

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "SMC" KOLKATA*

Before **Shri SANJAY GARG, Judicial Member**

आयकर अपील सं.य/ ITA No.534/Kol/2020 Assessment Year:2012-13
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M/s Merino Exports Pvt. Ltd. 5, Alexandra Court, 60/1 Chowringhee Road, Kolkata-700 0201 [PAN No.AABCM 5670 N]	बनाम/ V/s.	Dy. Commissioner of Income Tax, Circle- 12(1), Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Shayam Sundar Jha, C.A
प्रत्यर्थी की ओर से/By Respondent	Shri Jayanta Khanra, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	08-02-2021
घोषणा की तारीख/Date of Pronouncement	08-02-2021

आदेश /O R D E R

The present appeal has been preferred by the assessee against the order dated 27.02.2020 of the Commissioner of Income-tax (Appeals)-20, Kolkata [hereinafter referred to as 'CIT(A)'].

2. The present appeal is barred by limitation period of 171 days'. A separate application for condonation of delay has been filed by the assessee explaining that due to restrictions imposed because of Covid-19 pandemic, the assessee could not file the appeal in time. In view of the reasons explained and considering the circumstances in the pandemic situation of Covid-19, I condone the delay in filing the present appeal. Case is now taken up for adjudication on merits.

3. The sole issue raised in this appeal is regarding the disallowance u/s 14A of the Income Tax Act, 1961 (in short 'the Act') r.w. Rule 8D of Income Tax Rules, 1962.

4. At the outset, Ld. counsel for the assessee has submitted that the assessee has not incurred any expenditure for earning of tax exempt income. That the assessee had made old investments in its sister concern from which the divided income has been received. The investments were made out of its own funds by the assessee. That even no administrative expenditure has been incurred on making these investments as no new investment was made during the year. That the Assessing Officer, without considering the above submissions of the assessee, has made the disallowance in mechanical manner by straightway applying the provision of Rule 8D of the IT Rules and even without examining the accounts of the assessee.

5. Ld. DR on the other hand, has relied on the findings of the lower authorities and has submitted that assessee has earned sufficient dividend income, therefore, the disallowance has been rightly made by the Assessing Officer as per the relevant statutory provisions.

6. I have heard the rival contentions of both the parties. Though, the Ld. DR has relied on the findings of the lower authorities, however, he cannot rebut the fact that the investments made were old investments and no new investment has been made during the year. That even there is no churning of the portfolios. The investments had been made in the sister concern of the assessee long time back from which the assessee has been regularly getting dividend income. Considering the overall facts and circumstances, in my view Ld Assessing Officer should not have applied the provision of Rule 8D in a mechanical manner. He was supposed to first consider the submission of the assessee, co-relate the same with the accounts of the assessee and if he does not get satisfied with the submission of the assessee, only then he should have invoked the provisions of Rule 8D of the IT Rules. Considering the submissions of the assessee in this case, in my view, the interest of justice will be well served if the disallowance u/s 14A is restricted to Rs.1,00,000/- in this case on account of administrative

expenditure. However, no disallowance of interest expenditure is warranted in this case as the assessee has not made any new investment during the year and the old investments had been made out of at its own fund by the assessee.

In view of the above observation, the appeal of the assessee is treated as partly allowed.

Order dictated and pronounced in open court immediately on completion of hearing on Monday, 8th February, 2021

Sd/-
(Sanjay Garg)
Judicial Member

*Dkp/Sr.PS

दिनांक:- 08/02/2021 कोलकाता

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s Merino Exports Pvt. Ltd., 5, Alexandra Court, 60/1 Chowringhee Road, Kolkaata-700 020
2. प्रत्यर्थी/Respondent-DCIT, Cir-12(1), Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।