

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

BEFORE SHRI JASON P. BOAZ ACCOUNTANT MEMBER  
AND SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No. 4176/MUM/2012  
(Assessment Year : 2009-10)

N.Kumar Diamond Exports Ltd.,  
1511, Prasad Chambers, Tata Road, No.2,  
Opera House, Mumbai 400004  
PAN:AAACN 3449B ... Appellant  
Vs.  
The ito 5(2)(1),  
5<sup>TH</sup> Flr.Aaykar Bhavan, MK Road,  
Mumbai 400 020 .... Respondent

Appellant by : None  
Respondent by : Shri Suman Kumar

Date of hearing : 02/01/2017  
Date of pronouncement : 11/01/2017

**ORDER**

**PER JASON P. BOAZ, A.M:**

This appeal by the assessee is directed against the order of the CIT(A) -9, Mumbai dated 11/04/2012 for ay 2009-10.

2. The facts of the case, briefly stated, are as under:-

2.1 The assessee, a company engaged in the business of manufacture and export of diamonds and other ornaments, filed its return for assessment year 2009-10 on 29/08/2009 declaring income of Rs.10,43,200/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (in short 'the Act') and the case was subsequently

taken up for scrutiny. The assessment was completed under section 143(3) of the Act vide order dated 11/11/2011, wherein the assessee's income was determined at Rs.15,43,200/-, in view of the disallowance of Rs.5,00,011/- under section 14A r.w. Rule 8D. On appeal, the CIT(A) dismissed the assessee's appeal vide the impugned order dated 11/4/2012.

3. This appeal was fixed for hearing on several occasions from 15/07/2013 onwards and on each of these dates neither was anyone present for the assessee nor was adjournment of hearing sought for. On a couple of occasions when the Bench did not function, date of further hearing was intimated through display on notice board. Even issue of notice by RPAD did not elicit any compliance from the assessee. On 02/01/2017 when the case was called for hearing, none was present for the assessee nor was any adjournment of hearing sought on its behalf. However, the Ld. Departmental Representative was present and ready to argue Revenue's case. In the circumstances, as narrated above, we are of the opinion that the assessee is not interested in pursuing this appeal seriously and, therefore, we proceed to dispose off this appeal ex-parte on merits with the assistance of the Ld. Departmental Representative and the material on record.

4.1 In this appeal, the assessee has raised the following grounds of appeal:-

*"On the facts and circumstances of the case and in law:*

*1. The learned CIT (A) has erred in confirming the disallowance U/S 14A of the Income Tax Act, 1961 (The Act).*

*2. The learned CIT (A) has erred in not appreciating the fact that no expenditure have been incurred for earning a small dividend of Rs. 120/-.*

*3. The learned CIT (A) has further erred in not restriction the disallowance u/s. 14A to the extent of exempt dividend i.e. Rs.120/-.*

*4. The appellant craves your leave to add, to alter, to amend or to withdraw any or all the grounds of appeal on or before the hearing.”*

4.2 According to the Ld. Departmental Representative, in the course of assessment proceedings the Assessing Officer(A.O) noticed that even though the assessee had earned dividend income, no expense was disallowed towards earning of exempt income. After calling for the assessee’s explanation in the matter, the AO proceeded to disallow an amount of Rs.5,00,011/- under section 14A r.w. Rule 8D(2)(iii) of the Rules. It is submitted that on appeal the CIT(A) upheld and sustained the aforesaid disallowance as he was of the view that the assessee could not categorically establish by material evidence the nexus between the entire capital being invested in securities, without a part of the same being utilized in its business. It is prayed that since no material has been brought on record by the assessee in this appeal to controvert the findings of the CIT(A), the assessee’s appeal may be dismissed.

4.3.1 We have heard the Ld. Departmental Representative and perused and carefully considered the material on record. The CIT(A) after considering the submission of the assessee and the material on record upheld the disallowance made by the Assessing Officer under section 14A r.w. Rule 8D(2)(iii) of the Rule hold as under at para 5.1 to 5.2.4 of the impugned order:-

“5.1 I have carefully and dispassionately considered the facts and circumstances of the case, statement of facts, relevant assessment

order, written submission and the arguments made by the LAR before the undersigned.

*“5.2 Grounds of appeal no.1 and 2:*

*It is held that the mandate of Section 14A of the Act is to prevent claims of deduction of expenditure incurred in relation to the income which does not form part of the total income of the assessee.*

*5.2.1 In the present case, the appellant could not establish the nexus*

*between the entire capital being invested in securities and that it was impossible to believe that out of the common hatch patch of the funds, the entire capital would have gone into the investment in shares without a part of the same going to the business, also it was not possible that the entire income would have been invested in shares and debentures and share application money especially when the appellant himself was not categorical as to how much of the sum had been invested in business.*

*5.2.2 The Hon'ble Calcutta High Court in the case of Dhapa & Sons Vs CIT reported in [(2011) 54 DTR (Cal) 345J has held that mere fact that shares were old and not acquired recently is immaterial. It was for the appellant to show by production of material that the shares were acquired from the funds available in its hands at relevant point of time without taking any benefit of any loan or that the loan had already been repaid and that no interest was paid by it for acquiring shares in the relevant year. In the absence of any such material interest payable by the appellant was to be disallowed under section. 14A of the Act having regard to investments in shares and total interest bearing funds, Furthermore, the Hon'ble Kerala High Court in the case of CIT vs. Smt Leena Ramachandran Report in [(2010) 45 DTR(Ker) 372] held that in a case where assessee received a dividend of Rs.36,81,596/- and no other benefits was derived from the company for the business carried out by the assessee as the entire funds was utilized for acquisition of shares the entire interest paid on borrowed funds was held to be correctly disallowed u/s.14A of the Act.*

*5.2.3 Secondly, even the appellant had not given any details to work out the direct nexus of the interest expenditure related to the exempted income which was not included in the total taxable income. The appellant's present case is covered by sub section (3) of section 14A of the Act because the appellant had claimed before the LAO that no expenditure was incurred by it in relation to the exempted income which did not form part of total income. The appellant's claim is also covered by sub section (2) of section 14A of the Act because the LAO was not satisfied with the correctness of the claim of*

*the appellant in respect of such expenditure as noted by the LAO in para 4. Accordingly, I agree with the LAOs view that in view of the clear cut decision of the Hon'ble Special Bench in the case of Daga Capital Management reported ;n (2008) 26 SOT 603 (Mum) for the purpose of disallowance, the reference in rule 8D(2)(ii) is "Value of Investment" and not the share held as investment. Therefore, even the shares held as stock in trade shall be considered for the purpose of disallowance. It is further held that in the formula prescribed under rule 8D(2)(ii) "a x b/c ". "b" denotes average value of investment , income from which it does not or shall not form part of the total income as appearing in the balance sheet of the assessee on the first date and the last date of the previous year; "c" includes the average of the total assets as appearing in the balance sheet of the assessee, on the first date and the last date of the previous year. The appellant has included stock in trade while furnishing e details of "c" which is the denominator. Therefore, it should include value O& stock-in-trade while furnishing the details of "b" also which is the numerator in this case. The same is amply clear in the rule 8(2)(ii) of IT Rules, 1962. Ground 0 appeal nO.2 cannot be allowed because the disallowance has to be worked out In accordance with the provisions of rule 8D of the IT Rules, 1962.*

*5.2.4 Having regard to the facts and circumstances of the case, the disallowance of Rs.5,00,011/- as worked out and disallowed by the LAO in the relevant assessment order is confirmed. Therefore, grounds of appeal no.1 and 2 are dismissed."*

4.3.2 Since this appeal is being decided ex-parte on the basis of material on record, we find that the assessee has not brought on record any material evidence to controvert the findings of the CIT(A),(supra), we find no reason to interfere therein and, therefore, uphold the finding on this issue in the order of the CIT(A) . Consequently, grounds 1 to 4 raised by the assessee are dismissed.

5. In the result, the assessee's appeal for ay 2009-10 is dismissed.

Order pronounced in the open court on 11/01/2017

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER  
Mumbai, Dated 11/01/2017

Sd/-  
(JASON P. BOAZ)  
ACCOUNTANT MEMBER

**Copy of the Order forwarded to :**

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

//True Copy//

Vm, Sr. PS

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**