

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(SMC)', KOLKATA
[Before Shri P.M. Jagtap, Vice President (KZ)]**

I.T.A. No. 2266/Kol/2019
Assessment Year: 2013-14

M/s. R.A.S. Trades Pvt. Ltd.....Appellant
R. No. 15, 3rd Floor, 11, Clive Road,
Kolkata - 700 001.
[PAN: AABCR 3903 P]

Vs

ITO, Ward - 4(1), Kolkata.....Respondent
P-7, Chowringhee Square,
Kolkata - 700 069.

Appearances by:

Shri Dev Kumar Kothari, FCA appearing on behalf of the Assessee.
Shri Jayanta Khanra, JCIT, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : January 16, 2020
Date of pronouncing the order : March 18, 2020

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 2, Kolkata dated 20.08.2019.

2. Ground No. 1 raised by the assessee in this appeal is general in nature which does not call for any specific adjudication.

3. Ground Nos. 2 to 4 involve a common issue relating to a disallowance of Rs. 4,20,216/- made by the AO and confirmed by the Ld. CIT(A) u/s 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962.

4. The assessee in the present case is a company which is engaged in the business of investment in shares and finance. The return of income for the year under consideration was filed by it on 30.10.2013 declaring a loss of Rs. 2,87,507/-. In the said return, the dividend

income of Rs. 2,31,128/- earned during the year under consideration was claimed to be exempt by the assessee. No disallowance on account of expenditure incurred in relation to the said exempt income however was offered by the assessee as required by the provision of section 14A. The AO, therefore, applied Rule 8D and worked out such expenditure incurred by the assessee in relation to the earning of exempt income at Rs. 4,20,216/- and disallowance to that extent was made by him u/s 14A. On appeal, the Ld. CIT(A) allowed a part relief to the assessee on this issue and directing the AO to re-compute the disallowance to be made u/s 14A as per Rule 8D by taking into consideration only the investment in shares which actually fetched the exempt dividend income to the assessee.

5. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The learned counsel for the assessee has contended that no satisfaction was recorded by the AO before making disallowance u/s 14A by invoking Rule 8D as mandatorily required. However, as rightly pointed out by the ld. DR, no disallowance u/s 14A was suo moto offered by the assessee and there being no case made out during the course of assessment proceedings to show that no expenditure was actually incurred in relation to the earning of exempt income, the AO was not required to record any satisfaction before applying Rule 8D to work out the disallowance to be made u/s 14A. The other contention raised by the learned counsel for the assessee is that the Assessing Officer while making the disallowance to be made u/s 14A by applying Rule 8D(2)(ii) & (iii) has taken into consideration the entire investment in

shares instead of only the investment which actually fetched the exempt dividend income to the assessee during the year under consideration. Although this contention raised by the learned counsel for the assessee is duly supported by the decision of Hon'ble Calcutta High Court in the case of REI Agro Ltd. GA No. 3022 of 2013 (ITAT No. 161 of 2013) judgement dated 23.12.2013, I find that the Ld. CIT(A) has already accepted this contention of the assessee and directed the AO to re-compute the disallowance to be made u/s 14A by applying Rule 8D (2)(ii) & 8D(2)(iii) by taking into consideration only the value of investment made in shares which actually fetched the exempt dividend income to the assessee during the year under consideration, I, therefore, find no merit in Ground Nos. 2, 3 & 4 raised by the assessee and dismiss the same.

6. As regards the common issue involved in Ground No. 5 and 6 of the assessee's appeal relating to the disallowance made by the AO and confirmed by the Ld. CIT(A) on account of interest amounting to Rs. 4,41,913/- u/s 40(a)(ia) of the Act, the limited contention raised by the learned counsel for the assessee by relying on the first proviso to section 201 read with second proviso to section 40(a)(ia) is that the concerned party namely M/s. JM Financial Products Ltd. having offered to tax the interest income paid by the assessee and having paid tax thereon, the disallowance made u/s 40(a)(ia) is not sustainable. In this regard, the ld. DR has contended that this claim made by the assessee specifically for the first time before the Tribunal requires verification by the AO. I find merit in this contention raised by the learned counsel for the assessee. I accordingly restore this

issue to the file of the AO with the direction to verify the claim of the assessee and allow appropriate relief in accordance with law. Ground Nos. 5 & 6 are accordingly treated as allowed.

7. In the result, the appeal of the assessee is treated as partly allowed for statistical purpose.

Order Pronounced in the Open Court on 18th March, 2020.

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Dated: 18/03/2020
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. R.A.S. Trades Pvt Ltd., R. No. 15, 3rd Floor, 11, Clive Road, Kolkata - 700 001.
2. ITO, Ward - 4(1), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata