

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C": DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA.No.3758/Del./2018
Assessment Year 2014-15

Hindustan Associated Engineers Pvt. Ltd., K-Block-54, Choudhary Building, Connaught Circus, New Delhi. PAN No. AAACH1505J	vs.	ITO Ward 11(3) C.R. Building, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Sh. Rajnish Aggarwal, CA
For Revenue :	Ms. Anima Barnwal, Sr. DR

Date of Hearing :	26.08.2021
Date of Pronouncement :	27.08.2021

ORDER

PER VIJAY PAL RAO, J.M.

1. This appeal by assessee is directed against the order dated 28.02.2018 of CIT(Appeals) for the AY 2014-15.

The assessee has raised the following grounds: -

1. That the Ld. CIT(A) has grossly erred in law and facts in confirming the disallowance of Rs. 6,85,400/- u/s 14A of the Income Tax Act, 1961 vide its order dated 28.02.2016.
2. That the Ld. CIT(A) has grossly erred in not considering that the disputed issue is a covered matter for the assessee and has already been decided in favor of the assessee in the Assessment Years 2008-09 and 2009-10, which is entirely arbitrary, baseless and unjust.
3. That the Ld. CIT(A) has grossly erred in law and facts in making the disallowance without showing any nexus between the interest expenditure and the income earned by the assessee, which is arbitrary and unlawful.
4. That the Ld. CIT(A) has grossly erred in facts and law in calculating the disallowance as per Rule 8D of the Income Tax Rules, 1962 by including the investments in debt based mutual funds, the returns from which are taxable, which is blatantly against the intentions and provisions of law.
5. That the Ld. CIT(A) has grossly erred in law and facts in making the disallowance without considering that the assessee had sufficient reserves and surplus to make the investments which is entirely baseless and arbitrary.
6. That the Ld. CIT (A) has grossly erred in law and facts in relying on the decision of the Hon'ble Supreme Court in Maxopp Investments Ltd V CIT as the facts of the case have no bearing on the present case, which is entirely
7. That without prejudice to the above, the Ld. CIT(A) has grossly erred in confirming the disallowance of Rs 6,85,400/- which is around 175% of the income earned i.e Rs. 3,89,059/- which is entirely baseless and arbitrary.
8. That each of the above mentioned grounds are substantial questions of law, are without prejudice to one another and the appellant craves leave to add/amend to the grounds at any time during the appeal in the interests of justice.

2. The only issue arises from the grounds raised by the assessee is regarding disallowance of Rs. 6,85,400/- made by the Assessing Officer u/s 14A of the Income Tax Act was confirmed by the CIT(A). During the

course of assessment proceedings, the AO noted that the assessee has made investment in equity based mutual funds, equity shares and earned dividend income of Rs. 3,89,059/- which is exempt from tax. The assessee has made a *suo moto* disallowance of Rs. 15,000/- u/s 14A in the return of income. The AO asked the assessee to explain the working of *ad hoc* disallowance of Rs. 15,000/- made u/s 14A and also to explain as to why the disallowance u/s 14A read with Rule 8D will not be made in investment which has yielded an exempt income. In response the assessee has revised the *suo moto* expenditure u/s 14A of Rs. 28,075/-. The AO was not satisfied with the *suo moto* disallowance made by the assessee and made disallowance on account of interest expenses of Rs. 5,57,484/- and on account of indirect administrative expenditure @ 0.5% of average investment comes to Rs. 1,42,916/-. Thus, the AO had made a total disallowance of Rs. 7,00,400/- and after adjusting the *suo moto* disallowance of Rs. 15,000/- the net addition

was made by the AO of Rs. 6,85,400/-. The assessee challenged the action before the CIT(A) but could not succeed.

3. Before us the Ld. AR of the assessee has referred to the balance sheet of the assessee and submitted that as on 31.03.2013 the assessee was having 211.38 crores as reserve and surplus. He has further pointed out that there is no fresh investment during the year under consideration in the shares and mutual funds and the AO has not made any addition on account of interest u/s 14A read with Rule 8D(2)(i) for the AY 2011-12 to 2013-14. He has referred to the assessment order passed u/s 143(3) of the Act for the AY 2013-14 and submitted that the AO has accepted the *suo moto* disallowance of Rs. 28,859/- as computed by the assessee under Rule 8D(2)(ii) of the Income Tax Rules. He has also pointed out that for the AY 2008-09 to 2010-11 the addition made by the AO u/s 14A was deleted by the CIT(A) and even a substantial relief was granted by CIT(A) in respect of the disallowance made

under Rule 8D(2)(ii) of the Income Tax Rules. Thus, the Ld. AR has submitted that when there is no fresh investment during the year under consideration and there was no disallowance on account of interest expenditure in the preceding years then the disallowance made by the AO on account of interest expenditure is not justified. As regards, the disallowance of administrative expenditure by applying Rule 8D(2)(ii) the Ld. AR has submitted that the AO has accepted the assessee's *suo moto* disallowance for the AY 2013-14 and when there is no fresh investment during the year under consideration then the addition made by the AO is not justified.

4. On the other hand, the Ld. DR has submitted that the AO has noted this fact that the assessee has made an *ad hoc* disallowance in the return of income without explaining any basis. Even in response to the show cause notice the assessee has not explained the basis for such disallowance made by the assessee of Rs. 15,000/-. Therefore, an *ad hoc suo moto* disallowance

without any reasonable and proper basis cannot be accepted and AO was justified to proceed in accordance with the provisions of section 14A read with Rule 8D of the Income Tax Rules. She has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as relevant material on record. As regards, the disallowance made by the AO on account of indirect interest expenditure, we find that the assessee was having sufficient non-interest bearing funds in the shape of reserve and surplus to the tune of Rs. 211.38 crores and undisputedly there is no fresh investment in the shares and securities/mutual funds during the year under consideration. Therefore, the question of utilizing the borrowed funds for making the investment in the shares and securities does not arise particularly when there was no disallowance made by the AO on account of interest expenditure in the preceding years. The assessee has produced the assessment order for the AY 2013-14 dated 26.02.2016 u/s 143(3), wherein

the AO has not made any disallowance on account of interest expenditure but the only disallowance was made by the AO towards indirect administrative expenditure @ .5% of average investment. Similarly, the AO has not made any disallowance of interest expenditure u/s 14A for the AY 2010-11 to 2012-13. Even for the AY 2008-09 to 2009-10 the addition made by the AO on account of interest expenditure was deleted by the CIT(A) and there is no further appeal by the Revenue. Hence, in the facts and circumstances of the case, when there is no fresh investment during the year under consideration and there was no disallowance made by the AO on account of interest expenditure in the preceding years then the disallowance made by the AO on account of interest expenditure to the tune of Rs. 5,57,484/- is not sustainable and the same is deleted.

6. As regards, the disallowance made by the AO on account of indirect administrative expenses, we find that the AO has computed the disallowance @ 0.5% of

average investment. The assessee is a company and during the year under consideration though no fresh investment was made by the assessee but there was a sale of some of the investments. Once there is a change in the investment portfolio and the decision of making fresh investment as well as selling of the investment is taken at the top level of the management then the provisions of Rule 8D(2)(iii) are very much applicable and hence, we do not find any reason to interfere with the orders of the Assessing Officer and CIT(A) to the extent of the disallowance made u/s 14A on account of administrative expenses. Though the assessee has raised an objection regarding non-recording of satisfaction by the AO while rejecting the *suo moto* disallowance made by the assessee. However, it is manifest from the record that the *suo moto* disallowance made by the assessee of Rs. 15,000/- was an *ad hoc* disallowance without explaining any basis much less a reasonable and proper basis. Even the assessee revised its *suo moto*

disallowance and that too has not been substantiated by any reasonable and proper basis. The AO has recorded all these facts in the assessment order which goes to show that the AO has recorded its satisfaction of not accepting the *suo moto* disallowance made by the assessee. Hence, the decision of Hon'ble Supreme Court in Maxopp Investment Vs. CIT 402 ITR 640 relied upon by the Ld. AR will not help the case of the assessee.

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

Order pronounced in the open Court on 27.08.2021

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

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Dated: 27th August, 2021

*Kavita Arora, Sr. PS

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-2' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar, ITAT Delhi Benches :
Delhi.