

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA NOS. 1791 & 1792/MUM/2015 : (A.Ys : 2010-11 & 2011-12)**

M/s. K. Uttamlal (Exports ) Pvt. Ltd. Vs. DCIT, Circle-6(2),  
C/o. Karnavat & Co. Mumbai (Respondent)  
2A Kitab Mahal, 1<sup>st</sup> floor,  
192, Dr. D.N. Road, Mumbai - 1  
**PAN : AAACK9486B (Appellant)**

**Assessee by : Shri Sunil Hiravat  
Revenue by : Shri Deepak Ripote**

**Date of Hearing : 21/07/2016**

**Date of Pronouncement : 30/09/2016**

**ORDER**

**PER G.S. PANNU, AM :**

The captioned appeals have been preferred by the assessee for Assessment Years 2010-11 & 2011-12 and since they involve certain common issues, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. Appeal for Assessment Year 2010-11 is taken as the lead case to appreciate the controversy.

**ITA NO. 1791/Mum/2015 (Assessment Year 2010-11)**

2. This appeal by the assessee is directed against the order of CIT(A)-12, Mumbai dated 29.01.2015, pertaining to the Assessment

Year 2010-11, which in turn has arisen from the order dated 18.02.2013 passed by the Assessing Officer, Mumbai under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

3. In this appeal, assessee has raised the following Grounds of appeal :

*"1. On facts and in law, the learned CIT(A) had erred in confirming the disallowance of Rs.5,35,143/- out of interest u/s 14A. Under the facts and circumstances of the matter, he ought to have directed the Assessing Officer to delete the said sum of Rs.5,35,143/-.*

*2. On facts and in law, the learned CIT(A) had erred in confirming the disallowance of Rs.5,83,063/- out of expenses instead of Rs.12,000/- as claimed by the appellant. Under the facts and circumstances of the matter, he ought to have directed the Assessing Officer to restrict the disallowance to Rs.12,000/- out of expenses.*

*3. On facts and in law, the learned CIT(A) had erred in confirming the addition of Rs.29,353/- being the purchases from M/s. Mahalaxmi Corporation by treating the same as bogus purchases as claimed by the Assessing Officer. Under the facts and circumstances of the matter, he ought not to have confirmed the said addition of Rs.29,353/-."*

4. The appellant before us is a company incorporated under the provisions of Companies Act, 1956 and is, *inter-alia*, engaged in the business of export of goods and merchandise as well as trading and investment in shares and securities. In the course of assessment proceedings, the Assessing Officer noticed that assessee had received dividend income of Rs.2,18,959/-, which was claimed as exempt. The Assessing Officer invoked the provisions of Sec. 14A of the Act and

disallowed an expenditure of Rs.11,19,650/- in relation to the exempt income by applying the formula contained in Rule 8D(2) of the Income Tax Rules, 1962 (in short 'the Rules'). The Assessing Officer disallowed Rs.5,35,143/- out of interest expenditure under Rule 8D(2)(ii) of the Rules and Rs.5,83,063/- out of overheads in terms of Rule 8D(2)(iii) of the Rules. The said disallowances have since been affirmed by the CIT(A) and accordingly, assessee is in appeal before us on the said issues by way of Grounds of appeal no. 1 & 2 stated above.

5. Insofar as the disallowance of interest expenditure of Rs.5,35,143/- is concerned, the plea of assessee is that exempt income has been earned by way of dividend and that the amount invested in the investments is out of interest-free funds. The learned representative for the assessee pointed out that so far as investments are concerned, it is evident from Schedule-V of the Balance-sheet that there is no change from that in the last year, and further that the amount of share capital and Reserves & Surplus are more than adequate to cover the value of such investments and, therefore, following the ratio of judgment of Hon'ble Bombay High Court in the case of *Reliance Utilities & Power Ltd.*, 313 ITR 340, the presumption is that such investments are out of interest-free funds. Reliance has also been placed on the judgment of the Hon'ble Bombay High Court in the case of *HDFC Bank Ltd.*, 366 ITR 505 for the proposition that in the aforesaid situation disallowance u/s 14A of the Act is not merited. At the time of hearing, the learned representative also pointed out that under a similar situation, interest disallowed u/s 14A of the Act in Assessment Year 2009-10 by the Assessing Officer was deleted by the

CIT(A) and Revenue has not preferred any appeal against such an order. Therefore, on the basis of consistency also, plea of the assessee is that interest disallowance deserves to be deleted.

6. The Id. DR has not controverted the factual matrix brought out by the learned representative for the assessee, but has merely relied upon the action of Assessing Officer.

7. We have carefully considered the rival submissions. In the Paper Book filed before us, assessee has placed a copy of computation of total income as also the Annual statement of accounts for the previous year relevant to assessment year under consideration. In the statement of total income it is revealed that the assessee has earned exempt dividend income of Rs.2,18,959/- as well as share of profit from partnership firms of Rs.20,41,220/- which is exempt u/s 10(2A) of the Act. In the context of reliance placed by assessee on the judgment of Hon'ble Bombay High Court in the case of *HDFC Bank Ltd. (supra)*, we have perused the Annual financial statements. In particular, the figures of share capital plus Reserves & Surplus have been examined by us in the context of the investments made, which has yielded such exempt incomes. It is quite clear that the amount of share capital plus Reserves & Surplus is more than adequate to cover such investments. Therefore, in our view, the case of assessee is fully covered by the ratio of judgment of Hon'ble Bombay High Court in the case of *HDFC Bank Ltd. (supra)* and disallowance of interest u/s 14A of the Act is untenable, which is hereby directed to be deleted. Thus, on this aspect, assessee succeeds.

8. Insofar as disallowance of Rs.5,83,063/- out of overhead expenses is concerned, same has been worked out by the Assessing Officer by applying Rule 8D(2)(iii) of the Rules. On this aspect, the learned representative pointed out that assessee had made *suo motu* disallowance of Rs.12,000/- based on the working placed at pg. 24 of the Paper Book. In terms of the said statement, assessee has taken into consideration the proportion of annual cost to the assessee for its staff for the work involved relating to the exempt incomes. A part of the administrative expenses has also been attributed to it. Be that as it may, we find that the basis of working adopted by the assessee has not been adversely commented by the Assessing Officer in the assessment order before proceeding to compute disallowance by invoking Rule 8D(2)(iii) of the Rules. This approach of the Assessing Officer is contrary to the provisions of Sec. 14A(2) of the Act, which requires the Assessing Officer to record his satisfaction on the incorrectness of the claim made by the assessee having regard to the accounts of the assessee, and only thereafter he can resort to compute disallowance by invoking Rule 8D of the Rules. Such an approach is conspicuous by its absence in the present case and, therefore, on this count itself we find no reason to uphold the disallowance of Rs.5,83,063/- computed by the Assessing Officer. As a consequence, we direct the Assessing Officer to retain the disallowance of Rs.12,000/- computed by the assessee and delete the balance. Thus, on this aspect also, assessee succeeds.

9. The last Ground raised by the assessee is with regard to disallowance of Rs.29,353/- made by the Assessing Officer out of

purchases. The relevant discussion in the assessment order reveals that assessee was found to have effected purchases of Rs.29,353/- from M/s. Mahalaxmi Corporation representing labels for the products exported by the assessee. The Assessing Officer has referred to a statement of the said supplier made to the Sales Tax Department wherein it is admitted that no such transactions were entered by the said concern with the assessee. As a consequence, the Assessing Officer held the said purchases to be bogus and added a sum of Rs.29,353/- to the returned income. CIT(A) has also affirmed the stand of Assessing Officer, against which assessee is in further appeal before us.

10. Before us, the learned representative for the assessee pointed out that assessee is an exporter of various goods and merchandise which, *inter-alia*, includes export of Papads. In this context, it was explained that assessee had purchased Papads from M/s. Shree Mahila Gruhudyog and exported the same and the impugned purchases consisted of labels affixed on such packets of Papads. The learned representative pointed out that assessee was having a huge turnover of approximately Rs. 67 crores and that the impugned purchases of Rs.29,353/- was too meagre an amount for it to undertake any fraudulent purchases so as to deflate the profits. In any case, it was pointed out that these are minor purchases which have been carried out in the course of business and do not call for any disallowance.

11. On the other hand, the Id. DR referred to the reasoning of Assessing Officer, which we have already adverted to in the earlier paras and is not repeated for the sake of brevity.

12. We have carefully considered the rival submissions. In our considered opinion, the Assessing Officer has mechanically made the addition without establishing on a concrete basis that assessee had effected bogus purchases. In fact, the alleged statement of the supplier, made to the Sales Tax Department, which is referred to by the Assessing Officer has not been confronted to the assessee at any stage. Furthermore, we find that there is no doubt that assessee had effected the purchase of Lijjat Papads for export and the impugned purchases were merely labels affixed on the packets of Papad so exported. Under the entirety of circumstances, in our view, the impugned action of Assessing Officer is unsustainable and addition of Rs.29,353/- is directed to be deleted.

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

14. The only issue involved in the appeal of assessee for Assessment Year 2011-12 relates to bogus purchases of Rs.75,000/-. Since the issue as well as the facts and circumstances are *pari materia* to those considered by us in the assessee's appeal for Assessment Year 2010-11 in the earlier paragraphs, our decision in the appeal for Assessment Year 2010-11 shall *mutatis mutandis* apply for Assessment Year 2011-12 also.

15. Resultantly, appeal of assessee for Assessment Year 2010-11 is partly allowed and for Assessment Year 2011-12 is allowed.

Order pronounced in the open court on 30<sup>th</sup> September, 2016.

Sd/-  
**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**

Sd/-  
**(G.S. PANNU)**  
**ACCOUNTANT MEMBER**

Mumbai, Date : 30<sup>th</sup> September, 2016

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, I" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai