

आयकर अपीलीय अधिकरण
मुंबई पीठ "एच", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
सुश्री पद्मावती एस, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER
आसं. 1712/मुं/2023 (नि.व. 2011-12)
ITA NO.1712/MUM/2023 (A.Y.2011-12)

Kotak Mahindra Bank Ltd.
27 BKC, Bandra Kurla Complex,
Bandra East, Mumbai-400051.
PAN: **AAACH1075K**

..... अपीलार्थी / Appellant

बनाम Vs.

ACIT (OSD)-3(2),
Room No. 555, Aayakar Bhavan,
M.K. Road, Mumbai-400020.

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Madhur Agrawal, Advocate
प्रतिवादी द्वारा/ Respondent by : Sh. Prakash Kishinchandani, Sr. DR
सुनवाई की तिथि/ Date of hearing : 03/08/2023
घोषणा की तिथि/ Date of pronouncement : 04/08/2023

आदेश / ORDER

PER VIKAS AWASTHY, JM

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 31.03.2023, for the Assessment Year 2011-12. The assessee in appeal has raised four grounds assailing the impugned order, viz:

Ground No.1: Violation of Principle of Natural Justice.

Ground No.2: Disallowance under section 14A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') r.w.r. 8D.

Ground No.3: Levy of interest under section 234B of the Act.

Ground No.4: Levy of interest under section 234C of the Act.

2. Sh. Madhur Agrawal appearing on behalf of the assessee submitted at the outset that he is not pressing Ground No.1 of appeal.

2.1 In respect of Ground No.2 assailing disallowance under section 14A r.w.r. 8D, the Id. counsel submits that during the period relevant to AY under appeal, the assessee has earned dividend income of Rs. 22,24,714/-. The assessee has made suo-moto disallowance under section 14A of Rs. 23,31,308/-. The Assessing Officer (AO) invoked Rule 8D and made disallowance of Rs. 98,40,228/-. The Id. Counsel submits that it is a settled legal position now that disallowance under section 14A of the Act cannot exceed exempt income earned during the relevant period. The assessee has itself made suo-moto disallowance of more than the exempt income. He further stated that *de-hors* the fact that no further disallowance is required to be made, there is no interest expenditure involved as assessee's own interest free funds are much more than the investments made. Where the assessee is having mixed bag of funds comprising of own interest free funds nad interest bearing funds, it shall be presumed that own interest free funds are utilized for the purpose of investments.

2.2 The Ld. Counsel submits that in ground No.3 & 4, assessee has assailed levy of interest under section 234B & 234C of the Act. The short prayer of the assessee is, the AO while computing interest has made wrong calculations, a direction may be given to the AO for re-computation of interest under the aforesaid sections.

3. Per contra, Sh. Prakash Kishinchandani representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

4. We have heard the submissions made by rival sides and have examined the orders of authorities below. Insofar as Ground No.1 is concerned, the Id. Counsel for the assessee has stated at Bar that he is not pressing Ground No.1. In view of the statement made by Id. Counsel, Ground No. 1 (including sub-ground) of appeal is dismissed as not pressed.

5. Ground No.2 of appeal is against disallowance made under section 14A r.w.r. 8D. Undisputedly, the assessee has earned dividend income of Rs. 22,24,714/- and the assessee has made suo-moto disallowance of Rs. 23,31,308/- under section 14A of the Act, for earning tax free income. It is now a well accepted position that disallowance under section 14A cannot exceed exempt income earned during the relevant period. **[Re: Daga Global Chemicals P. Ltd. Vs. ACIT 82 taxmann.com 254 (Mum. Trib.)]**. Thus, in the light of undisputed facts, we are of considered view that no further disallowance u/s 14A is warranted. The Id. Counsel made a statement that the assessee is committed to the suo-moto disallowance already made. Consequently, the AO is directed to delete the additional disallowance made under Rule 8D. The assessee succeeds on ground no.2 of appeal.

6. In ground No. 3 & 4 of appeal, the assessee has assailed levy of interest under section 234B and 234C of the Act. The Id. Counsel for the assessee has submitted that while computing interest under the aforesaid sections, the AO has miscalculated the interest. Charging of interest under section 234B and 234C is mandatory and consequential. We deem it appropriate to restore these grounds

back to the file of AO for re-computation of interest, in accordance with law.
Ground No.3 & 4 of appeal are thus, allowed for statistical purposes.

7. In the result, appeal of assessee is partly allowed.

Order pronounced in the open court on **Friday**, the **04th** day of August, 2023.

Sd/-
(MS. PADMAVATHY S)

Sd/-
(VIKAS AWASTHY)

लेखाकार सदस्य/ACCOUNTANT MEMBER
मुंबई/Mumbai, दिनांक/Dated: 04/08/2023
SK, Sr. PS

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai