

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA.NO. 2993/MUM/2022 (A.Y: 2014-15)

M/s Plastiblends India Ltd, 10 th Floor, A Wing Fortune Terraces, Opp Citi Mall New link Road, Andheri (W) Mumbai- 400053 PAN: AAACP6287B	v.	DCIT-Circle-10(3)(2) Mumbai
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Sagar Tilak
Department Represented by	:	Shri Rajesh Meshram
Date of Hearing	:	18.01.2023
Date of Pronouncement	:	13.04.2023

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 27.09.2022 for the A.Y.2014-15.

2. Brief facts of the case are, assessee filed its return of income for A.Y.2014-15 on 29.11.2014 declaring total income under normal provisions at ₹.37,73,07,746/- and book profit u/s. 115JB at ₹.40,48,73,806/-. The case was selected for scrutiny under CASS and notices u/s. 143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. In response Authorised Representative of the assessee attended and submitted the relevant information as called for.

3. Assessee is engaged in the business of manufacturing of various types of master batches and compounds for the plastic industry. The assessee is a listed company in the Bombay Stock Exchange and its manufacturing operations are carried out from Daman and Roorkee in Uttranchal.

4. During assessment proceedings, Assessing Officer observed that assessee has pressed for a claim of exemption of ₹.31,21,521/- being Long Term Capital Gain on sale of 12450 shares of State Bank of Travancore u/s. 10 (38) of the Act. In this regard assessee has submitted working of the said Capital Gain along with supporting evidences and it was submitted that assessee has included the above profit in its Profit and

Loss Account which is declared at Note 19 of the Profit and Loss Account included in the Annual Report and the same was filed during the course of assessment proceedings. After considering the submissions of the assessee, Assessing Officer has rejected the same by invoking the decision of the Hon'ble Supreme Court in the case of M/s. Goetze (India) Ltd., v. CIT (2006) 204 CTR and observed that assessee has claimed the same in the course of assessment proceedings by way of written submissions and beyond 31st March, 2016. Accordingly, he rejected the claim made by the assessee.

5. Further, Assessing Officer observed that in the Profit and Loss Account, assessee has credited ₹.12,53,407/- as dividend income and claimed the same as exempt u/s.10(34) of the Act. Further, he observed that assessee has disallowed while computing the income to the extent of ₹.47,347/-.

6. At the time of proceedings assessee submitted that Rule 8D is not applicable to the case of the assessee and assessee has not borrowed any funds for investments and is cash rich with Capital and Reserves. The borrowings are only by way of cash credit facilities and unsecured loans which have been utilized for working capital.

7. After considering the submissions of the assessee, Assessing Officer applied the Rule 8D and disallowed as under: -

S. No	PARTICULARS	AMOUNT		
1	The amount of expenditure directly relating to income which does not form part of total income	--		
2	Expenditure by way of interest= <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding: 5px;">$A \times \frac{B}{C}$</td> <td style="padding: 5px;">$578,82,000 \times \frac{345,61,000}{242,08,75,000}$</td> </tr> </table>	$A \times \frac{B}{C}$	$578,82,000 \times \frac{345,61,000}{242,08,75,000}$	8,26,338
$A \times \frac{B}{C}$	$578,82,000 \times \frac{345,61,000}{242,08,75,000}$			
3	A= The amount of expenditure by way of interest other than amount of interest included in clause (i) incurred during the previous year. ₹ 578,82,000/- B= the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year. [₹ 358,44,000 + ₹ 332,78,000 + 2] = ₹ 345,61,000/- C= the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year. [₹ 235,76,76,000+ ₹ 248,40,74,000 + 2] = ₹ 242,08,75,000/-			
4	An amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year."	₹ 1,72,805/- (½% of ₹ 34561000/-)		
	TOTAL	₹ 9,99,143/-		

8. Accordingly, he disallowed ₹.9,51,796/- by giving credit of ₹.47,347/- and he adjusted the disallowance u/s. 14A of the Act in both regular computation as well as income determined u/s. 115JB of the Act.

9. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) after considering the submissions of the assessee dismissed the appeal filed by the assessee.

10. Aggrieved assessee is in appeal by raising following grounds in its appeal: -

"1. On the facts and in the circumstances of the case and in law the Assessing Officer erred in assessing the total income of the appellant at Rs. 37,82,28,700/-.

2. On the facts and in the circumstances of the case and in law the Assessing Officer erred in making disallowance of Rs. 9,51,796/- u/s 14A rwr 8D of the Income Tax Act 1961.

3. On the facts and in the circumstances of the case and in law the Assessing Officer erred in not taking cognizance of the fact that the appellant has made investments out of its surplus funds and not out of borrowed funds and therefore no disallowance u/s 14A rwr 8D could be made in the hands of the appellant.

4. On the facts and in the circumstances of the case and in law the Assessing Officer as well as the Id. CIT(A) erred in not allowing the exemption u/s 10(38) in respect of LTCCG on sale of listed securities solely on the ground that the appellant failed to make a claim in respect of same in its return of income.

5. On the facts and in the circumstances of the case and in law the Id. CIT(A) grossly failed to appreciate the fact that the CIT(A) is empowered to entertain an additional claim not made in Return of income and made for the first time before the Id. CIT(A) and thereby erred in not allowing the exemption in respect of LTCCG earned on sale of listed securities which is otherwise eligible for exemption u/s 10(38) of Income Tax Act 1961.

6. The appellant craves for leave to add, alter, amend, delete etc the above grounds of appeal in the interest of natural justice."

11. At the time of hearing, with regard to Ground No. 1, Ld. AR of the assessee brought to our notice relevant facts on record and submitted that assessee has earned dividend income from shares held by it and other investments which do not generate any income during the present assessment year. In this regard he brought to our notice Page No. 66

and 68 of the Paper Book to highlight that assessee has not received any dividend from the shares invested in Urban Infrastructure Venture Capital Fund, he also brought to our notice Page No. 51 of the Paper Book, therefore he prayed that for the purpose of calculating the disallowance, Assessing Officer should have considered only those investments which has actually earned dividend income. Further, he submitted with regard to disallowance made by the Assessing Officer on Rule 8D(2)(ii) of I.T. Rules, he submitted that assessee has enough interest free funds in the business to make those investments. Therefore, interest should not be considered for disallowance. In this regard he filed a calculation under Rule 8D before us, for the sake of clarity it is reproduced below: -

Sr.No	Particulars	Amount Rs	Amount Rs.
1	The Amount of Expenditure directly relating to exempt Income		Nil
2	Expenditure by way of Interest:		
A	The amount of interest	5,78,81,857.00	
B1	Opening Investment generating exempt income	70,13,870.00	
B2	Closing Investment generating exempt income	46,90,537.00	
B	Average Investment generating exempt income	93,59,138.50	
C1	Opening Total Assets	2,36,35,81,892.00	
C2	Closing Total Assets	2,47,81,66,573.00	
C	Average Total Assets	3,60,26,65,178.50	
D	AXB/C		1,50,367.66
E	One-half per cent of average investments generating exempt income (0.5 % of B)		46,795.69
F	Amount of Disallowance under Rule 8D		1,97,163.35

12. With regard to claim of deduction u/s. 10(38) of the Act, he agreed that assessee has not claimed the same in return of income filed, however, assessee has claimed first time before the Assessing Officer and Assessing Officer has rejected the same. He submitted that as per the decision of the National Thermal Power Co. Ltd., *v.* CIT [1998] 229 ITR 383 (SC) Assessing Officer may not be in a position to entertain the claim made by the assessee, however, as per the decision of Hon'ble Supreme Court ITAT has the discretion to allow or not to allow the new grounds raised and he prayed this issue may be considered.

13. On the other hand, Ld. DR relied on the orders of the lower authorities.

14. Considered the rival submissions and material placed on record, with regard to Ground No. 1 we observe that Assessing Officer has applied Rule 8D of I.T. Rules to make the disallowance u/s. 14A of the Act. However, he failed to consider the facts on record. We observe from the record that assessee has enough interest free funds in the business to make the investments. Therefore, the disallowance under Rule 8D(2)(ii) is not called for, accordingly we direct the Assessing Officer to delete the same.

15. With regard to disallowance made u/s. 8D(2)(iii) of I.T. Rules, we observe that the administration expenses of 0.5% on the investment in which exempt income earned are to be applied not on the total investment made by the assessee but only to the extent of investments which has actually earned exempt income. It is brought on record that assessee has made the investment, however, not earned exempt income out of total investments. Therefore, we direct the Assessing Officer to recalculate the disallowance u/s. 14A of the Act based on the above direction and however, assessee itself has filed a calculation determining the disallowance u/s. 14A which is placed on record. Therefore, we direct the Assessing Officer to verify the same and allow the same as per the above direction.

16. With regard to Ground No. 4, we observe that assessee has failed to claim deduction u/s. 10(38) of the Act in its original return of income. However, it made a plea for above claim only during the assessment proceedings, the Assessing Officer invoked the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd v. CIT (supra) and accordingly, rejected the claim of the assessee. However, we observe that the documents filed by the assessee which proves that assessee has a bonafide claim on record. Therefore, we direct the Assessing Officer to

verify the same and allow the claim made by the assessee as per law. We are inclined to apply the ratio of the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., v. CIT (supra) and accordingly, we are of the view that assessee should be given the benefit of bonafide claim, which assessee has failed to claim in the return of income. Accordingly, we direct the Assessing Officer to verify the claim of the assessee and allow the bonafide claim of the assessee as per law. In the result, ground raised by the assessee is allowed for statistical purpose.

17. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 13th April, 2023

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai / Dated 13/04/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum