

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD ' A ' BENCH, HYDERABAD.**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND  
SHRI L. P. SAHU, ACCOUNTANT MEMBER  
(Through Virtual Hearing)**

**ITA No.938/Hyd/2017  
(Assessment Year : 2012-13)**

M/s. Moldtek Packaging Ltd.,  
Hyderabad-500 033  
PAN AABCT0845L .....Appellant.  
Vs.  
Asst. Commissioner of Income Tax,  
Circle 16(2), Hyderabad. ..Respondent.

Appellant By : S/Shri K.Sriram & Raghuram Praturi.  
Respondent By : Shri Sunil Kumar Pandey (D.R)

Date of Hearing : 06.04.2021.  
Date of Pronouncement : 02.07.2021.

**O R D E R**

**Per L.P.Sahu, A.M. :**

This is an appeal filed by the assessee against the order of Commissioner of Income Tax-10, Hyderabad order dt.30.12.2016 passed in case No. 0120/CIT(A)-10/2016-17 raising the following grounds of appeal :

1. The Order of the Honourable Commissioner of Income Tax (Appeals)-10 dated 31.12.2016 is contrary to facts and law.
2. The Honourable Commissioner of Income Tax ( Appeals) -10 erred in passing an order dismissing the appeal of the applicant in respect of Rs 58500 being 20% claimed towards preliminary expenses u/s 35D of the Income Tax Act attributing the same to be capital expenditure in his order.
3. The Honourable Commissioner of Income Tax (Appeals) -10 erred in passing an order dismissing the appeal of the applicant in respect of Rs 364000 disallowed by the erstwhile assessing officer u/s 14A of the Income Tax Act, 1961 read together with Rule 8D of the Income Tax rules 1962 , towards interest and financial charges which was added the same to the income returned in the ROI..
4. The Honourable Commissioner of Income Tax (Appeals)-10 erred in passing an order disallowing deferred employee compensation Rs 2059963 which are basically employee remuneration costs incurred and added the same to the Income returned in the ROI filed to the detriment of the assessee on grounds that the same is not an allowable expenditure as per the provisions of the Income Tax Act, 1961 in the absence of details.
5. Due to the above reasons, and adding back of corporate dividend tax paid by the assessee, the taxable income was erroneously computed at Rs 116928240 instead of Rs 114445780 as filed in the return of income. The Honourable Commissioner of Income Tax ( Appeals)-10 however allowed the appeal of the appellant in respect of such Corporate dividend tax of Rs 4549002 pending verification by the assessing officer.
6. The assessee urges for an interim stay on the demand unjustly raised to the extent of Rs 24,10,900 for the above reasons, & the submissions made by it in writing, and consequentially the levy of interest on the erroneous demand for taxes thus raised, pending the adjudication of this matter.
7. The Appellant craves leave to add to, amend, or alter any or all of the aforesaid grounds of appeal

2. At the outset, during the course of hearing the ld. AR submitted that the Ground No.5 is not pressed therefore this ground is dismissed as not pressed.

3. The brief facts of the case are that the assessee filed Return of Income on 27.09.2012 declaring total income of Rs.11,44,45,780. The case was selected

for scrutiny and statutory notices were issued to the assessee. During the course of assessment proceedings, it was observed by the Assessing Officer that the assessee has debited in the profit and loss account under the head 'preliminary expenses' and claimed deduction u/s.35D of the Act but the Assessing Officer disallowed by holding that payment to ROC for increase in capital is a capital expenditure and added to the total income of the assessee. The Assessing Officer further noticed that the assessee has received dividend of Rs.6.35 lakhs and claimed the same as exempt income u/s. 10(34) of the Income Tax Act, 1961 ('the Act') It was observed that there was a total investment of Rs.316.32 lakhs and paid interest and has received exempt income, therefore the Assessing Officer applied Rule 8D for making disallowance of Section 14A of the Act. It was observed that the assessee has debited Rs.380.17 lakhs towards finance charges in the profit and loss account. The Assessing Officer calculated

disallowance under Rule 8D(ii) of Rs.2.08 lakhs and under Rule 8D(2)(iii) of Rs.1.56 lakhs resusltantly total disallowance was made of Rs.3.64 lakhs (Rs.2.08 lakhs + Rs.1.56 lakhs = Rs.3.64 lakhs). Further scrutiny of the account of the assessee, it was noticed that the assessee has debited an amount of Rs.20,59,963/- towards differed employee compensation and the Assessing Officer holds that it was not an allowable expenditure under the Income Tax Act. Accordingly, he added the same into the total income of the assessee. Feeling against the order of the Assessing Officer, the assessee filed an appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee. Feeling against the order of the CIT(A), the assessee is in appeal before the ITAT.

4. The learned Authorised Representative submitted that the assessee company has incurred expenditure is a revenue expenditure which was

incurred in increase in the capital of the company. In respect of disallowance made u/s. 14A by the Assessing Officer, he submitted that the assessee had sufficient reserves and surplus which was invested towards earning of the exempt income and dividend income was directly credited into the bank account of the assessee, therefore, there was no expenditure incurred. Further in respect of deferred employee compensation of Rs.20,59,963/-, he submitted that 2,02,000 options were allotted to the employees of the company under the employees stock option scheme as per SEBI guidelines at Rs.26 per option. Intrinsic / discount price @ Rs.36.95 of option is accounted as deferred employee compensation and amortised on straight line basis over the resting period on the basis of the option exercised whichever is earlier. The same amounts to be taxed in the hands of the employee as a pre-requisite and duly tax has been deducted at source. He submitted that the details of the Form No.16 and

computation of income submitted before Your honour for prior of payment of tax on perquisites and stated that the matter may be sent back to the Assessing Officer for further verification for proof of payment of tax on the deferred employee compensation by the employees.

5. On the other hand, the learned departmental representative relied on the order of the authorities below. He submitted that in respect of ROC expenses, the Id. CIT(A) has relied on the decision of Brookbond India Limited Vs. CIT 225 ITR 798 (SC) is squarely applicable in the present case. Therefore, the Assessing Officer has rightly treat it as a capital expenditure. Further in respect of disallowance made u/s. 14A of the Act, the authorities below have rightly decided this issue, the assessee has received dividend income during the year and in respect of differed employee compensation, he relied on the order of the CIT(A). He further submitted in this

regard the assessee could not file any details as well as documents from the SEBI.

6. After hearing both the sides and perusal of the record, the assessee has claimed ROC expenses in the profit and loss account u/s. 35D of Rs.58,500. This issue has rightly been decided by the CIT(A) on relying on the judgment of Hon'ble Supreme Court in the case of Brookbond India Limited Vs. CIT (supra) and Punjab State Industrial Development Corporation Vs. CIT 225 ITR 792 (SC) wherein it was held that the ROC expenses as fees for enhancement of capital was not a revenue expenditure. Therefore this ground cannot be allowed. Respectfully following the above case laws relied on by the CIT(A), we dismiss this ground of assessee. The Ground No.2 is dismissed.

7. The Assessing Officer has made disallowance u/s. 14A of Rs.3,64,000 as it was calculation made under Rule 8D(ii) and 8D(iii) within the impugned

assessment year, the assessee has received dividend of Rs.6,35,000 and it is exempt u/s. 10(34) of the Act; and huge finance cost debited into the profit and loss account. No suo moto any expenditure in this regard disallowed by the assessee. After considering the submissions of both sides, we find similar issue has been decided by the co-ordinate bench of this Tribunal in NSL Renewable Power Pvt. Ltd. Vs. DCIT in ITA Nos.1024/Hyd/2017 and 2031/Hyd/2018 order dt.17.06.2021 and the case was heard on 22.4.2021. For the sake of convenience the relevant paras of the order is extracted hereunder :

“ 13.1 After hearing both the parties, we are of the view that the CIT(A) has restricted the disallowance to the extent of dividend income of Rs. 57,60,120/-. In Cross Objections No. 09/Hyd/2020, the objection of the assessee is that CIT(A) has wrongly decided the issue and restricted the disallowance to the extent of exempt income earned by the assessee. While going through the calculation of disallowance made by the AO, the AO has taken the value of average investments of Rs. 174.87 crores, but, the contention of the assessee in the cross objections, the assessee has not received any exempt income from its subsidiaries. As per our thoughtful consideration, the disallowance u/s 14A rwr 8D(2)(ii) and (iii) the value of investments should be considered only on the investments from which the assessee has earned exempt income. In this connection, we rely on the decision of the coordinate bench of this Tribunal in the case of Transport Corporation of India Ltd. in ITA No. 117/Hyd/2016, order dated 21/09/2016, wherein the coordinate bench has held as under:

“11. Considered the submissions of both the counsels and perused the material facts on record. The AR submitted that the assessee has sufficient own funds which are interest free to make investment. He also relied on various decisions,



in particular, Reliance Utilities & Power Ltd. (supra). We cannot take this argument further because there exist interest bearing funds and it is difficult to identify the utilization of the funds in the business unless the assessee brings proper records to show that the specific interest free funds were utilized to acquire the investment which are exempt from tax. In the present case, it is difficult to identify the funds utilization considering the complicated structure of the business. To address this issue, the legislature has introduced Rule 8D for calculation of disallowance relating to direct expenses associated with the exempt income, interest relating to the investment and administrative expenses.

11.1 While carefully reading the rule 8D(2)(ii), the formula given are:  $A \times B/C$  Where A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year; B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year; C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year; In particular, the notes for 'B' clearly states that the average value of investment, income from which does not or shall not form part of the total income. It is clear that we have to include those investments which has generated income and exclude those investments, which have not generated income. In the present case, AO had taken the total investment instead of those investments, which have generated income. Accordingly, we direct the AO to calculate the disallowance of interest as below ( as per rule 8D):  $\text{Interest} \times \text{Investment (which generated income)} / \text{Average total assets}$  The main reason is that as per section 14A, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income, which is exempt from tax. The relevance is the expenditure in relation to income. The quantification has to be undertaken in relation to the exempt income. The investment which has not generated exempt income should be excluded from the calculation of ratio to determine the disallowance.

11.2 Similarly, for the administrative expenses, 0.5% of average investments from which the exempt income is received should be considered instead of average of the total investments.

11.3 considering the above discussion, we direct the AO to recalculate the disallowance as per rule 8D as per the above guidance. Accordingly, ground raised by assessee is allowed.”

13.2 We direct the AO to recalculate the disallowance as per rule 8D as per the above guidance. We further direct the AO if the disallowance u/s 14A is higher in the recalculation made by the AO, the same shall be restricted to the extent of exempt income earned by the assessee as per the case law Joint Investment Pvt. Ltd. Vs. CIT 372 ITR 694 (Del.).

13.3. Further, the revenue has raised a ground regarding the dividend income of Rs. 57,60,120/- should be treated as income from other sources is also not

correct. On the one hand, the Assessing Officer himself has treated it as a dividend income which is exempt and on other hand, he has treated as daily dividend income and taxed under the income from other sources. While recalculating disallowance u/s 14A, we have restricted the disallowance to the extent of exempt earned by the assessee or less than the exempt income, whichever is lower and the same amount cannot be taxed as income from other source, which amounts double taxation in the hands of the assessee. The dividend amount received by the assessee is exempt as per section 10(35) of the IT Act. The assessee has relied on the following case law, which support the case of the assessee:

- “1. PCIT Vs. Caraf Builders & Constructions (P) Ltd. (ITA No. 1260 of 2018) (Delhi HC)
2. PCIT Vs. McDonalds India Pvt. Ltd., (ITA 725/2018 (Delhi HC)
3. DCIT Vs. Pitti Electrical Equipment Pvt. Ltd. ITA No. 735/Hyd/2018.
4. Vanni Potluri Vs. DCIT, ITA No. 2263/Hyd/2017
5. Mylan Laboratories Ltd. Vs. DCIT, 180 ITD 558.”

The assessee is unable to demonstrate that on the date of investments he had sufficient own funds available. While calculating the disallowance u/s. 14A, only those investments should be considered which has yielded exempt income. Respectfully following the above decisions of the co-ordinate bench of the Tribunal, we are sending back to the file of Assessing Officer for recalculation of the disallowance u/s. 14A of the Act. Needless to say that reasonable opportunity of being given to the assessee and the assessee is also directed not to seek

unnecessary adjournments. Accordingly this ground is allowed for statistical purposes.

8. In regard to disallowance of Rs.20,59,963 towards disallowance of differed employee compensation, the CIT(A) has dismissed by holding that for want of details were not provided by the assessee as per para No.9.2 of the CIT(A) order. Before us, the assessee has filed a paper book dt.23.3.2021 and has submitted that benefit received by the employee has been added in their income as a prerequisite and properly TDS has been made and in support he has submitted Form No.16 issued to the employees and computation of income. The CIT(A) observed that the assessee did not file any details of perquisites paid to the employees to which the CIT(A) has narrated in para No.9.2 in his order. Considering the totality of facts and circumstances and paper books filed by the assessee, we remit this issue to the file of Assessing Officer for further verification and

the assessee is directed to produce all the documents in support of his claim of the expenditure and the Assessing Officer is directed to provide reasonable opportunity of hearing to the assessee. The assessee is directed not to seek unnecessary adjustments. Therefore this ground of the assessee is allowed for statistical purposes.

8. In the result, the appeal of the assessee is partly allowed.

*Order pronounced in the open court on 2<sup>nd</sup> July,2021.*

Sd/-

Sd/-

**(P. MADHAVI DEVI)**

**(L.P. SAHU)**

Judicial Member

Accountant Member

Hyderabad, Dt.02.07.2021.

\* Reddy gp

Copy to :

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|----|---|
| 1. | M/s. MoldtekPackaging Ltd., 700, Road No.36, Jubilee Hills, Near Peddamma Temple, Hyderabad-500 033 |
| 2. | ACIT, Circle 16(2), Hyderabad.  |
| 3. | Pr. C I T-IV, Hyderabad.  |
| 4. | CIT(Appeals)-10, Hyderabad.   |
| 5. | DR, ITAT, Hyderabad.  |
| 6. | Guard File.   |

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.