

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'B', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND MS.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.1342/Chd/2016
(Assessment Year : 2012-13)

Vanaik Spinning Mills Ltd.,
105-Ashoka Estate,
24-Barakhamba Road,
New Delhi.

Vs.

The A.C.I.T.,
Circl-7,
Ludhiana.

PAN: AAACV5323J
(Appellant)

(Respondent)

Appellant by : Shri Navdeep Sharma
Respondent by : Shri Ravi Sarangal, CIT DR
Date of hearing : 27.07.2017
Date of Pronouncement : .2017

ORDER

PER ANNAPURNA GUPTA, A.M.:

This appeal has been preferred by the assessee against the order of Ld. CIT(Appeals)-4, Ludhiana dated 6.4.2015 relating to assessment year 2012-13.

2. The brief facts of the case are that the assessee company is engaged in the business of manufacturing of Plastic Bags, Sutli and trading in all type of yarns & fibers and had filed its return of income for the year under consideration on 21.09.2012 declaring therein an income of Rs.3,32,54,710/- which was processed under section 143(1) of the Act at the returned income. However, the assessment in this case was completed by the Assessing Officer vide order under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 10.3.2015 and the income assessed at Rs.3,33,08,520/-. While completing the assessment, the

Assessing Officer had made an addition of Rs.53,801/- to the returned income of the assessee company on account of disallowance of interest by invoking provisions of section 36(1)(iii) of the Act, as the assessee company had made investment in group companies and mutual funds out of mixed funds without any visible benefit. Apart from this, the Assessing Officer had also rejected the request of the assessee company to revise disallowance made by the assessee company itself under section 14A of the Act from Rs. 1,87,807/- to Rs.71,571/-.

3. Aggrieved by the same, the assessee went in appeal before the Ld.CIT(Appeals) challenging both the actions of the Assessing Officer, and who vide his order dated 6.4.2015 rejected all the grounds raised by the assessee and dismissed the assessee's appeal.

4. Aggrieved by the same, the assessee has now come up in appeal before us. Ground No.1 raised by the assessee reads as under:

1. a) That the Worthy CIT(A)-4, Ludhiana, erred in law and on facts in not allowing the revised claim made during assessment proceedings of the appellant for disallowance of Rs.71,571/- u/s 14A of the Act by applying rule 8D of the Income-tax Rules, 1962 as against original disallowance of Rs.1,87,807/- made in the return.

Directions may be given to consider the disallowance u/s 14A read with rule 8D as revised by the appellant during assessment proceeding which is as per law.

b) The Worthy CIT(A)-4, Ludhiana has further, erred in law and on facts in not directing the A.O. to exclude the amount of interest paid Rs.38,91,2571-on letter of credit which relates directly to the trading business activities of the appellant and which are directly

attributable to business receipts subjected to tax, while computing disallowance u/s 14A read with rule 8D.

5. In the above ground the assessee has challenged the action of the Ld.CIT(Appeals) in upholding the order of the Assessing Officer denying the claim of the assessee with regard to revision of disallowance u/s 14A of the Act.

6. Briefly stated, during assessment proceedings the assessee had requested the Assessing Officer to revise the disallowance of expenses made suo moto by the assessee as per section 14A at Rs.1,87,807/-. The assessee contended that the same had been computed in accordance with the method provided under Rule 8D by including in the total value of investments, those investments on which no exempt income had been earned. The assessee stated that Courts in a number of decisions have held that while computing the disallowance u/s 14A as per Rule 8D, investments on which no exempt income has been earned during the year have to be excluded. Reliance was placed on the decision of the I.T.A.T., Calcutta Bench in the case of REI Agro Ltd. Vs. DCIT, 144 ITD 141 (Kol). The assessee submitted a revised calculation of the disallowance to be made u/s 14A by excluding the said investments and reworked the same at Rs.71,571/-. The Assessing Officer did not accept the claim of the assessee. The Ld.CIT(Appeals) also rejected the assessee's claim stating that the working made by the assessee company originally was in accordance with Rule 8D and thus required no interference.

7. Before us, the Ld. counsel for assessee reiterated the contentions made before the lower authorities. The Ld. counsel for assessee contended that for the purpose of calculating expenses to be disallowed u/s 14A in accordance with the formula laid down in Rule 8D only exempt income earning investments have to be considered. Reliance was placed on the following decisions in this regard:

- i) ABC India Ltd. Vs. ACIT
ITA No.615/2014 dated 24.3.2015 (Del)
- ii) Ramtech Software Solutions Vs. ACIT
ITA No.477/Chd/2015 dated 14.8.2015

8. The Ld. counsel for assessee submitted that by excluding those investments which did not earn exempt income during the year, the disallowance u/s 14A worked out to Rs.71,517/- as submitted to the Assessing Officer also and reproduced at Paper Book page No.4 as under:

Revised Disallowance u/s 14A read with rule 8D is worked out as below

	As on 31/03/2012	As on 31/03/2011
Total Assets	262510424	276208983
Average Total Assets	= $\frac{262510424 + 276208983}{2}$	
	= 269359703	
Average total Investments on = which exempt income received	= 9582815	
i) Direct Cost	NIL	
ii) <u>Indirect Cost</u>		
a) Interest on CC A/c	664956/-	
b) Indirect Cost	$\frac{\text{Interest} \times \text{Average Investment on which exempt income received}}{\text{Average Total Assets}}$	
	= $\frac{664956 \times 9582815}{269359703}$	
	= 23657	

(iii) $\frac{1}{2}\%$ of Average	=	0.5% x 9582815
	=	47914
Total	=	(i+ii+iii) 71571

9. The Ld. counsel for assessee also contended that the interest expenses to be disallowed as per Rule 8D(2)(ii) *ought* to be calculated by excluding the amount of interest paid on letter of credit since the same was directly related to the trading business activity of the assessee.

The Ld. counsel for assessee, therefore, stated that the Ld.CIT(Appeals) had erred in not giving due consideration to the above contentions of the assessee.

10. The Ld. DR, on the other hand, relied upon the order of the Ld.CIT(Appeals).

11. We have heard contentions of both the parties, perused the orders of authorities below and also gone through the documents placed before us. We find merit in the contentions of the Ld. counsel for assessee that for the purpose of calculating disallowance of expenses u/s 14A as per Rule 8D, the investment to be taken into consideration are only those which have earned exempt income. The special bench of the ITAT in the case of ACIT, Circle 17(1) vs Vireet Investments Pvt. Ltd in ITA No.502/Del/2012 while dealing with the issue relating to the mode of computation u/r 8D(2)(iii) has held that while considering the average value of investments, only those investments are to be taken into consideration which have yielded exempt income and not those which did not yield any

exempt income. Even the Hon'ble Delhi High Court has held so in the case of ACB Ltd. vs ACIT in ITA No.625/2014 dt.24th March 2015.

12. In view of the above judicial precedents, the Ld.CIT(Appeals) we hold, has erred in rejecting this contention of the assessee.

13. We find merit in the other contention of the assessee also that Letters of credits are issued by banks on account of imports and are, therefore, directly relatable to the business of the assessee. The interest paid on account of the same, therefore, are not to be considered for the purpose of calculating the amount of disallowance of interest as per Rule 8D(2)(ii) of the Rules.

14. In view of the above we hold that the disallowance of expenses made u/s 14A be reworked after excluding investments which did not earn any exempt income during the year and after excluding interest pertaining to letters of credits got issued by the assessee.

In view of the above, ground No.1(a) &(b) stand allowed.

15. Ground No.2 raised by the assessee reads as under:

2 a) That the Worthy CIT(A)-4, Ludhiana, erred in law and on facts in disallowing Rs.53,801/- u/s 36(i)(iii) out of interest paid on working capital loan on the presumption that the assessee might have utilized borrowed funds for investment in shares though no fresh investments were made during the year. The investment made in earlier years were also out of its internal accruals and own surplus fund available.

Directions be given to the Assessing Officer to delete the disallowance made on assumption, surmises and conjectures.

- b) *That the Worthy CIT(A)-4, Ludhiana has further erred in law and on facts in upholding and not directing the Assessing Officer to reduce Rs.1, 56,2917- regarding disallowance of interest u/s 14A r.w. respect to rule 8D which has been accepted by the department in its order passed u/s 143(3) instead of Rs.35,325/- wrongly considered by the Assessing Officer in its order.*

Directions be given to the Assessing Officer to reduce Rs.1,56,291/- from the disallowance of Rs.89,126/- made u/s 36(1)(ii) and thereby reduce the disallowance to NIL.

16. The said ground relates to disallowance of interest made u/s 36(1)(iii) of the Act on account of investment made by the assessee in equity, shares and mutual funds which the Assessing Officer held were not for the purpose of business of the assessee. The Assessing Officer found that the assessee had made the said investment amounting to Rs.1,15,91,042/- and at the same time had incurred interest expenditure amounting to Rs.45,56,213/-. Relying upon the decision of the Hon'ble jurisdictional High Court in the case of CIT Vs. Abhishek Industries Ltd. 286 ITR 1 the Assessing Officer worked out disallowance to be made u/s 36(1)(iii) of the Act to the extent of Rs.53,801/- by apportioning the total interest claimed by the assessee in the debt equity ratio and made addition of the same to the income of the assessee.

17. The Ld.CIT(Appeals) upheld the disallowance so made stating that the Assessing Officer was fair in making disallowance by taking debt equity ratio in consideration.

18. Before us, the Ld. counsel for assessee stated that there was no reason for making any disallowance u/s

36(1)(iii) of the Act at all since no fresh investments were made during the year and all investments made in earlier years were out of own funds of the assessee. The Ld. counsel for assessee drew our attention to its Balance Sheet placed at Paper Book page No.16 in this regard showing that it had own funds in the form of share capital, reserves and surplus to the extent of Rs.55 lacs and Rs.9.35 crores respectively in the preceding year which was more than sufficient for making the investment of Rs.1.7 crores. Alternatively, the Ld. counsel for assessee pleaded that the disallowance of interest already made u/s 14A of the Act should be reduced from the disallowance now made u/s 36(1)(iii) of the Act.

19. The Ld. DR, on the other hand, supported the order of the Ld.CIT(Appeals).

20. We find merit in the contention of the Ld. counsel for assessee. The Hon'ble jurisdictional High Court in the case of Bright Enterprises Pvt. Ltd. vs CIT, Jalandhar (2016) 381 ITR 107(P&H) has held that where the assessee has enough own funds the presumption should be that the investments or advances for non business purpose have been made out of the said funds. Having said so and considering the fact that the availability of enough own funds has been amply demonstrated by the assessee by pointing out the figures showing availability of own funds in the form of share capital and reserves amounting to in all Rs.10 crores, we find that there are more than sufficient

funds available with the assessee for the purpose of making investments of Rs.1.7 crores and, therefore, there is no reason at all for making any disallowance of interest u/s 36(1)(iii) of the Act. We, therefore, direct that the disallowance made u/s 36(1)(iii) to the extent of Rs. 53,801/- be deleted.

Ground of appeal No.2 therefore stands allowed.

21. In the result, the appeal of the assessee stands allowed in above terms.

Order pronounced in the Open Court.

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Dated : 23rd October, 2017

Rati

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Assistant Registrar,
ITAT, Chandigarh