

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

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| ITA No. 1843/H/2019 Assessment Year: 2016-17 | | |
| Rain Industries Ltd., Hyderabad. PAN - AABCP 2276K (Appellant) | Vs. | Dy. Commissioner of Income-tax, Circle - 3(1), Hyderabad. (Respondent) |
| Assessee by: | | Shri Nikhil Kanadia |
| Revenue by: | | Shri Rohit Mujumdar |
| Date of hearing: | | 10/05/2021 |
| Date of pronouncement: | | 18/06/2021 |

ORDER

PER L.P. SAHU, A.M.:

This appeal filed by the assessee is directed against CIT(A) - 3, Hyderabad's order dated 14/10/2019 for AY 2016-17 involving proceedings u/s 143(3) of the Income Tax Act, 1961 ; in short "the Act" on the following grounds:

"1. The Ld. AO and the Ld. CIT(A) erred in law and in fact invoking and retaining the disallowance u/s 14A of the Act without appreciating the facts of the case

2. The Ld. CIT(A) erred in not adjudicating on the ground that the investments were made out of own

funds, while agreeing that the investments were lower than the surplus funds.

3. The Ld. AO and the Ld. CIT(A) failed to appreciate that the investments are strategic and historic and are made out of accumulated profits and not out of borrowed funds.

4. Without prejudice to the above, the Ld. AO and the Ld. CIT(A) erred in computing the disallowance on the investments which were acquired under a scheme arrangement."

2. Brief facts of the case are that the assessee company e-filed its return of income on 28/11/2016 declaring total loss of Rs. 9,92,86,739/-. Subsequently, the case was selected for scrutiny under CASS and accordingly, statutory notices were served upon the assessee, against which, the assessee furnished the information called for.

2.1 The AO noticed from Note 12 to the balance sheet that the assessee company had investments to the tune of Rs. 916,96,51,115/- as on 31.03.2016 in M/s. Rain Cements Ltd (Rs. 212,81,04,235/-), M/s. CII Carbon (Vizag) Ltd (Rs.1,30,00,000/-) & M/s. Rain Commodities (USA) Inc. (Rs.702,85,46,880/-). According to the AO, since the assessee had investments, income arising from which is exempt in nature, disallowance u/s. 14A is squarely applicable to assessee's case. He noted that as per the CBDT Circular No. 5/2014 dated 11.02.2014, disallowance of expenditure for earning exempt income u/s. 14A would be

attracted even if the corresponding exempt income has not been earned during the financial year. Further, disallowance u/s. 14A was made in assessment u/s. 143(3) for AYs 2014-15 & 2015-16 considering directions of Hon'ble DRP in the case of M/s. Rain Cements ltd for AY 2011-12. Accordingly, he made the disallowance u/s. 14A at Rs.1,86,77,787/-.

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) after considering the submissions of the assessee, restricted the disallowance to Rs. 1,06,73,021/- applying rule 8D.

4. The ld. AR of the assessee submitted that the disallowance made u/s 14A has been decided by the coordinate bench of this Tribunal assessee's own case for AY 2012-13 in ITA No. 1728 & 1729/Hyd/2016, for AY 2012-13, dated 31/01/2018.

5. On the other hand, the ld. DR neither controverted the submission of AR nor brought any contrary decision in this regard.

6. We have considered the rival submissions and perused the material on record. As submitted by the ld. AR, we find that the issue in dispute is squarely covered by the decision of the coordinate bench of this Tribunal in

assessee's own case cited supra, wherein the coordinate bench has held as under:

"8. As regards ground No. 2 relates to disallowance u/s 14A of the Act, the AO noticed from the Note 13 of the Balance sheet that the assessee company has investments to the tune of Rs. 4,16,47,86,500/- as on 31/03/2013. According to the AO, since the assessee has investments, income arising from which is exempt in nature, disallowance u/s 14A is squarely applicable to assessee's case. The AO relying on CBDT Circular No. 5/2014, dated 11 February, 2014, computed the disallowance at Rs. 7,47,500/-. When the assessee objected the same before the DRP, the DRP confirmed the disallowance. 5 ITA Nos. 1728 & 1729 /Hyd/2016 Rain Cements Ltd and Rain Industries Ltd. 9. Before us, ld. AR submitted that the investment made in Moonglow Company Business Inc. BVI of Rs. 4,01,52,86,500/- is overseas investment and the dividend earned therefrom is taxable in India. She relied on the decision of the coordinate bench of ITAT, Delhi in the case of Interglobe Enterprises Ltd. Vs. DCIT in ITA Nos. 1362 & 1032/Del/2013, order dated 04/04/2014. Further, she submitted that the investment in APGPCL does not generate any exempt income as it is invested to get the power supply at concessional rate. The benefit derived by the assessee by virtue of investment is not dividend income but gets power at subsidized rates. This benefit is not exempt from tax. Therefore, this investment should be excluded from calculation of rule 8D(2)(iii). 10. Ld. DR, on the other hand, relied on the orders of revenue authorities. 11. Considered the rival submissions and perused the material on record. With regard to investment in APGPCL, the coordinate bench has remitted this issue back to the file of the AO to verify the contention of the assessee and, if, found correct, the investment should be excluded from the calculation under rule 8D(2)(iii). Therefore, we are also inclined to remit this issue back to the file of the AO to verify the contention of the assessee."

6.1 As the issue under consideration is materially identical to that of the case decided by the coordinate bench in assessee's own case for AY 2012-13, respectfully following the same, we restore the issue back to the file of the AO with a direction to decide the same in line with the decision of the coordinate bench cited supra. Accordingly, the grounds raised by the assessee on this issue are treated as allowed for statistical purposes.

7. In the result, appeal of the assessee is allowed for statistical purposes in above terms.

Pronounced in the open court on 18th June, 2021.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 18th June, 2021.

Kv

Copy to :

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| 1 | <i>Rain Industries Ltd., Rain Center, 34, Srinigar Colony, Hyderabad.</i> |
| 2 | <i>DCIT, Circle - 3(1), Signature Towers, Kondapur, Opp. Botanical Garden, Hyderabad.</i> |
| 3 | <i>CIT(A) - 3, Hyderabad.</i> |
| 4 | <i>Pr. CIT - 3, Hyderabad</i> |
| 5 | <i>ITAT, DR, Hyderabad.</i> |
| 6 | <i>Guard File.</i> |