

**आयकर अपीलिय अधिकरण "आई" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND  
SHRI C.N. PRASAD, JUDICIAL MEMBER**

**ITA NO.2481/MUM/2015 : (A.Y : 2009-10)**

DCIT 1(1)(1)  
R.No.579, Aayakar Bhavan  
M.K.Road  
Mumbai – 400 020

Vs. M/s Banhem Estates &  
ITS Parks Ltd.  
The Times of India Bldg.  
Dr.D.N.Road  
Mumbai – 400 001

**PAN : AAACB2190F**

(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : **Shri R.A.Dhyani**  
प्रत्यर्थी की ओर से Respondent by : **Shri Venkataraman**

सुनवाई की तारीख / Date of Hearing : **09/02/2017**  
घोषणा की तारीख / Date of Pronouncement : **26/04/2017**

**आदेश / ORDER**

**PER C.N.PRASAD [J.M.]**

This appeal is filed by the Revenue against the order of the Ld.CIT(Appeals) -2, Mumbai dated 26.12.14 for the assessment year 2009-10.

2. The only grievance of the Revenue in this appeal is the Ld. CIT (Appeals) erred in restricting the disallowance u/s 14A r.w. rule 8D(2)(iii) to Rs.2,01,844/- as against Rs.52,98,696/- disallowed by the Assessing Officer.

3. Briefly stated, the facts are that the Assessing officer while completing the assessment disallowed Rs.52,98,696/- u/s 14A read with Rule 8D(2)(iii) of the Act. The entire disallowance of Rs.52,98,696/- represents half percent of the average value of investments. On appeal, the Ld. CIT (Appeals) restricted the disallowance to Rs.2,01,844/- which are the expenses incurred by the Assessee to the business centre of the Assessee company. The Ld. CIT (Appeals) observed that the Assessee incurred only Rs.2,01,844/- as expenditure in its business centre and therefore should be restricted to only to the said expenses.

4. The Ld. DR vehemently supported the orders of the Assessing Officer and submits that the disallowance was rightly made by invoking Rule 8D(iii) of the Act.

5. The Ld. Counsel for the Assessee placed reliance on the orders of the Ld. CIT (Appeals). He further submits that the Assessee in Form 3CD suo moto disallowed Rs.2,00,329/- as inadmissible u/s 14A and this allocation of expenses for earning exempt income is not disputed by the Assessing Officer. He submits that the Assessing Officer has not given any finding as to why the method adopted by the Assessee is not satisfactory to invoke the provisions of Section 14A of the Act. He submits that the total expenses incurred by the business centre of the Assessee is only Rs.2,01,844/- and therefore the Ld. CIT (Appeals) is perfectly justified in restricting the expenditure to Rs.2,01,844/-.

6. We have heard the rival submissions, perused the orders of the authorities below. The Assessing Officer mechanically applied Rule 8D and

computed the disallowance u/s 14A read with Rule 8D(2)(iii) being 0,5% of the average value of investments. The Ld. CIT (Appeals) however restricted the disallowance to the expenses actually incurred by the Assessee in its business centre observing as under :

“The facts of the case, the stand taken by the A.O. in the assessment order and the contentions raised by the learned authorized representative of the appellant company during the appellate proceedings as well as the written submissions made are considered. It is seen from the P&L A/c. for the relevant previous year of the appellant that it has classified the expenses into (i) operating expenses and (ii) administration & general expenses. It is explained that operating expenses are incurred for running the business center and therefore, administration & general expenses alone have to be considered for the purpose of disallowance u/r. 81(2)(iii). Such expenses aggregate to only Rs. 2,01,844/-. It is clarified that expenses of Rs. 48,377/- incurred towards auditors fees are not required to be considered for disallowance u/r. 8(2)(iii), since audit has to be carried out, irrespective of the holding or not holding an investment portfolio. The appellant has arrived at the suo-moto disallowance of Rs. 2,00,329/-, on a proportionate basis of allocation of general & administrative expenses in the ratio of investments to total assets. However, such a methodology is not provided u/r. 81(2)(iii). In view of this, the disallowance has to be worked out only in accordance with the methodology provided u/r. 8D(2)(iii), which works out to Rs. 52,98,696/-. However, it is not intended that the notional disallowance u/r. 81(2)(iii) has to be made in excess of the actuals. In this case the actual expenses are much less than the notional disallowance arrived at by the AO in the assessment order. Since the expenses incurred by the appellant which are not fully attributable to the business center are only Rs. 2,01,844/-, the same has to be adopted as the disallowance. Accordingly, the AO is directed to restrict the disallowance to Rs. 2,01,844/- as against Rs. 52,98,696/-. Since the appellant has suo-moto disallowed Rs.2,00,329/- the net additional disallowance works out to Rs.1,515/- [Rs.2,01,844/- (-) Rs.2,00,329/-].”

On a careful reading and consideration of the order of the Ld. CIT (Appeals), we do not find any valid reason to interfere with the findings and decision of the Ld. CIT (Appeals) in restricting the disallowance u/s 14A of the Act which is very much reasonable in our view.

7. In the result, appeals of the Revenue are dismissed.

Order pronounced in the open court on the 26<sup>th</sup> day of April 2017.

Sd/-

**(RAJENDRA)**  
**लेखा सदस्य /**  
**ACCOUNTANT MEMBER**

मुंबई / Mumbai; दिनांक / Dated 26.04.2017

LR, SPS

**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), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

सहायक पंजीकार  
**(Asstt. Registrar)**  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mum

**ITA No.2481/Mum/2015, A.Y 2009-10  
M/s Banhem Estates and ITS Parks Ltd.**

**ITA No.2481/Mum/2015, A.Y 2009-10**  
**M/s Banhem Estates and ITS Parks Ltd.**

		Date	Initials	
1.	Draft dictated on:			Sr. PS/PS
2.	Draft placed before author:			Sr. PS/PS
3.	Draft proposed & placed before the second member:			JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:			Sr. PS/PS
6.	Order pronounced on:			Sr. PS/PS
7.	File sent to the Bench Clerk:			
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			
10.	Date of dispatch of Order:			