

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA Nos.543 & 544/KOL/2024
(Assessment Year:2011-12 & 2014-15)**

Maithan Alloys Ltd.
4th Floor, Ideal Centre, 9, A.J.C.
road, Kolkata-700017,
West Bengal

(Appellant)

Vs.

DCIT, Cir.1(1)
Aaykar Bhavan., P-7,
Chowringhee Square,
Kolkata-700069, West Bengal

(Respondent)

PAN No. AABCM7758B

Assessee by : Shri Sidhhrath Kejriwal, AR

Revenue by : Shri Abhishek Kumar, DR

Date of hearing: 07.01.2025

Date of pronouncement : 21.01.2025

ORDER

Per Rajesh Kumar, AM:

These are appeals preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 06.11.2023 for the AY 2011-12.

543/KOL/2024 for A.Y. 2011-12

02. At the outset, we note that there is delay of 73 days in filing the appeal by the Revenue for which the condonation petition has been moved by the assessee alongwith affidavit of Shri Subhas Chandra Aggarwalla wherein it has been stated that appellate order was not served physically on the assessee. The affidavit further states that the appellate order was passed on 6.11.2023 and was not sent on either of the official e-mails of the assessee namely



office@maithanalloys.com, bhagwatisydiccate@gmail.com and snowtaxipl@gmail.com and the assessee came to know about the appellate order having been passed only after assessee logged into the departmental website. Considering the contents of the condonation and the arguments of the rival parties we are quite convinced about the sufficiency and genuineness of the reasons for delay and accordingly, condone the same by admitting the appeal for adjudication.

03. The first issue raised in ground no.4 is against the confirmation of disallowance of ₹2,08,45,476/- by the Id. CIT (A) as made by the Id. AO by disallowing the interest expenditure u/s 36(1)(iii) of the Act.
04. The facts in brief are that the Id. AO on after perusing the profit and loss account noted that the assessee charged to the profit and loss account a sum of ₹5,57,03,070/- by way of interest on loan. The Id. AO further noted that as on 31.03.2014, the assessee has long term and short-term borrowings at ₹59.67 crores. The Id. AO noted that the assessee has also given some non-interest-bearing advances during the year. Accordingly, a show cause was issued to the assessee as to why the interest should not be disallowed proportionately as the assessee has advanced non-interest-bearing advances out of interest-bearing borrowing funds. The assessee replied that assessee is a NBFC (non-Banking Finance Corporation) and had given interest bearing as well as non-interest-bearing loans and advances and the details were submitted before the Id. AO which are also extracted on the page no.2 of the assessment order. The assessee submitted that during the year, the interest-bearing loans were taken for giving interest bearing advances/ loans. Moreover, the assessee has earned interest income of Rs. 6,98,71,918/- and after netting the interest expenses against



the interest income , a net interest income of Rs. ₹1,41,68,858/-. The assessee further submitted that the assessee has not used interest bearing funds for advancing interest free loans and advances and in fact interest bearing borrowed funds were utilized for giving interest bearing only too at higher rate of interest. The contention of the assessee did not found favour with the Id. AO and he computed the disallowance of interest at ₹2,08,45,476/- and added the same to the income of the assessee besides making disallowance of ₹2,24,651 u/s 14A of the Act in the assessment framed du/s 143(3) dated 30.06.2016.

05. In the appellate proceedings, the Id. CIT (A) simply dismissed the appeal of the assessee when the assessee failed to appear on the appointed date of hearing.
06. After hearing the rival contentions and perusing the materials available on record, we find that the issue of proportionate disallowance of interest of ₹2,08,45,476/- is squarely covered in its favor by the decision of the co-ordinate Benches in the case of JCIT (OSD), Circle-11, Kolkata Vs. M/s Snowtex Investment Ltd. for A.Y. 2013-14 in ITA No.236/KOL/2023 vide order dated 9th June, 2023 which was related concern and has since been merged in the scheme of re-organization with another related entity of the assessee namely Ma Kalyaneshwari Holdings Pvt. Ltd. Now the latter entity is also merged with the assessee in the scheme of re-organization vide NCLT order dated 01.02.2024. In the above ,the co-ordinate bench has held that the assessee was having interest free funds which were sufficient to cover the interest free loans and advances given by the assessee. Therefore, it is presumed that the interest free loans/ advances were given out of interest free funds available. In the



current financial year also, the non-interest bearing advances taken were ₹30,15,52,777/- whereas non-interest bearing advances given were ₹22,31,96,817/- which were reproduced by the Id. AO at page no.2 of the assessment order. Therefore, in the current year also the presumption has to be drawn that interest free loans and advances were given out of interest free funds available with the assessee. For the sake of ready reference, extract the operative part of the decision in the case of JCIT (OSD), Circle-11, Kolkata Vs. M/s Snowtex Investment Ltd. for A.Y. 2013-14 in ITA No.236/KOL/2023 vide order dated 9th June, 2023.

"5. At the outset, the Id. counsel for the assessee has invited our attention to the order of the Tribunal dated 06.11.2015 (*supra*) to submit that the Assessing Officer has wrongly noted that in earlier year, the Tribunal in similar facts and circumstances has confirmed the disallowance of proportionate interest expenditure in respect of interest free advances. He invited our attention to para 3 onwards of the order of the Tribunal to submit that the Tribunal after considering the entire facts and circumstances of the case has in fact confirmed the order of the CIT(A) deleting the additions made by the Assessing Officer on this issue. He, therefore, has submitted that the issue is squarely covered in favour of the assessee by the aforesaid decision of the Tribunal in the own case of the assessee for earlier assessment year. The Id. counsel has further demonstrated that the own funds/interest free available with the assessee were sufficient to meet the interest free advances/investments made by the assessee. He, in this respect, has brought our attention to the financials of the assessee to explain that as per the Assessing Officer, the assessee had total interest bearing borrowings of Rs. 34.34 crores as on 31.03.2013, however, the assessee had advanced interest-bearing loan of Rs.47.09 crores to other parties and further the interest free share application money of Rs.4.27 crores was available with the assessee. He has demonstrated that the total interest-bearing borrowings of the assessee were at Rs.34.34 crores, whereas, the total loans and advances including interest free advances and share application money of the assessee was at Rs.67.03 crores and apart from that, the assessee had interest free funds in the form of trade payables of Rs.37.05 crores. The Id. counsel has submitted that the issue is squarely covered by the recent decision of the Hon'ble Supreme Court in the case of **CIT (LTU) v. Reliance Industries Ltd. reported in (2019) 410 ITR 466**, wherein, the Hon'ble Supreme Court confirmed the proposition of law that if the own funds/interest free funds are available with the assessee to meet the investment, presumption will be that the assessee has used own interest free funds for the said investment. In view of this, we do not find any infirmity in the order of the CIT(A)."



07. Therefore, considering the facts of the assessee in the light of the above decision, we set aside the order of the Id. CIT (A) and direct the Id. AO to delete the disallowance of ₹2,08,45,476/-.
08. The issue raised in ground no.5 is against the confirmation of disallowance u/s 2,24,651/- by the Id. CIT (A) as made by the Id. AO u/s 14A read with section Rule 8D of the Act.
09. The facts in brief are that during the year the assessee has dividend income of ₹9,932/- which was claimed as exempt u/s 10(34) of the Act. During the course of assessment proceeding, the assessee furnished the computation of disallowance, however, the Id. AO computed the disallowance at 0.50% of the average investments which comes to ₹2,24,651/- and the same was added to the income of the assessee. Pertinent to state that the disallowance was made under u/s 14A r.w.r. 8D(2)(iii) of the Act. The Id. CIT (A) simply confirming the order of the Id. Assessing Officer.
010. After hearing the rival contentions and perusing the materials/facts available on record, we are of the view that the disallowance in no way can exceed the amount of exempt income earned during the year i.e. ₹9,932/-. The case of the assessee is squarely covered by the decision of the Hon'ble Delhi High court IN PCIT Vs Era Infrastructure (India) Ltd. (ITA No. 204/2022) judgement dated 20/07/2022 wherein the Hon'ble High Court has held that amendment made in section 14A of the Act by finance Act ,2022 , will be applicable prospectively and it was also held that disallowance u/s 14A of the Act should not exceed the amount of exempt income earned by the assessee during the year. The issue is also covered by the decision of co-ordinate Bench in the case of **Ma Kalyaneshwari Holdings Pvt. Ltd. Vs. DCIT**, in ITA No. 699/KOL/2022 for A.Y. 2013-14, wherein similar



issue has been decided in favour of the assessee. Patient to state the said entity was merged with the assessee vide order of NCLT dated 01.02.2024. The operative part of the coordinate bench decision is extracted below:-

"4. Heard rival contentions. We find that the assessee has earned only Rs.8,669/- as dividend income during the year. Recently, the Hon'ble Delhi High Court PCIT Vs. Era Infrastructure (India) Ltd. (ITA 204/2022) judgment dt. 20/07/2022, has held that the amendment made in Section 14A of the Act by Finance Act, 2022, will be applicable prospectively and also held that disallowance u/s 14A of the Act should not exceed the exempt income earned by the assessee during the year. Therefore, since the assessee has earned exempt income of Rs.8,669/- during the year, the disallowance u/s 14A of the Act, is restricted to the same and the remaining disallowance of Rs.29,48,097/- is hereby deleted."

011. Therefore, we set aside the order of Id. CIT (A) and direct the Id. AO to restrict the disallowances to the exempt income i.e. 9,932/-. The ground no. 5 is allowed.
012. The issue in ground no.6 is against the confirmation of disallowance of ₹2,54,651/- by the Id. CIT (A) as made by the Id. AO to the book profits in respect of disallowances made u/s 14A of the Act, read with Rule 8D(2)(iii) of the Rules.
013. After hearing the rival contentions and perusing the materials available on record, we find that the issue is settled in favour of the assessee by the decision of special Bench in case of **ACIT, Circle 17(1) Vs. Vireet Investment Pvt. Ltd.**, in ITA No.502/Del/2012, wherein the Hon'ble Special Bench has held that in case of book profit, no disallowance by the Id. AO under Section 14A read with Rule 8D of the Rules is no required to be made. Accordingly, we set aside the order of Id. CIT (A) and direct the Id. AO to delete the addition. The ground no. 6 is allowed.

**544/KOL/2024 for A.Y. 2014-15**

014. The issue raised in this appeal is similar except quantum as decided in ITA No. 544/KOL/2024 for A.Y. 2014-15 in para 2 to 6 of this order, wherein we have directed the Id. AO to delete the disallowance. Accordingly, our decision in the above ITA would apply mutatis mutandis in this appeal in ITA No.543/KOL/2024 for AY 2011-12 and direct the Id. AO to delete the disallowance in this assessment year also.

015. In the result, the appeals of the assessee are partly allowed.

Order pronounced in the open court on 21.01.2025.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated:21.01.2025

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata