IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'A', CHANDIGARH

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

ITA No.48/Chd/2016
(Assessment Year : 2012-13)

The Haryana State Co-operative And Marketing Federation Ltd., Corporate Office, Sector 5, Panchkula, Haryana. PAN: AAAJH0022R (Appellant)	Vs.	The D.C.I.T., Panchkula Circle, Panchkula. (Respondent)

Appellant by : Shri Aman Parti
Respondent by : Shri Gulshan Raj, Addl.CIT DR

Date of hearing : 09.10.2017
Date of Pronouncement : 30.10.2017

ORDER

PER ANNAPURNA GUPTA, A.M.:

This appeal filed by the assessee has been preferred against the order passed by the Ld. Commissioner of Income Tax(Appeals), Panchkula (hereinafter referred to as 'CIT(Appeals)') dated 27.11.2015 relating to assessment year 2012-13.

2. Brief facts of the case are that the assessee is an apex-cooperative society in the State of Haryana having income from trading and marketing of foodgrains and in its return of income filed during the year it had claimed deduction u/s 80P(2)(d) of the Income Tax Act, 1961 (in short 'the Act') on account of interest and dividend income earned and u/s 80P(2)(e) on account of rental income earned for letting out of godown, etc. which was denied by the Assessing Officer and the same was upheld by the Ld.CIT(Appeals). Against

these two actions of the Ld.CIT(Appeals) the assessee has preferred the present appeal raising the following effective grounds:

> *2.That the CIT(A) erred in facts and in law in upholding the disallowance made by the Assessing Officer u/s 80P(2)(d) amounting to Rs.7,25,20,354/-by invoking the provisions of Rule 8D read with section 14A of the Income Tax Act, 1961. That even otherwise, the CIT(A) erred in upholding the quantum of disallowance worked out by the AssessingOfficeru/s14Aread with Rule 8D of the Income Tax Rules, 1962.*
>
> *3. That the Worthy CIT(A) erred in facts as well as in law in upholding disallowance u/s 80P(2)(e) amounting to Rs 8,69,01,552/- in respect of the rent derived by the appellant from letting out of godowns for storage, processing etc. of commodities and therefore the said order be set aside.*

3. The only issues arising in the present appeal are therefore two fold;

> i) the disallowance of deduction claimed by the assessee u/s 80P(2)(d) of the Act on account of interest and dividend income earned by it and
>
> ii) the disallowance of deduction claimed by the assessee u/s 80P(2)(e) of the Act in respect of rental income derived by it.

4. Ground No.2 raised by the assessee is against the order of the Ld.CIT(Appeals) upholding the denial of deduction claimed by the assessee u/s 80P(2)(d) of the Act amounting to Rs.7,25,20,354/- on account of interest and dividend

income earned by it. The assessee had claimed 100% deduction of the interest and dividend income earned by it without reducing any proportionate expenditure and had claimed before the Assessing Officer that no cost had been incurred on this investment. The Assessing Officer disallowed the claim after computing the disallowance of expenditure as per section 14A r.w.r. 8D of the Income Tax Rules, 1962.

5. The Ld.CIT(Appeals) upheld the disallowance made by the Assessing Officer following his order in the case of assessee for assessment year 2011-12. Further the Ld. CIT(A) emphasized the issue of applicability of section 14A r.w.r. 8D in the case of the assessee, pointing out that the issue came up before the I.T.A.T. in assessment years 2004-05 and 2005-06 also wherein the I.T.A.T. restored the matter to the Assessing Officer for fresh adjudication after recognizing the Ld. DR's contention that it requires examination in pursuance to rule 8D of the Income Tax Rules. The Ld.CIT(Appeals) further pointed out that the Ld.CIT(Appeals) while deciding the appeal against the assessment order passed after the aforesaid direction of the I.T.A.T. mentioned that the assessee accepted that the disallowance needed to be made as per rule 8D and accordingly, the Ld.CIT(Appeals) directed the Assessing Officer to rework the disallowance. This view was followed in subsequent years also. Therefore, the Ld.CIT(Appeals) held that the assessee's submission of non applicability of

section 14A was not acceptable since there was no change in facts as compared to the preceding years.

6. Before us, the Ld. counsel for assessee raised several contentions as under:

1) That disallowance u/s 14A r.w.r. 8D was not applicable since the issue did not pertain to exempt income but to incomes which were allowed deduction under Chapter-VI-A.

2) That in any case, even if the section 14A r.w.r. 8D was applicable, no disallowance of any interest expenditure as per rule 8D(2)(ii) was to be made since the assessee had enough own funds for the purpose of making the said investments and in any case, all the investments were old.

3) That the disallowance under rue 8D(2)(iii) on account of administrative expenses was to be restricted to investments which had actually earned income during the year. Reliance was placed on a number of case laws with regard to the above contention of the assessee.

7. The Ld. DR, on the other hand, pointed out that as far as the applicability of section 14A r.w.r. 8D, the same has been dealt with by the Ld.CIT(Appeals) wherein he had mentioned that the assessee had admitted to the applicability of the same in assessment year 2005-06 and had been followed in the case of the assessee for subsequent

years also. It was also pointed out by the Ld. DR that the Hon'ble jurisdictional High Court in the case of Punjab State Cooperative Milk Producers Federation Ltd. vs Commissioner of Income Tax & Anr. reported in 336 ITR 495 had upheld the applicability of section 14A while calculating the eligible deduction u/s 80P(2)(d) of the Act. As far the assessee's contention of no disallowance to be made as per rule 8D(2)(ii) on account of interest, the Ld. DR contended that on account of the mixed funds available with the assessee the provisions of rule 8D(2)(ii) were clearly applicable.

8. We have heard contentions of both the parties, perused the orders of authorities below and also gone through the documents placed before us.

9. On the first contention raised by the assessee that section 14A r.w.r. 8D is not applicable while working out the claim of deduction u/s 80P(2)(d), we find that the Ld. DR has rightly pointed out that the issue has already been dealt with by the Hon'ble jurisdictional High Court in the case of Punjab State Cooperative Milk Producers Federation Ltd. vs Commissioner of Income Tax & Anr. reported in 336 ITR 495 wherein the applicability of the said section has been upheld. The relevant findings of the Hon'ble High Court with regard to the same are as under:

> *"The assessee is entitled to deduction under s. 80P(2)(d) of the Act after excluding the expenditure attributable to the earning of such income. The apex Court in Sabarkantha Zilla Kharid Vechan Sangh Ltd.'s case (supra), where the High Court while rejecting the claim of the assessee had held that the assessee who was engaged in the purchase of agricultural implements,*

seeds, live-stocks etc. was entitled to deduction under s. 81 of the Act from tax only in relation to net profit and not gross profits. It was held as under :

"The said provision, as seen therefrom, undoubtedly exempts an assessee-co-operative society, which carries on the business envisaged therein, from payment of income-tax on profits and gains of such business. But the controversy which relates to the said provision is, whether the income-tax not payable thereunder, falls to be calculated either with reference to the full amount of profits and gains of the co-operative society's business, as contended on behalf of the assessee or with reference to the net amount of profits and gains of the co-operative society's business, as otherwise computable under the provisions of the IT Act for the purpose of charging income-tax thereon, as contended on behalf of the Revenue. If the relevant provisions of the IT Act providing for charging a person including a co-operative society with income-tax on "profit and gains" of such person's business show that it is the net profits and gains, i.e., income of such business computed in accordance with the provisions of the IT Act, which is includible in such person's total income liable to charge of income-tax, it must flow therefrom, as a necessary corollary thereof, that the "profits and gains" for which exemption from income-tax is envisaged under s. 81(i)(d) of the IT Act, ought to be net profits and gains, i.e. income of business computed in accordance with the provisions of the IT Act which is includible in such person's total income for charging income-tax thereon."

13. It may be noticed that s. 80P was inserted in place of s. 81 which was simultaneously deleted by Finance (No. 2) Act, 1967, w.e.f. 1st April, 1968.

14. Further, s. 14A was inserted in the Act by Finance Act, 2001 w.e.f. 1st April, 1962. The said section provides that any expenses incurred by the assessee for earning income which does not form part of total income under the Act, shall not be an allowable expenditure. The apex Court in Walfort Share & Stock Brokers's case (supra), defining the scope of s. 14A of the Act, incorporated retrospectively from 1st April, 1962, had laid down as under :

"The insertion of s. 14A with retrospective effect is the serious attempt on the part of the Parliament not to allow deduction in respect of any expenditure incurred by the assessee in relation to income, which does not form part of the total income under the Act against the taxable income (see Circular No. 14 of 2001 dt. 22nd Nov., 2001). In other words, s. 14A clarifies that expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income. In many cases the nature of expenses incurred by the assessee may be relatable partly to the exempt income and partly to the taxable income. In the absence of s. 14A, the expenditure incurred in respect of exempt income was being claimed

against taxable income. The mandate of s. 14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail the tax incentive by way of exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income. The basic reason for insertion of s. 14A is that certain incomes are not includible while computing total income as these are exempt under certain provisions of the Act. In the past, there have been cases in which deduction has been sought in respect of such incomes which in effect would mean that tax incentives to certain incomes was being used to reduce the tax payable on the non-exempt income by debiting the expenses, incurred to earn the exempt income, against taxable income. The basic principle of taxation is to tax the net income, i.e., gross income minus the expenditure. On the same analogy the exemption is also in respect of net income. Expenses allowed can only be in respect of earning of taxable income. This is the purport of s. 14A. In s. 14A, the first phrase is 'for the purposes of computing the total income under this Chapter' which makes it clear that various heads of income as prescribed under Chapter IV would fall within s. 14A. 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 s. 14A. Further, s. 14 specifies five heads of income which are chargeable to tax. In order to be chargeable, an income has to be brought under one of the five heads. Secs. 15 to 59 lay down the rules for computing income for the purpose of chargeability to tax under those heads. Secs. 15 to 59 quantify the total income chargeable to tax. The permissible deductions enumerated in ss. 15 to 59 are now to be allowed only with reference to income which is brought under one of the above heads and is chargeable to tax. If an income like dividend income is not a part of the total income, the expenditure/deduction though of the nature specified in ss. 15 to 59 but related to the income not forming part of total income could not be allowed against other income includible in the total income for the purpose of chargeability to tax. The theory of apportionment of expenditures between taxable and non-taxable has, in principle, been now widened under s. 14A. Reading s. 14 in juxtaposition with ss. 15 to 59, it is clear that the words "expenditure incurred" in s. 14A refers to expenditure on rent, taxes, salaries, interest, etc. in respect of which allowances are provided for (see ss. 30 to 37)."

15. Adverting to the judgments relied upon by the learned counsel for the assessee, the same do not advance its case. Suffice it to notice that the Doaba Co-operative Sugar Mills case (supra) was a case prior to insertion of s. 14A by Finance Act, 2001 retrospectively from 1st April, 1962 and would, thus, be of no assistance to the assessee. Further, this Court in King Export's case (supra), on consideration of facts involved therein had concluded that there was no expenditure

> *which had been incurred by the assessee for earning the income and the same did not form part of total income. That is not the situation in the present case.*
>
> *16. In view of the above, the substantial questions of law are answered against the assessee and in favour of the Revenue.*

10. Moreover, as emerged during the course of hearing before us, the applicability of rule 8D r.w.s. 14A has been upheld in the case of the assessee by the Tribunal and accepted by the assessee in preceding years. Therefore, we find no merit in the contention of the assessee that section 14A r.w.r. 8D is not to be applied for the purpose of calculating the deduction allowable u/s 80P(2)(d) of the Act.

11. As far the contention of the Ld. counsel for assessee that in view of the fact that it had enough surplus funds which are interest free and which is demonstrated from the quantum of share capital and reserves available with the assessee over the years as reflected in the financial statement of the assessee, the presumption ought to be that the investments had been made out of these interest free funds available, we are in agreement with the Ld. counsel for assessee. The fact that the assessee had enough own funds to make the impugned investment had not been controverted by the Ld. DR and the same stands reflected in the Balance Sheet of the assessee right from financial year ending 31-03-91 to the impugned financial year ending on 31-03-12, which have been filed before us in the form of Paper Book .Moreover, the Hon'ble jurisdictional High Court has held in the case of CIT VS. Max India Ltd.ITA No.210/Chd/2013 dt.08-03-2017 that if an assessee establishes that its

interest free funds were equal to or more than the interest bearing funds it would be open to it to contend that presumption arises that the expenditure for earning interest income was incurred from out of its interest free funds warranting no disallowance of interest expenditure u/s 14A r.w.r. 8D.. The relevant findings of the Hon'ble High Court are as under:

> *"9. This presumption is unfounded. Merely because the interest free funds with the assessee have decreased during any period, it does not follow that the funds borrowed on interest were utilized for the purpose of investing in assets yielding exempt income. If even after the decrease the assessee has interest free funds sufficient to make the investment in assets yielding the exempt income, the presumption that it was such funds that were utilized for the said investment remains. There is no reason for it not to. The basis of the presumption as we will elaborate later is that an assessee would invest its funds to its advantage. It gains nothing by investing interest free funds towards other assets merely on account of the interest free funds having decreased. In that event so long as even after the decrease thereof there are sufficient interest free funds the presumption that they would be first used to invest in assets yielding exempt income applies with equal force."*

12. In view of the same, we hold that the disallowance made on account of interest expenditure as per rule 8D(2)(ii) of the Rules be deleted.

13. As far as the contention of Ld. counsel for assessee that the calculation of administrative expenses to be disallowed as per rule 8D(2)(ii) be restricted to investments which have earned income during the year, we find merit in this contention of Ld. counsel for assessee. The Special Bench of the I.T.A.T. in the case of ACIT vs. Vireet Investments Pvt. Ltd. ITA No.502/Del/2012 dt.16/06/17 has laid down the said proposition and even the Hon'ble Delhi

High Court in the case of ACB India Ltd.vs ACIT in ITA No.615/2014 dt-24.03.2015 has held so holding as under:

> *"4.The AO, instead of adopting the average value of investment of which income is not part of the total income i.e. the value of tax exempt investment, chose to factor in the total investment itself. Even though the CIT(Appeals) noticed the exact value of the investment which yielded taxable income, he did not correct the error but chose to apply his own equity. Given the record that had to be done so to substitute the figure of 38,61,09,287/- with the figure of `3,53,26,800/- and thereafter arrive at the exact disallowance of 05%."*

14. In view of the above, we direct that the expenses to be disallowed under rule 8D(2)(ii) be calculated by taking into account only those investments which have earned income during the year.

15. In view of the above we hold that section 14A r.w.r. 8D is applicable for working out the deduction claimed u/s 80P(2)(d) by the assessee and that no disallowance of interest expenditure is allowable as per Rule 8D(2)(ii) while the expenditure to be disallowed as per Rule 8D(2)(iii) is to be calculated by taking into consideration only those investments which have earned income during the year.

16. In view of the above, ground No.2 raised by the assessee is partly allowed.

17. In ground No.3, the assessee has challenged the denial of deduction claimed u/s 80P(2)(e) of the Act amounting to Rs.8,69,01,552/- on account of rental income earned by it from letting out of godowns for storage processing etc.

18. Briefly stated, during the impugned assessment year the assessee had derived rental income from letting out of

godowns to National Collateral Management Services Ltd. Central Warehousing Corporation Mumbai, IFFCO, KRIBHCO, etc. and had claimed deduction u/s 80P(2)(e) of Rs.8,69,01,552/- from this rental income. The Assessing Officer denied the said claim of the assessee for the reason that the Hon'ble Punjab & Haryana High Court had in earlier year disallowed the claim of the assessee, for the reason there was no provision in the objects of the assessee company to let out godowns on rent and further for the reason that no evidence to substantiate the claim, had been filed by the assessee. The Ld.CIT(Appeals) in his turn upheld the disallowance following his order in the case of the assessee for assessment year 2011-12.

19. Before us, the Ld. counsel for assessee pointed out that while in assessment year 2011-12, the assessee's appeal on this issue had been dismissed for want of evidence that the income had been earned by letting out of godowns, in the present case, the facts were distinguishable since the assessee had filed evidence in this regard. The Ld. counsel for the assessee drew our attention to para 5.5 of the Ld.CIT(Appeals)'s order for assessment year 2011-12 pointing out the fact that in assessment year 2011-12 for want of evidence the assessee's ground had been dismissed. The same is reproduced hereunder:

> *"I have gone though the facts of the case, written submission filed by the appellant and report submitted by AO during appellant proceedings. Following the decision by my predecessor for assessment year 2008-09 and by Hon'ble ITAT for the A.Y. 2009-10. as the facts remain same, the*

undersigned sees no reason to differ with the order passed by my predecessor in the appellant's own case for the A.Y. 2008-09. Since, the due opportunity for computation of deduction was provided by the AO to the appellant during remand proceedings but no reply was submitted by the appellant, it is found that there is no income on account of letting out of godowns which is available for deduction u/s 80P(2)(e) of the Act. The AO was justified in disallowance of claim of deduction u/s 80P(2)(e) of the Act. As a result, this ground of appeal is dismissed. "

20. Thereafter the Ld. counsel for assessee drew our attention to the facts as mentioned by the Ld.CIT(Appeals) in his order at para 8.1 mentioning that the documentary evidence in support of letting out of godowns was furnished by the assessee during assessment proceedings with the details of calculation based on which deduction has been claimed. The same are reproduced hereunder:

"8.1 During the appellate proceedings, the counsel for the appellant submitted that the appellant during the year under consideration received income on account of renting of its godowns for the purpose of storage, processing and facilitating the marketing of agricultural commodities. Deduction claimed u/s 80P(2)(e) has been disallowed by the AO relying upon the ratio laid down by the Hon'ble Punjab and Haryana High Court in the appellant's own case in ITA No. 157, 159, 664 of 2005, 477 of 2006, 419 of 2007, 275 of 2009 and 246, 251 of 2010. The appellant further submitted that the deduction in respect of the income derived by the appellant by way of renting of godowns for the purpose of storage, processing and facilitating the marketing of agricultural commodities has been specifically held to be admissible u/s 80P(2)(e). In the present case, the appellant had let out some of its godowns where from rent was received. Documentary evidence in support of letting out of godowns on rent had been furnished by the appellant during the course of the assessment proceedings. Details of the calculations based on which the deduction had been claimed by the appellant had also been furnished by the appellant during the assessment proceedings. Copy of some of the agreements evidencing the receipt of renting of godowns for the purpose of storage, processing and facilitating the marketing of agricultural commodities was also submitted. So, the order of the AO in disallowing the deduction claimed u/s 80P(2)(e) in respect of the rent derived is erroneous as being against the facts of the case and also the judgment of the Hon'ble Punjab and Haryana High Court.

21. The Ld.Counsel for the assessee ,on the basis of the above, stated that the Ld.CIT(Appeals) had erred in dismissing the ground raised by the assessee for want of evidence following his order for assessment year 2011-12.

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

23. We have heard contentions of both the parties and perused the orders of authorities below. We find merit in the contention of the Ld. counsel for assessee. Undoubtedly, the assessee had been denied claim of deduction u/s 80P(2)(e) of the Act by the Ld.CIT(Appeals) following the order of the Ld.CIT(Appeals) in assessee's case for assessment year 2011-12. As rightly pointed out by the Ld. counsel for assessee in the said order the assessee had been denied deduction for want of evidence substantiating his claim of having earned rental income by letting out of godowns, warehousing, etc. As also rightly pointed out by the Ld.Counsel for the assessee the said evidence in the present case had admittedly been filed before the Ld.CIT(Appeals). Clearly, therefore, the Ld.CIT(Appeals) had erred in following his order for assessment year 2011-12 and dismissing assessee's claim for deduction for want of evidence when the same had actually been filed before him. In view of the same, therefore, we consider it fit to restore the matter back to the file of the Ld.CIT(Appeals) to adjudicate the issue afresh in the light of evidences filed by the assessee substantiating his claim and in accordance

with law after giving due opportunity of hearing to the assessee. Ground of appeal No.3 raised by the assessee, therefore, stands allowed for statistical purposes.

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

Order pronounced in the open court.

Sd/- Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 30th October, 2017

Rati

Copy to:

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

Assistant Registrar,
ITAT, Chandigarh