

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 1874/Mum/2021 (A.Y. 2016-17)

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| M/s. KMME Implex Pvt. Ltd.<br>No. 702, Nirman Kendra<br>20, Dr. E. Moses Road<br>Mahalakshmi, Mumbai-11.<br><br>PAN : AAECK9341H<br>(Appellant) | Vs. | DCIT, Circle-<br>6(3)(2)<br>Mumbai.<br><br>(Respondent) |
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| Assessee by           | Ms. Laxmi Menon |
| Department by         | Shri R.P. Veena |
| Date of Hearing       | 25.08.2022      |
| Date of Pronouncement | 26.08.2022      |

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 17.03.2020 passed by Ld CIT(A)-12, Mumbai and it relates to the assessment year 2016-17. All the grounds of appeal raised by the assessee relate to the disallowance made u/s 14A of the Act.

2. The facts relating to the issue are stated in brief. The assessee is a trader in shares. During the year under consideration, it received dividend income of Rs. 24,13,886/-, but did not make any disallowance u/s 14A of the Act. When questioned on this aspect by the AO, the assessee submitted that sec.14A is not applicable to a share trader. The AO did not accept the same. He referred to the decision rendered by Hon'ble Supreme Court in the case of Maxopp Investments Ltd. and held that the disallowance is required to be made u/s 14A of the Act. Accordingly, the AO computed disallowance by applying provisions of Rule 8D of I T Rules and disallowed a sum of Rs.64,33,500/-, which consisted of interest disallowance under Rule 8D(2)(ii) of Rs.61,26,720/- and expenses disallowance under Rule 8D(2)(iii) of

Rs.3,06,780/-. The AO added the above said amount for computing book profit u/s 115JB of the Act also. The Ld CIT(A) also confirmed the same.

3. The Ld A.R submitted that the assessee is a share trader and all the loans have been taken for the purpose of carrying on business of trading in shares only. Accordingly, she submitted that, in real sense, no interest expenditure could be apportioned to dividend income. The Ld A.R further submitted that the total investments held by the assessee is Rs.5.88 crores out of which a sum of Rs.4.00 crores have been invested in the growth schemes of mutual funds, which will not yield any dividend income. Hence the interest attributable to the above said four crores should not be taken into account for computing interest disallowance u/r 8D(2)(ii) of I T Rules. Further, the Ld A.R submitted that the assessee has not received any dividend income from some of the investments. Accordingly, the Ld A.R submitted that the above said investments in Growth funds and the value of investments which did not yield dividend income should be excluded while computing average value of investments. In the alternative, the Ld A.R further submitted that the disallowance u/s 14A should not exceed the amount of exempt income.

4. The Ld A.R further submitted that the AO was not correct in law in adopting the disallowance computed u/s 14A of the Act for making addition for computing book profit u/s 115JB of the Act. She submitted that the addition under clause (f) of Explanation to sec. 115JB should be computed on the basis of books of accounts separately.

5. The Ld D.R, on the contrary, supported the order passed by Ld CIT(A).

6. We have heard rival contentions and perused the record. We find merit in the contentions of Ld A.R. We understand that the contentions of Ld A.R are that:-

(a) interest expenditure on loan funds related to the investments made in Growth funds should not be considered for making disallowance u/r 8D(2)(ii) of I T Rules.

(b) the AO should not have included the investments, which did not yield any dividend income (including investments made in growth funds of mutual funds) for the purpose of computing average value of investments. We notice that this contention of the assessee finds support from the decision rendered by Special bench of ITAT in the case of Vireet Investment (P) Ltd (165 ITD 27)(Delhi).

7. We notice that the AO has simply applied the provisions of Rule 8D without making any reference to the facts of the present case. We agree with the contentions of Ld A.R that, if the loan funds were used for making investments in growth funds of mutual funds, which will not yield any dividend income, then the interest relatable to such investments should not be considered for the purpose of computing disallowance u/r 8D(2)(ii) of I T Rules. Further, in the case of Vireet Investments P Ltd (supra), it has been held that, for the purpose of computing average value of investments, the investment which has yielded exempt income alone should be taken into account.

8. It has also been held in the above said case by the Special bench that the disallowance computed u/s 14A of the Act should not be adopted for making addition under clause (f) to Explanation to sec.115JB of the Act, meaning thereby, the addition to be made under clause (f) should be computed separately from the profit and loss account/books of account.

9. In view of the above, we are of the view that the AO is required to compute disallowance u/s 14A and also the addition to be made under clause (f) of Explanation to sec.115JB of the Act in accordance with the discussions made supra. Accordingly, we set aside the order passed by Ld

CIT(A) and restore the issue to the file of AO for computing disallowance u/s 14A and the addition to be made u/s 115JB of the Act in the light of discussions made supra.

10. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 26.08.2022.

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 26/08/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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