

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “A” BENCH: NEW DELHI**

**BEFORE SHRI G.S.PANNU, VICE PRESIDENT &
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No.5555/Del/2017

[Assessment Year : 2013-14]

Advance Valves Pvt.Ltd., 11-G, Ashok Palace, 877-East Park Road, Karol Bagh, New Delhi-110005. PAN-AAACS0305B	vs	ACIT, Range-1, New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Baldev Raj, CA	
Respondent by	Ms. Alka Gautam, Sr.DR & Shri Kanv Bali, Sr. DR	
Date of Hearing	24.07.2024	
Date of Pronouncement	26.07.2024	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2013-14 is directed against the order of Ld. CIT(A)-I, New Delhi dated 09.06.2017. The assessee has raised following grounds of appeal:-

1. *“Whether on the facts and circumstances of the case, the learned CIT(A) has erred in sustaining the disallowance of Rs.9,06,947/- made by the AO under Section 14A of the Act read with Rule 8D(2)(ii).*
2. *Whether on the facts and circumstances of the case, the learned CIT(A) has erred in not accepting the contention of the appellant that investment made in the partnership firm was out of surplus non-interest bearing funds available with the company.*
3. *Whether on the facts and circumstances of the case, the learned CIT(A) was right in confirming the action of the AO in including Bank Charges and Bank guarantee charges of Rs.21,85,514/-, as interest*

on borrowings for the purposes of calculating disallowance u/s 14A of the Act read with Rule 8D(2)(ii).

4. *Whether on the facts and circumstances of the case, the learned CIT(A) has erred in ignoring the contention of the appellant that interest earnings of Rs.10,75,258/- by investing surplus funds from time to time, should be reduced from the gross amount of interest charged by the Bank on borrowings for working out disallowance u/s 14A/Rule 8D(ii).*
5. *That the order of the learned CIT 'A' is bad in law and on the facts of the case.*
6. *The Appellant craves leave to add, amend or alter the Grounds of Appeal, before or at the time of hearing.”*

2. **Ground Nos. 1 to 4** are inter-related therefore, the effective ground is against the sustaining the disallowance of Rs.9,06,947/- made by the Assessing Officer by invoking the provision of section 14A of the Income Tax Act, 1961 (“the Act”).

3. **Ground Nos.5 & 6** are general in nature, need no separate adjudication.

4. Facts giving rise to the present appeal are that the assessee company filed its return of income at Rs.7,86,28,030/- on 30.11.2013. The case was selected for scrutiny assessment and the assessment u/s 143(3) of the Act was framed vide order dated 15.03.2016. The Assessing Officer while framing the assessment, noticed that the assessee made investment in a partnership firm. The income derived therefrom was not includible in the taxable income of the assessee. Therefore, the Assessing Officer issued show-cause notice vide note sheet entry dated 28.01.2016 as to why provisions of section 14A r.w. Rule 8D of the Income Tax Rules, 1962 (“the Rules”) should not be invoked and

disallowances are made accordingly. In response thereto, the assessee filed his submissions vide letter dated 25.02.2016 and contended that it has already disallowed a sum equal to 0.5% of average investments considering the expenses attributable to such investments. The assessee further contended that it had sufficient interest free funds for investments hence, in respect of interest, no disallowance is called for. Before the Assessing Officer, the assessee also submitted the status of the non-interest bearing funds. However, the Assessing Officer did not accept the contentions of the assessee and proceeded to make disallowance u/s 14A of the Act. Thereby, he made addition of Rs.9,06,947/-.

5. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who sustained both the addition. Before Ld.CIT(A), the contentions of the assessee was that **firstly**, it had sufficient interest free funds for making the investments therefore, no disallowance should have been made; **secondly**, the Assessing Officer had wrongly computed the disallowance as he included the bank charges and bank guarantee charges as interest. However, the submissions of the assessee were not found acceptable to the Ld.CIT(A) and held that bank charges and bank guarantee charges are part and parcel of interest. Thus, he sustained the addition made by the assessing authority.

6. Aggrieved against the order of Ld.CIT(A), the assessee filed the present appeal.

7. The Ld. Counsel for the assessee reiterated the submissions as made before Ld.CIT(A). It was contended by Ld. Counsel for the assessee that the

Assessing Officer has erred in attributing proportionate interest on borrowings from Bank, to the investment in the capital of a partnership firm, M/s. Advance Valves Global, of which it was a 51% partner and earned its share of profit which is exempt in its hands u/s 10(2A) of the Act. A note in respect of computation of disallowance was also submitted before Ld. CIT(A). He took us through the Paper Book to buttress the contentions that Ld.CIT(A) has not considered the submissions made by the assessee.

8. On the contrary, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

9. In re-joinder, Ld. Counsel for the assessee submitted that the case is also covered in favour of the assessee by the judicial pronouncements by the Co-ordinate Bench of this Tribunal and the Hon'ble Supreme Court in the cases of *Godrej Boyce Mfg. Ltd. in Civil Appeal No.7020 of 2011 dated 08.05.2017* and reliance was placed upon the judgement of Hon'ble Supreme Court in the case of *Hero Cycles Pvt.Ltd. vs CIT 379 ITR 347 (SC)*.

10. We have heard Ld. Authorized Representatives of the parties and perused the material available on record. There is no dispute with regard to the fact that before the authorities below, the assessee had *suo motto* disallowed the expenditure related to administrative expenses. However, in respect of the disallowance for the interest, it was stated that the assessee was having sufficient interest free funds and also it was stated that the AO has wrongly computed the disallowance by including the bank charges and bank guarantee charges. We find that Ld.CIT(A) has decided this issue by observing as under:-

Decision:

"I have considered the submission of the appellant and observation of the Assessing Officer. It is seen that AO has worked out disallowance of Rs.13,84,170/- and after giving set off of suo moto disallowance made by the appellant of Rs.4,77,223/-, a further addition of Rs.9,06,947/- has been made. It is seen by the AO that the appellant company has made investment in partnership firm and derivable income from such partnership is not includible in taxable income. The appellant has invested Rs.11,91,56,644/- in the partnership firm during the year, therefore, the Assessing Officer has applied the provisions of Section 14A read with Rule 8D for working out disallowance under Rule 8D(2)(ii) and Rule 8D(2)(iii). The appellant has contended that investment made in the partnership firm as on 31.03.2012 of Rs.7,17,32,532/- and as on 31.03.2013 of Rs.11,91,56,644/- is out of the share capital and reserve and surplus and no interest bearing funds has been utilized by it. It is contended by the appellant that it has got share capital, reserve and surplus to the extent of Rs.40,11,56,900/- out of which it has invested in fixed assets and long term loans and advances to the tune of Rs.9,83,69,635/-. After deducting the said investment, the amount of Rs.30,27,87,265/- is available for investment and working capital requirements, therefore, the appellant submitted that no disallowance of interest can be made under Rule 8D(2)(iii).

I have considered the argument of the appellant. It is seen that appellant has paid interest of Rs.56,67,261/- which is not directly attributable to any income. This interest includes the bank charges and bank guarantee charges also which are part and parcel of the interest. Since, the funds available with the appellant company are invested in different assets, therefore, it cannot be directly be said that the funds received as share capital and reserve and surplus were utilized for making investment in partnership firms and funds taken on interest were utilized for working capital requirement. This bifurcation is not possible in the absence of any evidence, therefore, Rule 8D(2)(ii) has to be applied for the

interest which is not directly attributable to any income and disallowance of the proportionate interest has to be worked out accordingly. Considering the facts of the case and submission of the appellant, it is held that funds available with the appellant company in the form of share capital, reserve and surplus and borrowed funds were utilized for making investment as well as for acquiring fixed assets and for working capital requirements of the appellant company, therefore, for working out disallowance under Rule 8D(2)(ii), the interest including bank charges and bank guarantee charges paid by the appellant has to be taken into consideration. Therefore, the Assessing Officer has rightly worked out the disallowance of interest of Rs.9,06,947/- and Rs.4,77,223/- being .5% of the average investments. Hence, the disallowance made by the AO is upheld and this ground of appeal of the appellant is rejected.”

11. From the above, it is clear that Ld.CIT(A) has not contradicted the submission of the assessee that it had sufficient interest free funds. The Hon’ble Supreme Court in the case of *Godrej Boyce Mfg. Company Ltd.* (supra), held as under:-

38. *“In the present case, we do not find any mention of the reasons which had prevailed upon the Assessing Officer, while dealing with the Assessment Year 2002-2003, to hold that the claims of the Assessee that no expenditure was incurred to earn the dividend income cannot be accepted and why the orders of the Tribunal for the earlier Assessment Years were not acceptable to the Assessing Officer, particularly, in the absence of any new fact or change of circumstances. Neither any basis has been disclosed establishing a reasonable nexus between the expenditure disallowed and the dividend income received. That any part of the borrowings of the assessee had been diverted to earn tax free income despite the availability of surplus or interest free funds available (Rs. 270.51 crores as on 1.4.2001 and Rs. 280.64 crores as on 31.3.2002) remains unproved by any material whatsoever. While it is true that the*

principle of res judicata would not apply to assessment proceedings under the Act, the need for consistency and certainty and existence of strong and compelling reasons for a departure from a settled position has to be spelt out which conspicuously is absent in the present case. In this regard we may remind ourselves of what has been observed by this Court in Radhasoami Satsang vs. Commissioner of Income-Tax[6].

“We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.”

12. In the present case, Ld.CIT(A) as well the assessing authority has not brought any material suggesting that the interest free funds were diverted for earning of tax free income. Under these facts, the disallowance made in respect of interest expenditure is not justified. Moreover, the Assessing Officer and Ld. CIT(A) did not advert to the submissions of the assessee that bank charges and bank guarantee charges do not partake character of interest and had been wrongly included as interest while making disallowance u/s 14A of the Act.

13. We therefore, respectfully following the judgement of Hon'ble Supreme Court rendered in the case of *Godrej Boyce Mfg. Company Ltd.* (supra), hereby delete the impugned disallowance made u/s 14A of the Act in respect of interest expenditure. Thus, grounds of the assessee's appeal are allowed.

14. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 26th July, 2024.

Sd/-

(G.S.PANNU)
VICE PRESIDENT

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI