

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SMT. MADHUMITA ROY, JUDICIAL MEMBER, JUDICIAL MEMBER

ITA No.1340/Ahd/2019
Assessment Year : 2016-17

Moly Metal Pvt.Ltd. 208, Aditya Building Nr.Mithakhali Six Roads Ellisbridge Ahmedabad. PAN : AAHCS 2144 K.	Vs.	ITO, Ward-2(1)(4) Ahmedabad.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/(Respondent)
Assessee by :	Shri S.N. Divatia, AR	
Revenue by :	Leena Lal, Sr.DR	

सुनवाई की तारीख/**Date of Hearing** : **30/06/2022**
घोषणा की तारीख /**Date of Pronouncement**: **07/09/2022**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the Id.Commissioner of Income-Tax(A)-6, Ahmedabad [hereinafter referred to as "Id.CIT(A)"] dated 21.6.2019 under section 250(2) of the Income Tax Act, 1961 ("the Act" for short) pertaining to Asst.Year 2016-17.

2. Sole issue in the present appeal relates to disallowance of expenses allegedly pertaining to earning of exempt income, as per provisions of section 14A of the Act.

3. The ld.AO had noted that the assessee had earned exempt income amounting to Rs.27,74,040/- during the year being Rs.19,32,310/- as dividend income exempt under section 10(34) of the Act and Rs.8,41,730/- being interest tax free income . The assessee had made a *suo moto* disallowance of expenses incurred for earning such exempt income amounting in all to Rs.2,10,750/-. The AO however worked out disallowance by applying Rule 8D and calculated total disallowance to be made at Rs.12,41,961/- comprising of Rs.1,37,386/- being the interest expenses and Rs.11,47,128/- being administrative expenses as per rule 8D(ii) and (iii) of the I.T. Rules respectively. The ld.CIT(A) deleted the disallowance pertaining to interest expenses amounting to Rs.1,37,386/- noting that the assessee had sufficient owned interest free funds for the purpose of making investment. The balance disallowance pertained to administrative expenses was however upheld, which after reducing *suo moto* disallowance made by the assessee amounted to Rs.9,36,371/-.

4. Before us, the solitary plea of the ld.counsel for the assessee was that impugned disallowance sustained/confirmed by the ld.CIT(A) be restricted by taking into consideration only those investments which had earned exempt income. The ld.counsel for the assessee stated that the assessee had made investments in various securities both quoted and unquoted, amounting in all to Rs.7,25,81,597/- as detailed in Note-11 of the audited accounts of the assessee placed before us at PB page no.27. The ld.counsel for the assessee contended that the exempt income earned did not pertain to all these investments. He contended that Hon'ble Delhi High Court in the case of Joint Investment P.Ltd. Vs. CIT in ITA No.117/2015 dated 25.2.2015 has held that disallowance under

section 14A should be computed by taking into consideration only those investments which had earned exempt income, while applying the formula laid down under Rule 8D of the Act.

The ld.DR was unable to controvert the above by pointing out any contrary decision either of the jurisdictional High Court or of Hon'ble Apex Court in this regard.

5. In view of the above, since disallowance has not been considered in the perspective as pointed out by the ld.counsel for assessee duly supported by the judicial decision in this regard, to be calculated in terms of Rule 8D of the Rules, only with respect to the investments which have earned exempt income, we consider it fit to restore this issue back to the AO to decide it afresh in the light of the limited argument raised by the assessee in this respect. The Ld.AO is directed to consider the argument of the assessee, verify all necessary facts and thereafter adjudicate the issue in accordance with law. Needless to add the assessee be granted due opportunity of hearing in this regard.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 7th September, 2022 at Ahmedabad.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 7/09/2022

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