the interest and on the basis of the working submitted by the assessee, CIT(A) at page 50 & 53 noted that the average rate of interest paid by the assessee was less than the average rate of interest earned. He therefore, held that assessee had not paid excessive average rate of interest on average borrowings than the average rate of interest charged on the average loans and advances. He therefore deleted the addition by holding that the addition made by AO was based on erroneous working. Aggrieved by the order of CIT(A), Revenue is now in appeal before us.

7. Before us, Learned DR supported the order of AO.

8. Learned AR on the other hand reiterated the submissions made before the lower authorities and supported the order of CIT(A).

9. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the deleting the addition on account of interest that should have been charged by assessee on the amount advanced by it and which was made by AO but deleted by CIT(A). AO on the basis of working given in the assessment order had concluded that assessee had charged lower interest on the amount advanced as compared to the higher interest paid on the amount borrowed. AO thereafter, worked out the interest that should have been charged by the assessee. When the matter was carried before CIT(A), CIT(A) after considering the submissions of the assessee had given a finding that the average rate of interest paid by the assessee was less than the average rate of interest earned by the assessee and thus assessee had not paid excessive interest on the borrowings. He has further given a finding that the addition made by AO was based on erroneous working. Before us, Revenue has not pointed any fallacy in the findings of CIT(A). In such a situation, we find no reason to interfere with the order of CIT(A). **Thus the ground of Revenue is dismissed.**

10. In the result, appeal of Revenue is dismissed

We now proceed with deciding the issue raised by the assessee in its Cross Objection No.99/Del/2019:

11. Before us, at the outset, Learned AR submitted that though assessee has raised the various grounds but he would like to argue only Ground No.7 wherein, according to him, AO has grossly erred in including investments in mutual funds for computing disallowance u/s 14A of the Act.

12. Before us, Learned AR submitted that while working out the disallowance u/s 14A of the Act, AO has considered the investments which also included the mutual funds on which the income earned is taxable and therefore the AO should have excluded the mutual fund investments while working out the disallowance u/s 14A of the Act. He therefore, submitted that suitable direction be given to AO to work out the disallowance.

13. Learned DR on the other hand supported the order of AO and, thereafter, pointed to the schedule of investment which is listed at page 135 of the paper book. From the aforesaid schedule, he pointed that assessee in the audited Balance Sheet has stated the investment in equity share of ICICI Advantages for which the assessee is seeking exclusion. He therefore submitted that in such a situation, the AO was fully justified in working out the disallowance after considering the aforesaid investments and therefore the ground raised by assessee has no merits.

14. We have heard the rival submissions and perused the material available on record. The grievance of the assessee in this ground is that AO had considered the investment in mutual funds while working out the disallowance under Rule 8D of I.T. Rules. It is the submission of the assessee that mutual fund investments should have been excluded for working out the disallowance u/s 14A of the Act. On perusal of the investments schedule placed in the audited Balance Sheet, the copy of which placed at page.135 of the paper book reveals that assessee has stated investment in mutual funds and also stated the investment in equity shares of ICICI Advantages at Rs. 37,402,900/-. In view of the aforesaid facts, we do not find any merit in the submissions of the Learned AR that the investments are in mutual funds and therefore, needs to be excluded. We, thus, **dismiss the Ground of the cross objection of the assessee.**

15. In the result, Cross Objections of the Assessee are dismissed.

16. In the combined result, appeal of the Revenue as well as Cross Objection of the assessee are dismissed.

Order pronounced in the open court on 25.07.2022

Sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 25.07.2022
PY*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI