

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHE 'H' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos. 142, 143 & 144/Del/2021
Assessment Years: 2011-12, 2012-13 & 2013-14**

RSWM Ltd., Khari Gram,
Gulabpura, Bhilwara (Raj.).
PAN: AAACR9700M)
(Appellant)

Versus DCIT, Central Circle-31,
New Delhi.
(Respondent)

Assessee by : Sh. S.S. Naagar, C.A.
Revenue by : Sh. Ramdhan Meena, Sr. DR

Date of hearing : 03.07.2023
Date of pronouncement: 03.07.2023

ORDER

PER SAKTIJIT DEY, V.P.:

Captioned appeals by the assessee arise out of separate orders of learned Commissioner of Income-tax (Appeals)-30, New Delhi pertaining to assessment years 2011-12, 2012-13 and 2013-14.

2. There is delay of 101 days in filing these appeals. The assessee has filed application seeking condonation of delay by stating that due to the restrictions imposed on account of COVID-19, appeals could not be filed in time. Having considered the submissions of the parties, we are

satisfied that the delay in filing the appeals was due to reasonable cause. Accordingly, we condone the delay in these appeals and admit them for adjudication.

ITA Nos. 142 & 143/Del/2021(A.Yrs. 2011-12 & 2012-13):

3. Ground No. 1 in both the appeals is on the common issue of disallowance of expenditure under section 14A of the Income-tax Act, 1961 read with Rule 8D.

4. Briefly, the facts are, the assessee, a resident corporate entity, is stated to be engaged in the business of manufacturing of yarn. In course of assessment proceedings for the impugned assessment years, the Assessing Officer noticed that the assessee had earned exempt income of Rs.1,48,52,682/- in assessment year 2011-12. Whereas, it had earned exempt income of Rs.50,17,110/- in assessment year 2012-13. On further verification, he found that the assessee has not disallowed any expenditure attributable to earning of exempt income in terms of section 14A of the Act read with Rule 8D. Having found that, he proceeded to compute disallowance under section 14A of the Act read with Rule 8D in the years under consideration and disallowed expenditure of Rs.3,21,91,000/- in

assessment year 2011-12 and Rs.3,85,60,000/- in assessment year 2012-13. The assessee contested the above said disallowances before learned first appellate authority. While deciding the issue, learned first appellate authority restricted the disallowance to the quantum of exempt incomes earned in the relevant assessment years under dispute. Still aggrieved, the assessee is before us.

5. We have heard rival submissions and perused materials on record. It is the say of learned counsel for the assessee before us that no disallowance of interest expenditure under Rule 8D(2)(ii) can be made, as the assessee had sufficient interest free fund available by way of reserves and surplus to take care of the investment made in assets yielding exempt income. Further, he submitted, no disallowance out of interest expenditure can be made, as the assessee has not made any current investments and all the investments are carried over from earlier years. As regards disallowance of administrative expenditure under Rule 8D(2)(iii), learned counsel submitted, only those investments, which have yielded exempt income during the relevant assessment years can be considered for computing disallowance.

6. On the other hand, learned Departmental Representative strongly relied upon the observations of learned Commissioner (Appeals).

7. Having considered rival submissions, from the materials placed on record, we find that there are no current investments in the impugned assessment years. All the investments have been carried over from earlier assessment years. It is further noticed, the assessee had sufficient interest free funds available with it by way of share capital, reserves and surplus. That being the factual position emerging on record, we hold that no disallowance of interest expenditure can be made under rule 8D(2)(ii). Hence, we direct the Assessing Officer to delete the disallowance made under Rule 8D(2)(ii) for both the assessment years under appeal.

8. As regards the disallowance made under Rule 8D(2)(iii), respectfully following the ratio laid down by ITAT Delhi, Special Bench in case of ACIT vs. Vireet Investments (P) Ltd. (2017) 58 ITR (T) 313 (Delhi-ITAT-SB), we direct the Assessing Officer to consider only those investments which have yielded exempt income during the relevant assessment years for computing average value of investments. Grounds are partly allowed.

9. As regards grounds Nos. 2 & 3 of ITA No. 142/Del/2021, on instructions, learned counsel appearing for the assessee did not press them. Accordingly, grounds Nos. 2 & 3 of ITA No. 142/Del/2021 are dismissed as not pressed.

10. The other grounds raised by the assessee, being of general nature, do not require specific adjudication.

11. In the result, appeals are partly allowed.

ITA No. 144/Del/2021 (A.Y. 2013-14):

12. Learned counsel appearing for the assessee, on instructions, did not press the grounds raised in this appeal. Accordingly, the appeal is dismissed as not pressed.

13. To sum up, ITA Nos. 142 & 143/Del/2021 are partly allowed and ITA No. 144/Del/2021 is dismissed.

Order pronounced in the open court on 03/07//2023.

Sd/-

**(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

Sd/-

**(SAKTIJIT DEY)
VICE-PRESIDENT**

Dated: 03.07.2023

*aks/-