

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 506/Kol/2023
Assessment Year: 2013-14

MSTC Limited Plot No. CF-18/2, Street No. 175 AA-1C, New Town Kolkata - 700156 [PAN : AACCM0021E]	Vs	Jurisdictional Assessing Officer, Circle-1(1), Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Prasun Kumar Bhattacharya, A/R
Revenue by :	Shri Amitava Sen, Addl. CIT D/R

सुनवाई की तारीख /Date of Hearing : 06/07/2023
घोषणा की तारीख /Date of Pronouncement: 22/08/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, (hereinafter the "Id. CIT(A)") dt. 31/03/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2013-14.

2. At the outset, the Id. Counsel for the assessee requested for not pressing Ground No. 2 and the same is hereby dismissed as not pressed.

3. Ground Nos. 3 & 4 are general in nature.

4. The only effective ground raised before this Tribunal in Ground No.1 which relates to disallowance u/s 14A of the Act at Rs.42,49,970/-.

5. At the outset, the Id. Counsel for the assessee, submitted that the alleged disallowance u/s 14A of the Act is made under limb (2) of Rule 8D of the Income Tax Rules, 1962 (hereinafter 'the Rules') i.e., interest disallowance on account of interest-bearing funds being applied for making investment fetching exempt income. He stated that the assessee company has sufficient interest free reserves in the form of share capital and reserves and surplus which are far more than the investments giving rise to the exempt income. He further stated that it has been consistently held by Hon'ble Courts that if the interest free funds are available and there is no finding of the revenue authorities that interest-bearing funds have been applied for making investments giving rise to exempt income then under such circumstances interest disallowance u/s 14A of the Act, is uncalled for.

6. On the other hand, the Id. D/R supported the orders of the lower authorities.

7. We have heard rival contentions and perused the record placed before us. Interest disallowance u/s 14A r.w. Rule 8D(2) is in the challenge before us. We observe that the assessee is limited company and is a Government of India undertaking and for Assessment Year 2013-14, *suo moto* disallowance at Rs.7,90,500/- is made as per Rule 8D(2)(iii) being 0.5% of the average value of investment. However, the Id. Assessing Officer further calculated interest disallowance under Rule 8D(2)(ii) at Rs.42,49,970/-.

7.1. Before us, audited financial statements of the assessee company has been placed which is forming part of the paper book filed on 12th

July, 2023. On perusal of the same we notice that the share capital as on 31/03/2013, is Rs.8.80 Crores and accumulate reserves and surplus are to the tune of Rs.687.16 Crores and both total to Rs.695.96 Crores. Against the said interest free funds, the current investments giving rise to exempt income during the assessment year is Rs.15.81 Crores. Further on perusal of the assessment order, we notice that the Id. Assessing Officer has not made any observation that interest bearing funds have been applied during the year on the said investments.

8. Under these given facts and circumstances and also considering the decision of the ITAT Mumbai in the case of *Reliance Industries Ltd. vs Addl. CIT [2012] 79 DTR (Trib) 315 (Mum)* as well as the Hon'ble Bombay High Court in the case of *CIT vs Reliance Utilities and Power Ltd. [2009] 313 ITR 340 (Bom)*, wherein it has been held that that if there were funds available both interest-free and over draft and / or loans taken, then a presumption would arise that investments would be out of the interest-free funds generated or available with the company, if the interest-free funds were sufficient to meet the investments and therefore, no part of interest on the borrowings could be disallowed on the basis that investments were out of interest-bearing funds. Applying the said proposition as, we find that since there were sufficient interest free funds available with the assessee for making the investments giving rise to exempt income, no disallowance was called for made under Rule 8D(2)(ii) of the Rules. Accordingly, we set aside the finding of the Id. CIT(A) and delete the disallowance u/s 14A of

the Act at Rs.42,49,970/-. Accordingly, the effective Ground No. 1 raised by the assessee is allowed.

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

Order pronounced in the Court on 22nd August, 2023 at Kolkata.

Sd/-

(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-

(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 22/08/2023

SC Sarma

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata