

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

**BEFORE SHRI SHAILENDRA KUMAR YADAV, JM
AND SHRI RAJESH KUMAR, AM**

आयकर अपील सं./I.T.A. No. 7115/Mum/2013
(निर्धारण वर्ष / Assessment Year: 2010-11)

Mrs. Anahaita Nalin Shah 1/1A, Birla Mansion, 134, N.M. Road, Fort, Mumbai-400 023.	बनाम/ Vs.	Asst. Commissioner of Income Tax, Range 4(2), 6 th floor, Income Tax Office, Maharshi Karve Road, Mumbai-400 020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AANPS 9303H		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Sanjukta Chowdhury
प्रत्यर्थी की ओर से/Respondent by	:	Shri Satya Pal Kumar

सुनवाई की तारीख / Date of Hearing	:	05/11/2015
घोषणा की तारीख / Date of Pronouncement	:	15/01/2016

आदेश / ORDER

PER RAJESH KUMAR, A. M:

This appeal by the assessee is directed against the order dated 17.10.2013 of Commissioner of Income Tax (Appeals)-8, Mumbai (hereinafter called as the CIT(A)) for assessment year 2010-11.The assessee has raised following grounds of appeal:

1. *“The Learned Assessing Officer has erred in adding an amount of Rs.11,18,976/- u/s 14A of the Income Tax Act, 1961.*
2. *The Learned CIT(A)-8 has erred in confirming the above addition in the hands of your Petitioner.*
3. *The order appealed against is bad in law and is against the principle of natural justice.*
4. *The order appealed against is based on surmises and conjectures.*

2. The common issue raised in all the grounds of appeal is against the confirmation of disallowance u/s 14A r.w.r 8D of the Act of Rs.11,18,976/- .

3. The brief facts of the case are that the assessee filed her return of income on 31.08.2010 declaring as income of Rs.67,08,440/-. The assessee was a Director of M/s. NVS Brokerage Pvt. Ltd. During year the assessee had earned the tax free dividend of Rs.14,80,716/- and did not allocate and apportion any expenses incurred for earning such tax free income. The assessee also carried on business of sales and purchases of shares under portfolio management services through J.M. Financial Services Ltd. and the income from the said trading was also offered Rs. 98,577/- as income from business. The ld. AO during the course of scrutiny found the assessee had earned a dividend income of Rs.14,80,716/- however no expenses were allocated to the exempt income and therefore concluded that

provisions of section 14A r.w.r. 8D of the Act were applicable and accordingly made the disallowance of Rs.11,18,976/- as computed in para 4.3 of the assessment order. The Id. CIT(A) dismissed the appeal of the assessee by holding as under:-

“I have considered the facts of the case and the arguments of the appellant. I have carefully considered the submission of the appellant and the argument of the Assessing Officer. I find that with the insertion of Rule RULE 8D r.w. the provisions of sub-section 2 &3 of section u/s 14A(2) lay down a procedure for determining expenditure to be disallowed u/s. 14A. this being procedural in nature, it is to be applied to all the pending proceedings as on the date of its insertion. This has also been upheld by the Special Bench of ITAT Mumbai in its decision dated 20/10/2008 in the case of M/s. Daga Capital management (P) Ltd. in ITA No. 8057/Mum/2003. In this decision, Special Bench of ITAT has also held that for the investment in shares held as investment as well as stock in trade, both, will form part of investment made for the purposes of tax free exempted income.

In the case of Godrej & Boyce Mfg. Co. Ltd. (ITANo.636/2010), the Hon’ble Bombay High Court had held that Rule RULE 8D was applicable only from AY 2008-09. Thus, addition of the amount determined as per rule RULE 8D has to be made from AY 2008-09 onwards as amount of expenditure incurred for earning of exempt income. The recent Special Bench judgement in the case of m/s. Daga

Capital Management Pvt. Ltd.(2008) reported in 26 SOT603 supports the view that the Assessing Officer has rightly made the disallowance u/s.14A.

The appellant's contention that no expenditure had been incurred to earn exempt income is not acceptable for the reason that the assessee being a share broker undertakes transactions of share which includes those transactions which subsequently yielded dividend which was exempt. The expenses debited to P&L Account had been incurred for undertaking transactions of shares which also included such transactions which yielded exempt dividend. Therefore, the expenses including interest and administrative expenses debited to P& L Account include expenditure incurred for undertaking transactions of shares which yielded exempt income. Apparently, any expenditure incurred for undertaking transactions for shares which subsequently yielded exempt income is required to be treated as expenditure incurred for earning of exempt dividend income. Therefore, the assessee's contention that no expenditure had been incurred for earning of exempt income is not acceptable. The amount of such expenditure is, therefore, required to be determined as per provisions of Rule RULE 8D. In view of above discussion, the Assessing Officer has correctly calculated the disallowance u/s.14A r.w. Rule RULE 8D and thus, the addition is confirmed. Thus, the ground of appeal is dismissed."

