



IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE SHRI S. RIFAUZ RAHMAN, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA no.95/Mum./2020
(Assessment Year : 2013-14)

Asstt. Commissioner of Income Tax
Circle-2(1)(1), Mumbai Appellant

v/s

M/s. Madura Garments Lifestyle
Retail Co. Ltd. (Now merged with Aditya
Birla Finance Ltd.), 18th Floor, One
IndiaBulls Centre, Tower-1, Senapati
Bapat Marg, Elphinstone Road Respondent
Mumbai 400 013 PAN – AAFCM0483M

ITA no.564/Mum./2020
(Assessment Year : 2013-14)

Aditya Birla Finance Ltd.
(Successors of M/s. Madura Garments
Lifestyle Retail Co. Ltd.), 18th Floor
One IndiaBulls Centre, Tower-1,
Senapati Bapat Marg, Elphinstone Road Appellant
Mumbai 400 013 PAN – AAFCM0483M

v/s

Dy. Commissioner of Income Tax
Circle-2(1)(1), Mumbai Respondent

Assessee by : Shri Yogesh Thar
Revenue by : Shri S.N. Kabra

Date of Hearing – 28.09.2021

Date of Order – 29/10/2021

ORDER

PER S. RIFAUR RAHMAN, A.M.

The captioned cross appeals are against the impugned order dated 15th October 2019, passed by the learned Commissioner of Income Tax (Appeals)-4, Mumbai, for the assessment year 2013-14.

2. Since both the appeals pertain to the same assessee involving common issue which arose out of identical set of facts and circumstances, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order. However, in order to understand the implication, it would be necessary to take note of the facts of one appeal. We are, accordingly, narrating the facts, as they appear in the appeal being ITA no.95/Mum./2019, for assessment year 2013-14, the conclusive result of which will be applicable equally to other appeal being ITA no.564/Mum./2020, for the A.Y. 2013-14.

ITA no.95/Mum./2020 **Revenue's Appeal – A.Y. 2013-14**

2. The assessee has filed the present appeal on the following grounds:-

"1. On the facts and the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance u/s 14A of the IT Act r.w. Rule 8D made by the AO without appreciating the fact that it was correctly worked out as per the method of calculation

prescribed in Rule 8D of the Income tax Rules, 1962, which is the changed law w.e.f. A.Y. 2008-09.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance u/s 14A of the IT Act r.w. Rule 8D made by the AO without appreciating that the method of working of disallowance is held as reasonable method by jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Ltd. Vs. CIT, 328 ITR 81 (Bom.).

3. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing relief to the assessee relying on the decision of Hon'ble Special Bench of ITAT Delhi in the case of Vireet Investment (P) Ltd., without appreciating the facts that the issue has not reached to its finality in view of the contrary decision of the Hon'ble High Court of Delli on the same issue, in the case of Goetz India Ltd., reported in 361 ITR 505 and in Bhushan Steel Ltd. (ITA No.593 & 594/2015) has taken a contrary view."

3. Facts in brief:- The assessee is engaged in the business of trading in readymade apparel and accessories. During the year, the assessee had entered into the specified domestic transactions with its Associated Enterprises (A.E). A reference was made to the Transfer Pricing Officer for computing the arm's length price under section 92CA(1) of the Act. The DCIT(TP)-1(1)(1), Mumbai, has passed order under section 92CA(3) dated 26th October 2016, accepting the submission of the assessee and accordingly no adjustments have been made.

4. Insofar as disallowance under section 14A of the Act is concerned, it is noted that the assessee has made investment in shares income from which is exempt. Therefore, the Assessing Officer

sought explanation from the assessee in response to which the assessee submitted that it had earned dividend income of ₹ 2,25,822, on the preference share in Aditya Birla Finance Ltd. and suo-motu offered the disallowance under section 14A of the Act of ₹ 2,91,81,108, being proportionate disallowance of interest and therefore no further disallowance is called for under section 14A r/w rule 8D out of the interest expenses. Further, the assessee has also provided the break-up of other expenses as per Profit & Loss Account and stated that none of these expenses can be allocated to the dividend income and hence no further disallowance under section 14A was required to be made. The Assessing Officer considered the submissions of the assessee but not found acceptable. He observed that the assessee does not maintain separate accounts for investments vis-a-vis source. Further, the suo-motu disallowance made by the assessee is not in accordance with the provisions of rule 8D(2)(iii) i.e., 0.5% of the average investment and, therefore, the other expenses are required to be apportioned by invoking rule 8D(2)(iii). Accordingly, the other expenses are apportioned by invoking the provisions of rule 8D(2)(iii), which is as under:-

- i) Expenditure directly related to exempt income - Nil;*
- ii) Proportionate interest expenses under rule 8D(2)(ii) - Nil;*
- iii) ½% of the average of the investments yielding exempt income = 0.5% x *B = ₹ 1,81,32,944/-*

$$*B = \text{Average Investments} = [(4250000000 + 3003177490)/2 = 3626588745]$$

(Interest expenditure has already been disallowed by the assessee on proportionate basis, hence no disallowance on the basis of expenditure is made)"

5. Accordingly, the Assessing Officer disallowed an amount of ₹ 1,81,32,944, which was added to the income of the assessee. The assessee being aggrieved filed appeal before the first appellate authority.

6. The learned CIT(A) held that the assessee has actually incurred expenses for earning exempt income on account of the interest payments and made a suo-motu disallowance of ₹ 2,91,81,108. He held that since the expenses were actually incurred which were offered to tax by the assessee as disallowance under section 8D(2)(ii), therefore, no further disallowance can be made out of the actual expenses incurred by the assessee and offered for taxation by the assessee itself.

7. Before us, the learned Counsel for the assessee submitted that according to the Assessing Officer, the suo-motu disallowance made by the assessee was not as per provisions of rule 8D(2)(iii). He submitted that the total exempt income earned by the assessee was ₹ 2,25,822, and hence it was claimed that disallowance made by the

Assessing Officer under rule 8D(2)(iii) should not exceed the quantum of exempt income earned by the assessee.

8. The learned Departmental Representative relied upon the observations of the Assessing Officer.

9. We have considered the rival submissions of the learned Counsel appearing for the parties and perused the material on record. The facts borne out from records clearly indicate that the assessee has earned dividend for the impugned assessment year. It is a well settled principle of law that disallowance computed under section 14A r/w Rule 8D shall not hold entire income earned for the year. In other words, disallowance of expenditure under section 14A r/w rule 8D shall not exceed exempt income earned for the year. This proposition of law is also supported by the decision of Hon'ble Delhi High Court in *Cheminvest Ltd. v/s CIT*, [2015] 378 ITR 33 (Del.), wherein it was clearly held that disallowance of expenditure under section 14A of the Act shall not exceed exempt income earned by the assessee for the year. As discussed in the foregoing paragraph, in the present case, although the dividend income earned by the assessee during the year under consideration, the Assessing Officer has computed disallowance which is in excess of exempt income earned for the year. Therefore, considering the facts and circumstances of the case and also by following the decision of the Hon'ble Delhi High Court in *Cheminvest*

Ltd. (supra), we direct the Assessing Officer to restrict the disallowance computed under section 14A of the Act r/w Rule 8D of I.T. Rules, 1962, to the extent of exempt income earned for the year. Consequently, we find no legal infirmity in the impugned decision of the learned CIT(A) warranting us to interfere with the order passed him which is hereby upheld. The grounds raised by the Revenue are dismissed.

10. In the result, Revenue's appeal is dismissed.

ITA no.564/Mum./2020
Assessee's Appeal – A.Y. 2013-14

11. The assessee has filed the present appeal on the following grounds:-

"i) Erred in retaining the disallowance under section 14A carried out by the Appellant of ₹ 2,91,81,108, despite the fact that the exempt income earned is only ₹ 2,25,822.

ii) Upholding the disallowance of mark to market loss of ₹ 9,06,249, by not accepting the decision of Hon'ble Supreme Court in case of Woodward Governor's case allowing such expenditure under section 37(1).

iii) Upholding the levy of interest under section 234B without taking cognizance of the fact that the Appellant had huge brought forward losses claimed in its return of income filed which would set-off tax liability, if any, arising out of the said disallowances."

12. Ground no.1, relates to disallowance under section 14A of the Act. The assessee has raised this issue which is in support of ground

no.1, raised by the Revenue which is decided by us vide Para-9, of this order, wherein, for the reasons stated therein, we have decided the issue in favour of the assessee and against the Revenue. Consequent upon the finding in ground no.1, raised by the Revenue in its appeal being ITA no. 95/Mum/2020, similar directions are issued on this issue as well. Thus, ground no.1, raised by the assessee is allowed.

13. Ground no.2, relates to disallowance of mark to market loss of ₹ 9,06,249.

14. The Assessing Officer mentioned that the assessee had claimed foreign exchange loss on mark to market forward covers amounting to ₹ 9,06,249, under the head "*Net Foreign Exchange Gain*". The Assessing Officer asked the assessee to justify the liability of the claim made by the assessee. The assessee submitted that the loss was incurred for avoiding the risk of loss due to foreign exchange fluctuations. The Assessing Officer rejected the submissions of the assessee and relying upon the Instructions no.3 of 2010, dated 20th March 2010, issued by the Central Board of Direct Taxes (CBDT) disallowed the loss claimed by the assessee.

15. The learned CIT(A) held that the assessee had not clarified whether the losses were incurred from actual transaction for forex

derivatives or losses were booked without actual sale of settlement. He held that in the absence of such a clarification, the issue is covered by Para-2 of the Instructions no.3 of 2010, dated 20th March 2010 issued by the CBDT. Consequently, the claim of the assessee was rejected. Aggrieved, the assessee is in appeal before the Tribunal.

16. Considered the rival submissions and material on record. It is brought to our notice that the assessee is in regular import business and it has covered the foreign currency fluctuation by booking forex forward contract cover from the bank. The Ld. AR brought to our notice page 67 and 68 of the Paper Book to highlight loss incurred by the assessee. We noticed that the assessee has booked the loss in the profit and loss account considering the closing mark to market rate as on 31.03.2013. But we notice that the maturity date mentioned in the contract falls on April, May and June 2013. The loss calculated by the assessee as on 31.03.2013 is only notional loss and the actual loss falls only when it is failed to fulfil the terms of the contract in the respective contract maturity date. Therefore, this loss actually falls on April, May and June 2013. Therefore, this loss pertains to next assessment year, the assessee can claim this loss only in the year of actual loss. Accordingly, this ground of appeal is dismissed.

17. Ground no.3, relates to charging of interest under section 234B of the Act.

18. Charging of interest under section 234B of the Act being consequential is mandatory in nature and hence the Assessing Officer is directed to give consequential effect in view of our findings given on individual grounds decided supra and in accordance with law.

19. In the result, assessee's appeal is partly allowed.

20. To sum up, Revenue's appeal is dismissed and assessee's appeal is partly allowed.

Order pronounced in the open court on 29/10/2021.

Sd/-

PAVAN KUMAR GADALE
JUDICIAL MEMBER

Sd/-

S. RIFAUR RAHMAN
ACCOUNTANT MEMBER

MUMBAI, DATED: 29/10/2021

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

By Order

Assistant Registrar
ITAT, Mumbai