

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Sonjoy Sarma, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. No.530/Kol/2024
Assessment Year: 2020-21

Vedant Fashions Ltd.....Appellant

SDF-1, A-501, A-502,
4th Floor, 19 Canal South Road,
Paridhan Garment Park,
Kolkata – 700015.

[PAN: AABCV4646B]

vs.

DCIT, Circle-3(2), Kolkata..... Respondent

Appearances by:

Shri Sunil Surana, FCA, appeared on behalf of the assessee.

Shri Pradip Kr. Biswas, Addl. CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : November 18, 2024

Date of pronouncing the order : November 29, 2024

आदेश / ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 30.01.2024 of the Commissioner of Income Tax (Appeals)-21, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The brief facts of the case are that the assessee filed its return of income declaring a total income of Rs.3084417870/-. The case of the assessee was selected for scrutiny by issuing notice u/s 143(2) under CASS, consequent to this, notices u/s 142(1) and 133(6) of the Act were issued to the assessee seeking clarification and verification of the deduction claimed in the return. During the assessment proceedings, the Assessing Officer observed that the assessee had claimed a deduction of Rs.2,98,57,165/- towards health and education cess. The Assessing Officer disallowed this deduction holding that the health and

education cess is part of the income tax liability and this falls under relevant provisions of section 40(a)(ii) of the Act which prohibits such deduction. The Assessing Officer further noted that the assessee had made investments which earned exempt income but had not made adequate disallowance of expenses related to such income. The assessee had voluntarily disallowed Rs.3,74,886/- u/s 14A of the Act. However, the Assessing Officer applied Rule 8D and calculated 1% of annual average of monthly average of opening and closing balance of the investments resulting into a disallowance of Rs.68,90,605/-. The difference of Rs.65,15,719/- was added to the income of the assessee.

3. The assessee challenged both these grounds before the ld. CIT(A), where the ld. CIT(A) upheld the action of the Assessing Officer concluding that health and education cess qualifies as tax u/s 40(a)(ii) of the Act is not deductible and in this regard, the assessee also accepted the disallowance as made by the Assessing Officer. Hence, the ld. CIT(A) sustained the addition made by the Assessing Officer. However, in respect of disallowance u/s 14A, the ld. CIT(A) acknowledged a computational error and directed the Assessing Officer to rectify the disallowance to Rs.67,90,605/- ,however, the disallowance was upheld in principle.

4. Dissatisfied with the above order, the assessee is in appeal before this Tribunal. The main contention of the assessee is that the Assessing Officer failed to record requisite satisfaction as required u/s 14A(2) of the Act before invoking Rule 8D as the assessee itself suo moto disallowed Rs.3,74,886/- which was sufficient. Further, the disallowance made by the Assessing Officer on a formulaic application of Rule 8D without examining the books of account, was not correct as has been held by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT' reported in (2018) 402 ITR 640(SC) which mandates of recording of satisfaction before applying Rule 8D which

was totally absent in the instant case of the assessee. The relevant part of the decision of the Hon'ble Supreme Court in the case of 'Maxopp Investment Ltd. vs. CIT' (supra) is as under:

".....Keeping this objective behind Section 14A of the Act in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income. Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in Section 14A of the Act. This is so held in Walfort Share & Stock Brokers (P.) Ltd., relevant passage whereof is already reproduced above, for the sake of continuity of discussion, we would like to quote the following few lines therefrom.

"The next phrase is, "in relation to income which does not form part of total income under the Act". It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of section 14A.

The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under section 14A."

35. The Delhi High Court, therefore, correctly observed that prior to introduction of Section 14A of the Act, the law was that when an assessee had a composite and indivisible business which had elements of both taxable and non-taxable income, the entire expenditure in respect of said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. The principle of apportionment was made available only where the business was divisible. It is to find a cure to the aforesaid problem that the Legislature has not only inserted Section 14A by the Finance (Amendment) Act, 2001 but also made it retrospective, i.e., 1962 when the Income Tax Act itself came into force. The aforesaid intent was expressed loudly and clearly in the Memorandum explaining the provisions of the Finance Bill, 2001...."

"Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to

*record its satisfaction to this effect. Further, while recording such a satisfaction, the nature of the loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the Assessing Officer.”
[emphasis added]*

4.1 Therefore, the ld. AR stated that the additions made by lower authorities need to be set aside by this Tribunal.

5. On the other hand, the ld. DR defending the order of the lower authorities asserted that the disallowance was made in accordance with the provisions of the Act.

6. We, after hearing rival submissions and perusing the materials available on record, find that in the present case, the Assessing Officer did not record satisfaction u/s 14A before invoking Rule 8D, which is a necessary condition while disallowing expenses u/s 14A of the Act. The Hon’ble Supreme Court in the case of ‘Maxopp Investment Ltd. vs. CIT (supra) has emphasised importance of recording satisfaction u/s 14A before invoking Rule 8D. In this case, the Assessing Officer mechanically applied Rule 8D without recording any satisfaction as required u/s 14A of the Act. This failure renders this disallowance unsustainable. Moreover, the disallowance computed by Assessing Officer appears to be not in accordance with mandate of Rule 8D. In view of this, the disallowance of Rs.65,15,719/- u/s 14A is deleted.

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

Kolkata, the 29th November, 2024.

Sd/-

[Rajesh Kumar]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 29.11.2024.

RS

Copy of the order forwarded to:

1. Vedant Fashions Ltd
2. DCIT, Circle-3(2), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches