

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.1018/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2015-16)

M/s. Mint Properties Pvt.Ltd., 122, Broadway, Chennai -600 108.	Vs	The Income Tax Officer, Corporate Ward-4(1) Chennai.
PAN: AAACM 5348Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. M.Karunakaran, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. G.Johnson, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	17.12.2020
घोषणाकीतारीख /Date of Pronouncement	:	31.12.2020

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of the learned CIT(Appeals)-8, Chennai dated 06.02.2019 and pertains to assessment year 2015-16.

2. The assessee has raised the following grounds of appeal:-

"1. The learned Commissioner of Income-tax Appeals erred in confirming the disallowance of Rs.16,23,470/- made under section 14A of the Act.

2. The authorities below erred in taking the interest paid of Rs.10,76,939/- as attributable to investments in the firms, the share income from which is exempt from tax u/s 10(2A) of the Act for disallowance u/s 14A r/w Rule 8D(2)(ii).

3 The authorities below should have seen that the borrowals on which interest was paid were directly

advanced to various parties for interest and such interest of Rs. 27,62,380/- was offered for tax as income.

4. The appellant submits that there is a direct nexus between the borrowals and advances/loans given and therefore the interest paid has to be adjusted against the interest received and offered for tax.

5 The appellant submits that no part of the borrowed funds were invested in the firms and in fact the appellant has become a partner in various firms in 2002- 2008 whereas the borrowals were made only in the year 2013.

6 The learned Commissioner of Income-tax (Appeals) erred in observing that the borrowed funds were mixed with the common funds and therefore it cannot be said that borrowed funds were not used for investment in the firms when the borrowed funds were directly given as loans to others on interest as evidenced from the bank statements submitted,

7. The Assessing officer is not justified in making the disallowance of Rs. 7,66.662/- under section 14A r/w Rule 8D(2)(iii).

8. The appellant submits that none of the expenses claimed can be attributable to earning of exempted share income from the firms and the appellant had not incurred any expenditure for investment in the firms to get any exempted income.

9. The appellant submits that the provisions of section 14A cannot be applied to share income from the firms as tax has been paid by the firm and he other income received by the partner as interest and remuneration from the firms are taxed in the bands of the partners. The share in profit of the firm which has suffered tax in the hands of the firm is therefore not an income which does not form part of total income for making the disallowance u/s 14A of the Act.

10. The appellant therefore prays that the disallowance of Rs,16,23,470/- made under section 14A may be deleted and justice rendered.”

3. Brief facts of the case are that the assessee company is engaged in the business of development of property filed its return

of income for the assessment year 2015-16 on 28.10.2015 declaring total income of ₹ 34,15,840/-.The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that assessee has earned exempt income being share of profit from partnership firm, whereas not disallowed expenditure incurred in relation to income which do not form part of total income under the Income Tax Act, 1961 (hereinafter referred to as "the Act"), therefore, called upon the assessee to explain as to why disallowances contemplated under section 14A of the Act shall not be disallowed in accordance with Rule 8D of the Income Tax Rules, 1962. In response, the assessee submitted that the assessee has not incurred any expenditure in relation to exempt income and further share of profit from partnership firm cannot be equated with dividend income which is exempt u/s.10(34) of the Act to make disallowance of expenditure in relation to such income. The Assessing Officer was not however, convinced with explanation furnished by the assessee and according to him, as per sub-section (2) and (3) of section 14A, disallowances contemplated under section 14A shall be determined in accordance with prescribed formula provided under Rule 8D and accordingly computed disallowance under Rule 8D(2)(ii) towards

interest expenditure of ₹ 8,56,808/- and made further disallowance of ₹ 7,66,662/- under Rule 8D(2)(iii) @ 0.5% of average value of investments and thus, made total disallowance of ₹ 16,23,470/- and added back to the total income. The Assessing Officer has also made similar additions to book profit computed u/s.115JB of the Act towards disallowance u/s.14A of the Act.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has filed detailed written submissions which has been reproduced at para 3 on page 4 to 6 of the learned CIT(A)'s order. The sum and substance of the arguments of the assessee before the learned CIT(A) are that it has not incurred any expenditure in relation to exempt income being share of profit from the partnership firm and hence, question of disallowance u/s.14A of the Act does not arise. The learned CIT(A), after considering the relevant submissions of the assessee and by relied upon certain judicial precedents including the decision of Hon'ble Supreme Court in the case of M/s. Godrej & Boyce Manufacturing Co.Ltd., in Civil Appeal No.7020/2011 upheld the additions made by the Assessing Officer towards disallowance of expenditure u/s.14A of the Act.

5. The learned AR for the assessee submitted that the learned CIT(A) has erred in confirming the additions made by the Assessing Officer towards disallowance of expenditure including interest under Rule 8D(2) (ii) & (iii) ignoring the fact that assessee has not incurred any interest expenditure towards investment in partnership firm and consequently no disallowance can be made towards interest paid on loans, which was specifically borrowed for the purpose of business. The learned AR further submitted that if at all interest disallowance is to be made, only net interest expenditure needs to be considered as held by the Hon'ble Gujarat High Court in the case of PCIT Vs. Nirma Credit & Capital P.Ltd. in T.C.Appeal No.409 & 514 of 2017 vide order dated 31.08.2017. Further, if net interest expenditure is considered, interest expenditure incurred by the assessee is less than interest income earned for the year and hence, there cannot be any disallowance towards interest expenditure. As regards other expenses, the Assessing Officer has failed to make out a case of any specific expenditure which is having direct nexus to exempt income and therefore, even under Rule 8D(2)(iii), no disallowance can be made.

6. The learned DR, on the other hand, supporting the order of the learned CIT(A) submitted that from the assessment year 2008-09 onwards disallowances contemplated u/s.14A shall be computed in accordance with Rule 8D, where a procedure has been provided and hence the Assessing Officer has no discretionary role to compute disallowance ignoring specific provisions provided under the Act. Therefore, there is no merit in the arguments of the assessee that no disallowance can be made towards interest expenditure and other expenses.

7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below along with the case laws cited by the learned counsel for the assessee. There is no dispute with regard to the fact that assessee has earned exempt income being share of profit from the partnership firm which is exempt u/s.10(2A) of the Act. Therefore, once there is exempt income which does not form part of the total income under the Act, then disallowance of expenditure in respect of said income required to be computed u/s.14A, read with Rule 8D of IT Rules, 1962. Therefore, we are of the considered view that there is no merit in the arguments of the assessee that provisions of

section 14A has no application to exempt income being share of profit from partnership firm. As regards disallowance of interest expenditure, although the Assessing Officer has adopted Rule 8D(2)(ii) of IT Rules, 1962 to determine interest disallowance, but fact remains that for the year under consideration interest paid by the assessee is less than interest income earned for the year. It is well settled principle of law that for the purpose of applying clause (ii) of Rule 8D prior to its amendment w.e.f 02.06.2016, amount of expenditure by way of interest would be interest paid by the assessee on borrowings less taxable interest earned during the financial year. This view is fortified by the decision of Hon'ble Gujarat High Court in the case of PCIT Vs. Nirma Credit & Capital P.Ltd, where the Hon'ble Court held that only net interest expenses is to be considered for the purpose of making disallowance u/s.14A of the Act. In this case, interest paid is less than interest earned for the year. Therefore, we direct the Assessing Officer to delete the additions made towards interest expenses under Rule 8D(2)(ii) of IT Rules, 1962. As regards disallowance of other expenses under Rule 8D(2)(iii) @ 0.5% of average value of investments, law is very clear inasmuch as there is no scope for Assessing Officer to go for ad-hoc disallowance, when assessee

has not maintained separate books of account for investments activity and business. When there is no separate books of account for both activities common expenditure relatable to investment activity and business activity has to be allocated on a systematic basis for which a separate method is prescribed under Rule 8D of IT Rules, 1962. In this case, the Assessing Officer has applied method provided under Rue 8D(2) (iii) @ 0.5% of average value of investments to compute disallowance of other expenses. We do not find any error in the findings recorded by the authorities below, which is in accordance with law and hence, we are inclined to uphold the order of the learned CIT(A) and reject the grounds taken by the assessee in respect of disallowance of other expenses under Rule 8D(2)(iii) of IT Rules, 1962.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 31st December, 2020

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 31st December, 2020
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/G