IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER

ITA NO. 7419/MUM/2017 (A.Y: 2011-12)

M/s. Minal Industries Limited 603, A Wing, Minal Complex Off Saki Vihar Road Andheri (E), Mumbai – 400 072 **PAN: AABCM 3102 D**	*v.*	Deputy Commissioner of Income Tax – 10(2)(2) Mumbai
(Appellant)		**(Respondent)**

Assessee by : **Shri Kiran Mehta**

Department by : **Shri Chaitanya Anjaria**

Date of Hearing : **13.06.2019**

Date of Pronouncement : **31.07.2019**

O R D E R

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)- 57, Mumbai [hereinafter in short "Ld.CIT(A)"] for the A.Y. 2011-12.

2. Assessee has raised the following grounds in its appeal: -

1. (a) In the facts and circumstances of the case of the appellant, the learned CIT (A) erred in confirming an addition of rs. 521,193 made by the learned AO by taking the fair arm's length interest rate in respect of loans given to associated enterprises (ae) @ 10.50 % as against interest rate of 5% charged by the appellant.

(b) While confirming the said addition the learned CIT(A) gravely erred in holding that the learned AO and the learned TPO had applied interest rate of 5.23%

in respect of the impugned loans to ae and that the appellant had accepted the said interest rate.

(c) It is respectfully submitted that interest rate of 5.23% was accepted by the department for the next assessment year, i.e for ay: 2012-13 and it was the contention of the appellant that the same interest rate may also be adopted for the year in appeal. unfortunately, the learned CIT (A) erred in holding that interest rate of 5.23% was adopted for the year in reference and thus, confirming the impugned addition on an all together erroneous basis.

2. The learned CIT(A) erred in confirming an addition of Rs.583,810 made u/s 14A read with rule 8D.

3. In the facts and circumstances of the case, the learned CIT(A) erred in confirming the reducting in quantum of deduction u/s 1 AA by Rs.32,47,697 (i.e. Rs. 33,67,697 originally disallowed by the learned AO minus Rs. 120,000 allowed by the learned CIT(A)"

3. At the time of hearing Ld. Counsel for the assessee submits that ground No.1 is not pressed. In view of the of the submissions of the Ld.Counsel for the assessee ground No.1 is dismissed as not pressed.

4. Ground No.2 is with regard to confirming the addition/disallowance made u/s. 14A r.w. Rule 8D of I.T. Rules at ₹.5,83,810/-. The Assessing Officer while completing the assessment invoking Rule 8D of I.T. Rules made disallowance of ₹.27,179/- towards interest under Rule 8D(2)(ii) of I.T.Rules and 0.5% of the average investments towards administrative expenses at ₹. 5,56,631/- under Rule 8D(2)(iii) of I.T. Rules, totaling to ₹.5,83,810/-. It was contended before the Assessing Officer that assessee earned only share of profit and has not incurred interest expenses or any other expenses to earn share of profit from the partnership firm and therefore, the provisions of section 14A are not applicable to share of profit from partnership firm since the same is subject

to tax in the hands of the partnership firm. However not agreeing with the contentions of the assessee the Assessing Officer following the decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Co. Ltd *v.* DCIT in ITXA.No. 626 of 2010 dated 12.08.2010 computed the disallowance u/s. 14A r.w. Rule 8D of I.T. Rules. On appeal Ld.CIT(A) sustained the addition/disallowance.

5. Ld. Counsel for the assessee reiterated the submissions made before the lower authorities. He also placed reliance on the decision of the Mumbai Bench of this Tribunal in the case of M/s. C. Mahendra International Ltd. *v.* ACIT in ITA.No. 2706/Mum/2013 dated 28.09.2015 in support of his contention that section 14A have no application to share of profit from the partnership firm.

6. Ld. DR vehemently supported the orders of the authorities below.

7. Heard rival submissions, perused the orders of the authorities below. The contention of the assessee that the provisions of section 14A of the Act are not applicable to share of profit from partnership firm since the same is subject to tax in the hands of partnership firm is decided by the Special Bench of Ahmadabad Tribunal in the case of Shri Vishnu Anant Mahajan v. ACIT in ITA.No. 3002/AHD/2009 dated 25.05.2012 in favour of the Revenue holding that provisions of section 14A applies to

the share of profit earned from partnership firm, following the said decision I reject the contentions of the assessee.

8. The other contention of the assessee that provisions of section 14A have no application to strategic investments is also now settled by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT [402 ITR 640].

9. The assessee also submitted that investments to the extent of ₹.18,37,500/- were made in the M/s. Minal International FZE Sharjha an overseas company, and therefore, the provisions of section 14A would not apply to such investments. The contention of the assessee has to be examined by the Assessing Officer as to whether the dividends from M/s.Minal International FZE Sharjha are taxable or tax free and accordingly the provisions have to be applied. Assessing Officer shall also decide the issue keeping in view the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. *v.* CIT (supra) and the Special Bench of Delhi Tribunal in the case of ACIT v. Vireet Investments Private Limited [165 ITD 27]. Thus, this issue of disallowance u/s. 14A r.w. Rule 8D is restored to the file of the Assessing Officer to decide in view of the above observations, after providing adequate opportunity of being heard to the assessee.

10. The last grounds of appeal in the appeal of the assessee is regarding restricting the deduction u/s. 10AA of the Act by allocation of expenses between SEZ and non-SEZ units of the assessee.

11. Briefly stated, the facts are, the Assessing Officer while completing the assessment noticed that assessee has two units one is non-SEZ and the other is SEZ unit in respect of which deduction u/s. 10AA was claimed by the assessee. Unit-wise Profit and Loss Account was required to be furnished by the assessee and on a perusal of the same Assessing Officer noticed that Directors remuneration has not been allocated to the SEZ Unit. He also noticed that administrative, selling and other expenses have not been allocated in the ratio of sales to turnover. During the assessment proceedings assessee was required to explain as to why these expenses should not be allocated to the SEZ Unit in the ratio of sales. Assessee contended that SEZ Unit is an independent unit of its own with all necessary infrastructure and that it has borne its own expenses and the number of transaction are limited. Therefore, it was submitted that there was no justification for any other allocation of expenses from head office. Not convinced with the submissions of the assessee the Assessing Officer allocated administrative, selling and other expenses and Directors remuneration on the basis of the turnover between SEZ and non-SEZ units. Accordingly, the Assessing Officer restricted the deduction

u/s.10AA of the Act. on appeal the Ld.CIT(A) sustained the action of the Assessing Officer in allocating the expenses on sales to turnover basis between SEZ Unit and non-SEZ Unit. However, he directed the Assessing Officer to exclude Directors remuneration of ₹.1,20,000/- from allocation and disallowance.

12. Ld. Counsel for the assessee before me submits that the Assessing Officer allocated the expenses on turnover basis whereas the assessee has taken the expenditure on actuals. He submits that separate Books of Accounts have been maintained by the assessee for both the units. It was also further submitted that 10AA unit has been commenced in October 2010 so there is no justification of allocation of expenses on the basis of turnover. It was also further submitted that no such disallowance has been made in later assessment years in which scrutiny assessment was also made.

13. Ld. DR vehemently supported the orders of the authorities below.

14. Heard the rival submissions, perused the orders of the authorities below. It is the contention of the assessee that assessee maintains separate Books of Accounts and the expenditure have been recorded on actual basis for both SEZ unit and non-SEZ unit. However, the observation of the Assessing Officer was that the assessee could not

produce any evidences to show that assessee has actually incurred expenses for the particular unit. It was also the submission of the assessee that in none of the Assessment Years later to this assessment year, even in scrutiny assessments no such allocation was made restricting the disallowance u/s. 10AA of the Act. In view of the submissions of the Ld. Counsel for the assessee and also the observations of the Assessing Officer in the Assessment Order, I am of the view that this issue has to be examined afresh by the Assessing Officer especially when separate Books of Accounts were maintained by the assessee for both the units. Thus, this issue is restored to the file of the Assessing Officer for denovo adjudication in accordance with law. Needless to say that the Assessing Officer shall provide adequate opportunity of being heard to the assessee. This ground is allowed for statistical purpose.

15. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on the 31st July 2019

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 31/07/2019
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum