

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "बी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

श्री आर. के. पांडा, लेखा सदस्य एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI R.K. PANDA, AM
AND SHRI VIKAS AWASTHY, JM**

आयकर अपील सं. / ITA No.1953/PN/2014
निर्धारण वर्ष / Assessment Year : 2010-11

Dhumal Industries,
E-36, D Road, MIDC,
Satpur,
Nashik – 422 007
PAN : AACFD0528N

..... अपीलार्थी / Appellant

बनाम v/s

ACIT, Circle-1, Nashik

..... प्रत्यर्थी /Respondent

अपीलार्थी की ओर से / Assessee by : Shri Nikhil Pathak
प्रत्यर्थी की ओर से / Respondent by : Shri Hitendra Ninawe

सुनवाई की तारीख / Date of Hearing :06.09.2016	घोषणा की तारीख / Date of Pronouncement:09.09.2016
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आदेश / ORDER

PER R.K.PANDA, AM :

This appeal filed by the Assessee is directed against the order dated 22-09-2014 of the CIT(A)-I, Nashik relating to Assessment Year 2010-11.

2. At the time of hearing the Ld. Counsel for the assessee did not press Ground of appeal No.8 for which the Ld. Departmental Representative has no objection. Accordingly, the said ground is dismissed as 'not pressed'. Grounds of appeal No.1 to 7 by the assessee read as under :

“1. In the facts and in the circumstances of the case that learned Hon'ble Commissioner of Income Tax (Appeals)-I, Nashik is wrong in confirming the disallowance u/s. 14A r.w.r. 8D of Rs. 3,41,204/- without considering the fact that the appellant has not incurred any expenditure to earn income of Rs. 31,35,538/- on Mutual funds exempt u/s. 10(35).

2. The learned Commissioner of Income Tax (Appeals)-I erred in not considering the fact that unsecured loan of children were taken in before 6 years used for business purchases and the interest is provided on Rs.1,79,833/- during the year.

3. The learned Commissioner of Income Tax (Appeals)-I has committed a mistake of giving notice of enhancement u/s. 251 for disallowance u/s. 14A of Rs. 60,59,726 since interest are paid on capital of partners of Rs. 1,49,38,801/-.

4. The learned CIT(A) failed to appreciate that the capital of partners are not borrowing from outside and interest are provided (paid) of Rs. 1,49,38,801/- on last day of accounting year i.e. on 31/03/2010. Investment of Mutual fund during the year of Rs. 4,90,37,517/- is out of capital of partners.

5. The learned CIT(A) is wrong in disallowing the interest of Rs.60,59,726/- incurred on capital of Rs. 4,90,37,517/- deployed for investment in Mutual fund treating that is not exclusively used for business u/s. 37.

6. The learned Commissioner of Income Tax (Appeal)-I failed to appreciate that it is surplus funds are temporarily invested in Mutual Funds are temporarily invested in Mutual Funds make use the same for future need for business purposes.

7. The learned Commissioner of Income Tax (Appeal)-I is wrong in applying to disallow interest u/s. 14A of Rs. 57,18,702/- and u/s. 37 of Rs.60,59,726/- and disallowed u/s. 37 being higher amount.”

3. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of manufacturing of Poultry firm products. It filed its return of income on 02-10-2010 declaring total income of Rs.3,45,67,328/-. During the course of assessment proceedings apart from other things the AO noticed that assessee has incurred an expenditure of Rs.1,79,833/- by way of interest during the relevant previous year. He noted that the assessee has made investment of Rs.8,17,47,690/- in mutual funds and has received the income of Rs.31,35,538/- from the said mutual funds which it claimed as exempt u/s.10(35) of the I.T. Act. However, the assessee

has not shown to have incurred any expenditure in relation to income which does not form part of the total income under the Act. On being questioned by the AO it was claimed by the assessee that provisions of section 14A are not applicable because the investment is from its own funds. For the above proposition the assessee relied on the decision in the case of CIT Vs. Hero Cycles Ltd. reported in 223 ITR 518.

4. However, the AO was not satisfied with the explanation given by the assessee. He observed that the assessee is engaged in the manufacturing business and its funds are interest bearing funds. He observed that funds to the tune of Rs.5,72,28,932/- are invested in mutual funds to earn exempt income. Further, the submission of the assessee that the investments are from profits or from capital or from own funds and not from interest bearing funds is not acceptable. He noted that the assessee had borrowed certain funds on which liability to pay interest is being incurred. On the other hand certain amounts had been invested for earning tax free dividend income, therefore, a part of the interest liability would be on account of investments made for earning the tax free dividend income. He noted that because of the massive turnover of the assessee and its complicated flow of funds it is difficult to identify as to which funds have been used for what purpose. Rejecting the various arguments advanced by the assessee and relying on various decisions the AO held that provisions of section 14A r.w. Rule 8D are applicable to the assessee company. He therefore disallowed an amount of Rs.3,41,204/- u/s.14A r.w. Rule 8D of the I.T. Rules.

