

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
I.T.A. No.4492/M/2014 (AY: **2010-2011**)

Shri Rajendra D. Shah, 60-B, Dolat, East West Road No.2, JVPD Vile Parle (W), Mumbai – 400 049.	बनाम/ Vs.	ACIT-21(1), Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra, Mumbai.
स्थायी लेखा सं./PAN : AAFPS1910E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Neelkant Khandelwal
प्रत्यर्थी की ओर से/ Respondent by	:	Shri B.S. Bist, Sr.DR

सुनवाई की तारीख / Date of Hearing : 21.04.2016

घोषणा की तारीख /Date of Pronouncement : 18.05.2016

आदेश / ORDER

PER RAJESH KUMAR, AM:

This appeal filed by the assessee on 30.6.2014 is against the order of the CIT (A)-32, Mumbai dated 19.5.2014 for the assessment year 2010-2011. In this appeal, assessee raised the following grounds which read as under:

1. *CIT (A) erred in confirming further addition made by the AO u/s 14A of Rs. 4,57,101/- without considering fact that interest expenses is related to business activity of appellant and there is no borrowing made for investment.*
2. *CIT (A) erred in confirming application of Rule 8D(2)(ii) of section 14A without considering the fact that net worth of appellant is more than investments and no new investment made by appellant during the year by borrowing.*
3. *CIT (A) erred in confirming application of Rule 8D(2)(iii) being 0.5% of average investment by ignoring fact that all investments are in group companies for maintaining control of group and investment was out of own net worth and appellant need not incur any administrative to earn exempt income."*

2. The brief facts of the assessee are that the assessee filed his return of income on 22.09.2010 showing an income of Rs. 81,94,096/-. The case of the assessee was fixed for scrutiny and statutory notices u/s 143(2) and 142(1) were issued and served upon the assessee. Thereafter, the assessment was completed by

the AO after considering the replies and submissions of the assessee filed from time to time in response to the various queries during the course of assessment proceedings vide order dated 25.03.2013 passed u/s 143(3) of the Act at Rs. 86,51,197/- by making various additions including disallowance of Rs.4,57,101/- made u/s 14A of the Act which is the subject matter of present appeal before us. The AO made the disallowance on the ground that the assessee earned dividend of Rs. 3,750/- and failed to make disallowance u/s 14A whereas the provisions of section 14A rule 8D were clearly applicable.

3. The aggrieved assessee, preferred an appeal before the CIT(A), who also dismissed the appeal by upholding the additions as made by the AO u/s 14A rule 8D after considering the submissions of the assessee which have been incorporated in para 3.3 of the appeal order and now the assessee is before us challenging the order of CIT(A).

4. We have considered the rival submissions and perused the relevant records placed before us. We note that the disallowance confirmed by the CIT(A) comprises of prorata interest of Rs. 1,31,747/- under rule 8D(2)(ii) and indirect expenses @0.5% of average investments Rs. 3,25,353/- under rule 8D(2)(iii). The common issue raised in all the grounds of appeal is with respect to confirmation of disallowance under Rule 8D of IT Rules, 1962. On the first limb under rule 8D(2)(ii), the Id counsel for the assessee submitted before us that the case of the assessee is fully covered in his favour by the decision of the jurisdictional High Court in the case of HDFC Bank Ltd (366 ITR 505) (Bom) as the own funds of the assessee were for more than the investments in shares and securities and accordingly prayed for the deletion of the same. As regards the **second limb** of rule 8D the Id AR submitted before us that the 99.78% of the investments were in group companies and dividend or profit was not the motive but strategically held by the assessee in those concerns and therefore no disallowance was called for. In support to his arguments the Id counsel relied on the decision of the Mumbai Tribunal in the case of Garware Wall Ropes Ltd V Add. CIT(2014) 46 taxmann.com18 (Mumbai-Trib).

5. The Id DR per contra relied on the orders of authorities below.

6. After consideration of the rival submissions and arguments and relevant materials, we find from the balance sheet of the assessee that the assessee's own funds were Rs. 17.62 Cr *vis a vis* investments in shares Rs. 5.57 Cr which is placed at page no 11 of the paper book. The jurisdictional High Court in the case of **HDFC Vs CIT (supra)** has held that *where the own funds are more than the investments in shares, the presumption is that the assessee has invested own funds and not loaned money into shares and thus no disallowance can be made under rule 8D(2)(ii)*. On the second limb of the addition the Id AR referred and relied on the decision Bombay Tribunal in the case of Garware Wall Ropes Ltd V Add. CIT (supra) in which the Tribunal has held that where the investments are made in the group companies and not in the shares of unrelated parties and the primary object is to hold the controlling stake in the group concern and not earning income out of investments then the disallowance under rule 8D cannot be applied and thus deleted the additions. In the case of the assessee, we find from details filed by the assessee during the course of hearing that the 99.78% of the total investments were made in the group concerns with the motive to hold the control in the said concern and not to earn any dividend or income. In our opinion, the case of the assessee is fully covered by the above cited decisions and therefore, following the ratio laid in the said decisions, we allow the appeal of the assessee by deleting the addition as made u/s14A read with Rule 8D of Rs. 4,57,101/-. Accordingly, grounds raised by the assessee are allowed.

7. In the result, assessee's appeal is allowed.

Order pronounced in the open court 18.05.2016.

Sd

(SAKTIJIT DEY)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 18.05.2016

व.नि.स./ OKK , Sr. PS

sd

(RAJESH KUMAR)

ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

True copy

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**