3. The Id. AR submitted before us that the Id. AO worked out the disallowance u/s. 14A as per Rule 8D of Rs.11,18,976/- which comprised of Rs.5,49,368/- on account of interest under rule8D(2)(ii) and Rs.6,97,002/- being 0.5% of the average investments under rule 8D(2)(iii) . The Id. Counsel argued that during the year ended 31.3.2008, the assessee borrowed 2.00 Crores from J.M. Financial Services Ltd and utilized the same for share trading business through the same brokerage company and net profit from the share trading was shown as income from business. During the year the amount of Rs.5,49,368/- was paid as interest for the said loan and since the loan was exclusively borrowed for share trading through J.M. Financial Products Pvt Ltd and the Income from the said trading business was duly returned as business income and therefore the interest paid to the said company was wrongly disallowed by the AO u/s14A r.w.r. Rule 8 D. The Id. Counsel relied on the decision of the CIT Vs. Gujarat Power Corporation Ltd. 352 ITR 583 (Guj) and CIT Vs. HDFC Bank Ltd. 366 ITR 505 (Bom) in support of the assessee's case. The Id. Counsel further submitted that the assessee did not borrow any loan during the financial year 31.03.2007 to 31.03.2009 and submitted that all the investment made by the assessee were out of her own funds during the above years. The Id. Counsel substantiated his arguments by filing the comparative statement of 4 years from 2007-08 to 2010-2011 showing details of the capital

account, interest paid, total investment, dividend received on shares, dividend received on mutual funds and loan/ creditors and Provisions filed at page no. 13 of the paper book . The total investment value of shares was 13,93,91,986/- and the balance in the capital account as on that date was Rs.18,40,73,180/- which unequivocally proved that all these investment were made out of assessee's own funds and not out of borrowed funds. The borrowed funds were utilized for the purpose of share trading the income from which was returned as income from business during the year. As regards the additions under rule 8D(2)(iii) of Rs. 4,21,973/- being 0.5% of average investments , it was argued that the 0.5% should be calculated by taking into account only those investments which yielded dividend income during the year and not by taking all the investments. The Id Counsel finally prayed that the addition made u/s.14A was wrong and be deleted. The Id. DR on the other hand relied on the authorities below.

5. We have considered the rival submissions and perused the material on record. We find that the assessee was engaged in the business of share trading for the purpose of which the assessee borrowed the money from J.M. Financial Products Pvt. Ltd., which was used for the purpose of share trading. Moreover the details as filed by the assessee on paper book at pg. no.13 shows that assessee had

capital Rs. 18,40,73,180/- on 31.03.2010 whereas the total value of investment on that date was Rs. 13,93,91,986/- which means that these investments were made by the assessee out of her own funds and not out of the borrowings which were used for the purpose of share trading. We also find that as on 31.03.2010 , the closing stock of shares was Rs.1,07,26,256/-which also proves that the money borrowed was utilized for the purpose of share trading business closing stock of shares was duly shown by the assessee. In the case of CIT Vs. HDFC Bank Ltd. (supra) the Hon'ble Bomay High Court has held that assessee's capital , profits reseres, surplus and current account deposits were higher than higher than the investments in the tax free securities and in view of this factual position it would have to be presumed that investments made by the assessee would be out of the interest free funds available with the assessee. In the case of CIT Vs Gujrat Power Corporation Ltd (supra) the Hon'ble Gujrat High Court has held that the assessee had demonstrated that it had other sources of investments and no part of the borrowed could be stated to be used for the purpose of earning tax free income, the invocation of the provisions of section 14A for taxing such interest was not justified. The facts of the case of the assessee are squarely covered by the above decisions and we respectfully following the ratio laid down , delete the addition of Rs.5,49,368/- under rule 8D(2)(ii). As regards the balance addition of Rs.

4,21,973/- we find merit in the arguments of the ld AR that 0.5% of dividend yielding investments should be disallowed and not on the entire investments . We , therefore direct the AO to calculate the disallowance of 0.5% under rule 8D(2)(iii) by taking those investments which yielded dividend during the year. Thus, the appeal of the assessee is partly allowed. The AO is directed accordingly.

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

Order pronounced in the open court on 15th January, 2016

Sd/-

(Shailendra Kumar Yadav)

न्यायिक सदस्य / Judicial Member

Sd/-

(Rajesh Kumar)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 15.1.2016

Ps. Ashwini Gajakosh

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 – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

(Dy./Asstt. Registrar) ITAT, Mumbai