

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “A”, PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.265/PUN/2018

निर्धारण वर्ष / Assessment Year 2014-15

Kalyani Steels Ltd., Mundhwa, Pune – 411 036 PAN : AAACK7315D	Vs.	DCIT, Circle-14, Pune
Appellant		Respondent

Assessee by Shri Nikhil S. Pathak
Revenue by Shri Vitthal Bhosale

Date of hearing	15-03-2021
Date of pronouncement	15-03-2021

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee arises out of the order passed by the CIT(A)-7, Pune on 23-11-2017 in relation to the assessment year 2014-15.

2. The assessee has filed three additional grounds covering certain parts of disallowance u/s.14A r.w. Rule 8D(2) (ii) and also deduction of Education Cess and Secondary and Higher Education Cess.

3. The Hon'ble Supreme Court in *National Thermal Power Company Ltd. Vs. CIT* (1998) 229 ITR 383 (SC) has observed that

“the purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the tribunal for the first time, so long as the relevant facts are on record in respect of that item”. Answering the question posed before it in affirmative, their Lordships held that on the facts found by the authorities below, if a question of law arises (though not raised before the authorities) which has bearing on the tax liability of the assessee, the Tribunal has jurisdiction to examine the same. Having gone through the subject matter of the additional grounds taken by the assessee, it is discernible that they raise a pure question of law. We, therefore, admit the same.

4. The first issue raised in this appeal is against the confirmation of disallowance u/s.14A of the Income-tax Act, 1961 (hereinafter also called ‘the Act’).

5. Briefly stated, the facts of the case are that the assessee is engaged in manufacture and sale of hot metal, pig iron, steel billets, blooms and rolled products and generation of power etc. Certain amount was offered by the assessee as *suo motu* disallowance u/s.14A. The AO, during the course of assessment proceedings, observed that Rule 8D(2) was not properly applied by the assessee. He computed the disallowance towards interest under Rule 8D(2)(ii) at Rs.45,16,437/- and half percent of the average value of investments under Rule 8D(2)(iii) at Rs.19,97,150/- thereby making total disallowance of Rs.65,13,587/-. The ld. CIT(A) gave certain directions to the AO in this regard thereby partly allowing the appeal, which was based only on disallowance u/s.14A. Now the assessee is before the Tribunal.

6. We have heard both the sides through Virtual Court and gone through the relevant material on record. The first component of the disallowance is interest of Rs.45,16,437/-. In this regard, our attention was invited by the ld. AR towards the balance sheet of the assessee company, whose copy has been placed at page 30 of the paper book. As against the Shareholders funds' of Rs.397.86 crore,

the value of investments taken by the AO in the assessment order for the purpose of making disallowance is only Rs.39.94 crore.

7. The Hon'ble Bombay High Court in *CIT vs. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom)*, has held that where an assessee possessed sufficient interest free funds of its own which were generated in the course of relevant financial year, apart from substantial shareholders' funds, presumption gets established that the investments in sister concerns were made by the assessee out of interest free funds and, therefore, no part of interest on borrowings can be disallowed on the basis that the investments were made out of interest bearing funds. In reaching this conclusion, the Hon'ble High Court relied on the judgment of the Hon'ble Supreme Court in the case of *East India Pharmaceutical Works Ltd. Vs. CIT (1997) 224 ITR 627 (SC)*. Similar view has been taken by the Hon'ble Delhi High Court in *CIT vs. Tin Box Company (2003) 260 ITR 637 (Del)*, holding that when the capital and interest free unsecured loan with the assessee far exceeded the interest free loan advanced to the sister concern, disallowance of part of interest out of total interest paid by the assessee to the bank was not justified. More recently, the

Hon'ble Supreme Court in *CIT(LTU) VS. Reliance Industries Ltd.* (2019) 410 ITR 466 (SC) has reiterated the same view.

8. When we examine the amount of Investments at Rs.39.94 crore as against the availability of Share Capital and Reserves at Rs.397.86 crore, it becomes evident that the amount of such Investments is much less than the amount of shareholders fund. We, therefore, order to delete the disallowance of interest amounting to Rs.45,16,437/-.

9. The second component of disallowance of interest at half percent of average value of investments is Rs.19,97,150/-. The ld. AR did not raise any dispute as to the applicability of 0.5% towards disallowance on the average value of investments. It was, however, requested that only the investments which yielded exempt income should be considered for the purpose of calculation.

10. The Hon'ble Delhi High Court in *ACB India Ltd. vs. CIT* (2015) 374 ITR 108 (Del) has held that the average value of investments, for the purposes of Rule 8D(2)(iii), should be confined to those securities in respect of which exempt income is earned and not the total investments. Similar view has been taken by the Special Bench of the Tribunal in the case of *ACIT vs. Vireet*

Investments (P) Ltd. (2017) 165 ITD 27 (Del) (SB). In view of the afore referred precedents, we set aside the impugned order to this extent and remit the matter to the file of Assessing Officer for re-computing the disallowance under Rule 8D(2)(iii) by considering only such investments in calculating the average value of investments, which yielded exempt income during the year. The assessee will be allowed hearing opportunity in such fresh proceedings. It is further made clear that while computing disallowance u/s.14A, the *suo motu* disallowance offered by the assessee, to the extent concerning with rule 8D(2)(iii), should be accordingly reduced.

11. The only other additional ground is towards the grant of deduction towards Education Cess and Secondary and Higher Education Cess paid for the year under consideration.

12. We find that this issue is no more *res integra* in view of the judgment of Hon'ble jurisdictional High Court in *Sesa Goa Lt. Vs. JCIT (2020) 423 ITR 426 (Bom.)* in which it has been held that Education Cess is not disallowable expenditure u/s.40(a)(ii) of the Act. Similar view has earlier been taken by the Hon'ble Rajasthan High Court in *Chambal Fertilisers and Chemicals Ltd. and Another*

Vs. JCIT (2018) 102 CCH 0202 (Raj-HC). We, ergo, direct to allow deduction for such an amount after verification.

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

Order pronounced in the Open Court on 15th March, 2021.

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 15th March, 2021
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

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

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	15-03-2021	Sr.PS
2.	Draft placed before author	15-03-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
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10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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