

आयकर अपीलीय अधिकरण  
कोलकाता 'एसएमसी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'SMC' BENCH, KOLKATA**

डॉ. मनीष बोरड, लेखा सदस्य  
एवं  
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य  
के समक्ष  
**Before**

**DR. MANISH BORAD, ACCOUNTANT MEMBER  
&  
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 1200/KOL/2023  
Assessment Year: 2017-18**

***Bengal Rubber Company Limited.....Appellant  
[PAN: AABCB 2441 C]***

**Vs.**

***DCIT, Circle-5, Kolkata.....Respondent***

**Appearances:**

***Assessee represented by:*** Akkal Dudhewala, A/R.

***Department represented by:*** Probhash Roy, Addl. CIT, D/R.

Date of concluding the hearing : April 30<sup>th</sup>, 2024

Date of pronouncing the order : May 28<sup>th</sup>, 2024

**ORDER**

**Per Pradip Kumar Choubey, Judicial Member:**

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 15.09.2023 arising out of the assessment order framed u/s 143(3) of the Act dated 07.12.2019.

2. The brief facts of the case of the assessee are that the assessee is domestic company furnished its original return of income for AY 2017-18 declaring total income at Rs. 24,46,682/-. The said return was selected for scrutiny assessment and notice u/s 143(2) of the Act was issued. It was

noticed that the assessee had earned total dividend income which did not form part of the total income to the tune of Rs. 7,44,81,950/-. It was further noticed that the assessee while computing the disallowable expenses u/s 14A of the Act read with Rule 8D of the Rules has taken into account only those investments in respect of which dividend has been received and thus, the other investments i.e. the investments for which dividends have not been received during the year have not been taken into account in computing the disallowable expenses u/s 14A of the Act read with Rule 8D of the Rules.

3. During the course of assessment, the appellant was asked to explain the manner in which the disallowance was offered, assessee filed the statement within the manner of computing disallowance of Rs. 1,94,455/- u/s 14A of the Act. The Assessing Officer (in short ld. 'AO') did not agree with the manner in which disallowance u/s 14A of the Act was offered. According to AO, the investment held across all shares & securities including subsidiary companies, and accordingly computed aggregate disallowance of Rs. 22,77,351/- with reference to the total investments and thereby with further disallowance u/s 14A of the Act of Rs. 20,82,896/- deducting the *suo moto* disallowance of the assessee worth of Rs. 1,94,455/-. The assessee preferred appeal before ld. CIT(A) wherein also the assessee did not get any relief.

4. Ld. Counsel for the assessee challenges the impugned order by giving reference to the judgment of Hon'ble Delhi High Court in the case of *PCIT vs. Era Infrastructure (India) Ltd.* reported in [2022] 141 taxmann.com 289 wherein the amendment to Section 14A of the Act vide Finance Act, 2022 as referred had been held to be applicable prospectively i.e. from AY 2022-23 onwards and thus, not applicable in the relevant AY 2017-18. The ld. Counsel for the assessee submitted that ld. CIT(A) had relied on the decision of the Coordinate Bench of ITAT, Guwahati wherein the foregoing amendment to Section 14A of the Act, Finance Act, 2022 was held to be retrospective i.e. wrong. The ld. Counsel for the assessee further cited the following decisions passed by the Coordinate Bench ITAT, Kolkata which is as follows:

- i) *Soyuz Trading Co. Ltd vs DCIT (ITA No. 1130/Kol/2023) [ITAT Kol]*
- ii) *S.R. Traders Pvt. Ltd vs ITO (ITA No. 795/Kol/2023) [ITAT Kol]*

iii) ACIT vs. Britannia Industries (ITA No. 2644/Kol/2018) [ITAT Kol]

5. The sole grievance of the assessee in this appeal is against the disallowance of Rs. 20,82,896/- made by the AO u/s 14A of the Act read with Rule 8D of the Rules. It is the case of the assessee that during the relevant previous year the appellant held investment in shares and securities whose monthly average value for the FY 2016-17 was Rs. 22,75,33,091/-. During the year the appellant earned dividend income of Rs. 7,44,81,950/- which was derived from the investment whose monthly average value for the FY 2016-17 was Rs. 1,92,43,471/-. In the return of income, the appellant was disallowed an aggregate sum of Rs. 1,94,455/-. Break up of the dividend is as follows:

Month	Opening value of investments on which dividend received	Closing value of investments on which dividend received	Average value of investments on which dividend received
April 2016	63,12,674	63,12,674	63,12,674
May 2016	63,12,674	63,12,674	63,12,674
June 2016	63,12,674	63,12,674	63,12,674
July 2016	63,12,674	63,12,674	63,12,674
August 2016	63,12,674	63,12,674	63,12,674
September 2016	63,12,674	63,12,674	63,12,674
October 2016	63,12,674	63,12,674	63,12,674
November 2016	63,12,674	4,07,94,798	2,35,53,736
December 2016	4,07,94,798	4,07,94,798	4,07,94,798
January 2017	4,07,94,798	4,07,94,798	4,07,94,798
February 2017	4,07,94,798	4,07,94,798	4,07,94,798
March 2017	4,07,94,798	4,07,94,798	4,07,94,798
		<b>Total</b>	<b>23,09,21,646</b>
Average investments = Total investments Rs.23,09,21,646/12			<b>1,92,43,471</b>
1% of average investments			<b>1,92,435</b>

6. We have gone through the judgment passed by the Hon'ble Delhi High Court in the case of *Era Infrastructure (India) Ltd. (supra)* and also gone through the judgments/orders passed by the Coordinate Bench of ITAT, Kolkata. Hon'ble Delhi High Court in its judgment dated 20.07.2022 dealt with the issue involved in the appeal and discussed the amendment of Section 14A of the Act very elaborately and held that **explanation inserted to section 14 A of the Act is applicable prospectively.**

7. We further find that the Hon'ble Delhi High Court in the case of "Joint Investment Private Ltd. vs. CIT and further in the case of ACB India Ltd. vs ACIT has held that for computing the disallowance u/s 14A of the Act r.w.r. 8D(2)(iii) of the income Tax Rules 1962 the average value of only the investments yielding non-taxable income have to be considered and not the entire investment. Our attention has also been drawn regarding other judgment of the Coordinate Bench of the ITAT, Kolkata on this controversial issue. Going over the entire citation and the facts of the present case we are on this view that the present case is entirely covered with the above cited decisions. Accordingly, we allow the appeal and direct the Assessing Officer to consider only the investments yielding tax exempt income for computation of disallowance under Rule 8D(2)(iii) of the income tax Rules 1962.

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

**Order pronounced in the open Court on 28<sup>th</sup> May, 2024.**

*Sd/-*

**[Manish Borad]**

Accountant Member

*Sd/-*

**[Pradip Kumar Choubey]**

Judicial Member

Dated: 28.05.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Bengal Rubber Company Limited, Birla Building, 11<sup>th</sup> Floor, 9/1, R.N. Mukherjee Road, Kolkata, West Bengal, 700001.**
2. **DCIT, Circle-5, Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata