

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
I.T.A. No.532/M/2015 (Assessment Year: **2010-2011**)

Yogesh B. Dharnidharka, C/o. Karnavat & Co., 2A Kitab Mahal, 1 st Floor, 192 Dr. D.N. Road, Mumbai – 400 001.	बनाम/ Vs.	ACIT-4(2), R.No.642, Aayakar Bhavan, M.K. Road, Mumbai – 400 020.
स्थायी लेखा सं./PAN : AABPD4545L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Sunil Hirawat
प्रत्यर्थी की ओर से/ Respondent by	:	Shri OAarsi Prasad, JCIT

सुनवाई की तारीख /Date of Hearing : 23.06.2016

घोषणा की तारीख /Date of Pronouncement : 22.08.2016

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 22.1.2015 is against the order of the CIT (A)-9, Mumbai dated 21.11.2014 for the assessment year 2010-2011. In this appeal assessee raised seven grounds in toto. Grounds no.1 to 4 relate to the disallowance u/s 14A read with Rule 8D of the IT Rules, 1962. Grounds no. 5 and 6 relate to the disallowances on accounts of entertainment and travel expenses.

2. At the outset, Ld Counsel for the assessee briefly narrated the facts of the case and brought my attention to the letter dated 20.6.2016, which is enclosed with a paper book containing copies of the financial statements; working of disallowance u/s 14A read with Rule 8D; copy of the assessment order for the AY 2009-2010 and submission of the assessee before the CIT (A). There is no certificate furnished by the assessee that these documents at Sl No.1 of the financial statements were available to the lower authorities.

3. Referring to ground nos. 1 to 4 of the appeal, Ld Counsel for the assessee submitted that they relate to the disallowance u/s 14A read with Rule 8D of the IT Rules, 1962. In this regard, Ld Counsel for the assessee submitted the no borrowed

funds were utilised for making exempt income yielding investments. He further submitted that the CIT (A) has not considered the binding judgment of the Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities and Power Ltd [2009] 313 ITR 340 (Bom.), which is relevant for the proposition that the *presumption of assessee investing in shares out of interest free funds should go in favour of the assessee.*

4. After hearing both the parties and on perusal of the orders of the order of the CIT (A) in general and the contents of para 3.2 in particular, I find the same is in not in tune with the provisions of section 250(6) of the Act. Therefore, I direct the CIT (A) to pass a speaking order considering the financial statements furnished before the Tribunal and the source of investments; the interest free funds available with the assessee at the relevant point of time etc. CIT (A) shall give a reasonable opportunity of being heard to the assessee as per the set principles of natural justice. Accordingly, grounds no. 1 to 4 are remanded to the CIT (A) for examine and fresh adjudication of the issue and for want of speaking order considering all the arguments of the assessee. Further, CIT (A) is directed to admit additional evidence, if any, on the subject. Accordingly, grounds no. 1 to 4 of the appeal are allowed for statistical purposes.

5. Ground nos.5 and 6 relate to the disallowances on account of entertainment and travel expenses. During the assessment proceedings, assessee failed to furnish certain evidences in support of the claim appears in the P & L Account. Therefore, AO disallowed the entire claim on both these accounts. During the first appellate proceedings, CIT (A) restricted the disallowance to 50% of the claims. In fact, the assessee made written representation for restricting the disallowance to 1/5th ie 20% of the claims.

6. After hearing both the parties on this issue, I am of the opinion that it is a settled proposition that in such matters, where the genuineness of the expenditure is never doubted by the AO, restricting the disallowance to 20% of the claims in both the accounts should meet the ends of justice. I order accordingly. Thus, Grounds no.5 and 6 raised by the assessee are partly allowed.

7. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 22nd August, 2016.

Sd/-

(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 22.8.2016
व.नि.स./ OKK, Sr. PS

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//

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