5. Before CIT(A) it was argued that the firm has made investments in mutual funds out of its own funds and not out of any borrowed funds. Further, the assessee has neither incurred nor claimed any expenditure either for realizing the income from mutual funds or against the income of such mutual funds. There is no borrowing from any bank and no interest is debited on account of bank loan. The interest paid on unsecured loan of Ms. Anagha Patil and Shri Akshay Dhumal of Rs.1,79,833/- on borrowed amounts were taken 6-7 years before and the said amount is used for the purpose of business particularly for acquiring plant and machinery etc. The said borrowed amount has not been utilized for the purpose of making investments the income of which is exempt from tax. The assessee has claimed interest @18% on the unsecured loans taken from the above two persons. Relying on various decisions it was argued that the disallowance made by the AO is not correct.

6. However, the CIT(A) was not satisfied with the arguments advanced by the assessee. He observed that the firm has investment of Rs.8,17,47,690/- in mutual funds as on 31-03-2010 and the firm has a capital of Rs.16,05,76,880/-. It was claimed by the assessee that it has borrowed funds of Rs.10,45,372/- only that too from the daughter and son of the partners on which an amount of Rs.1,79,833/- has been paid and the investment of Rs.8,17,47,690/- in mutual funds has been made out of its own sources, i.e. capital of the partners amounting to Rs.16,05,76,880/- for which the assessee claimed that disallowance of Rs.3,41,024/- u/s.14A of the Act is incorrect. However, he observed that the above plea of the assessee is not only incorrect but also misleading. He observed that the assessee firm has paid interest of Rs.1,49,38,861/ to its partners on their

respective capital. The firm has paid interest of Rs.94,91,072/- to Shri Anil Dhumal and Rs.54,57,729/- to Ms. Shailaja Dhumal on their capital funds for A.Y. 2010-11. Therefore, the contention of the assessee that no expenditure was incurred in respect of exempt income from investment in mutual funds and that the same was made out of its own funds and no funds were borrowed from the banks is factually incorrect and misleading. Since the partners are being paid interest @12% p.a. on their capital, therefore, the funds invested in mutual funds are out of interest bearing funds for the purpose of disallowance u/s.14A of the Act. Rejecting the various arguments advanced by the assessee the Ld.CIT(A) held that disallowance u/s.14A r.w. Rule 8D has to be made. Since the AO has not disallowed properly by not considering the capital accounts of the partners on which interest has been paid, the CIT(A) issued notice of enhancement u/s.250 of the I.T. Act. Since the assessee has incurred an expenditure of Rs.60,59,726/- on earning exempt income, he held the same as disallowance u/s.14A r.w. Rule 8D of the Act.

7. Aggrieved with such order of the CIT(A) the assessee is in appeal before us.

8. We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. There is no dispute to the fact that the assessee in the instant case has made investment of Rs.81,7,47,690/- in mutual funds as on 31-03-2010. The firm has a capital of Rs.16,05,76,880/-. It is also an undisputed fact that the assessee firm has paid interest of Rs.1,49,38,801/- to its partners on

their respective capital, i.e. Rs.94,91,072/- to Shri Anil Dhumal and Rs.54,47,729/- to Ms. Shailaja Dhumal. Therefore, we do not find any infirmity in the order of the CIT(A) holding that assessee has used interest bearing funds for the purpose of making investment in the mutual funds. Since the assessee has incurred expenditure of Rs.60,59,726/- for earning exempt income, therefore, the order of the CIT(A) enhancing the disallowance u/s.14A r.w. Rule 8D to Rs.60,59,726/- as against Rs.3,41,024/- made by the AO in our opinion under the facts and circumstances is fully justified. The Ld. Counsel for the assessee could not controvert the detailed reasoning given by the CIT(A) on this issue. We therefore uphold the order of the CIT(A) and the grounds raised by the assessee are dismissed.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 09-09-2016.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 09th September, 2016.
सतीश

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-I, Nashik
4. The CIT-I, Nashik
विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" पुणे /
5. DR, ITAT, "B" Pune;
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

//सत्यापित प्रति // True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune