

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, D, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

श्री संजय गर्ग, न्यायिक सदस्य एवं

श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

**Before Shri Sanjay Garg, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NO.4369/Mum/2012
Assessment Year: 2008-09**

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| Rallis India Ltd. C/O. Kalyaniwalla & Mistry, Army & Navy Bldg., 3 rd Floor, 148, M.G. RD. Fort, Mumbai-40001 | बनाम/ Vs. | DCIT RG 3(3) Mumbai |
| (Appellant) | | (Revenue) |
| P.A. No. AABCR2657N | | |

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| Appellant by | Shri M.M. Golvala (AR) |
| Revenue by | Shri B.S. Bist (Sr. DR) |

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| Date of Hearing : | 04/10/2016 |
| Date of Order: | 19/10/2016 |

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

This appeal has been filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals), Mumbai-7, {(in short 'CIT(A)'}, dated 27.03.2012 passed against assessment order of the AO dated 24.11.2010 u/s 143(3) for the Assessment Year 2008-09 on the following grounds:

“1.The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of

interest u/s. 14A read with Rule 8D(2)(ii) to the tune of Rs.2 1,16,000/-.

2.Both the lower authorities erred in invoking Rule 8D, without recording any objective satisfaction as to how the appellant's submission was erroneous.

3.The learned Commissioner of Income Tax (Appeals) failed to consider the evidence led before him to demonstrate that investments were made out of the appellant's own funds.

4.Both the lower authorities erred in holding that administrative expenses to the tune of Rs.21,80,947/- were required to be allocated to the earning of dividend income under section 14A read with Rule 8D(2)(iii).

5.Without prejudice to the foregoing, and in any event, the allocation of expenditure u/s.14A read with Rule 8D(2)(iii) to the tune of Rs.21,80,947/- is highly excessive and arbitrary and the same is required to be reduced substantially.

6.The learned Commissioner of Income tax (Appeals) erred in not holding that professional fees paid to M/s. Udwardia Udeshi & Co. (Rs.4,62,500/-) and to M/s. Price Waterhouse Coopers (Rs.5,50,000/-) were allowable as normal business expenditure having regard to the facts and circumstances of the case, the appellant submitted that the Assessing Officer be so directed.

7. Both the lower authorities erred in adding back provision for doubtful debts while computing book profits u/s.115JB.

8. Both the lower authorities erred in adding back disallowance u/s.14A while computing book profits u/s.115JB.”

2. During the course of hearing, arguments were made by Shri M.M. Golvala, Authorised Representative (AR) on behalf of the Assessee and by Shri B.S. Bist, Departmental Representative (DR) on behalf of the Revenue.

3. During the course of hearing ground nos. 6, 7 & 8 were not pressed by the Ld. Counsel of the assessee and therefore, these are dismissed.

4. Ground Nos.1: In this ground, the assessee had contested the action of lower authorities in making disallowance of interest u/s 14A read with Rule 8D(2)(ii) amounting to Rs.21,16,000/-. During the course of hearing it was submitted by the Ld. Counsel that own funds are to the tune of Rs.307.53 crores approximately whereas investment made in tax free securities amounting to Rs.55.51 crores. Therefore, no disallowance of interest could have been made as per law and facts. It was further submitted that Hon'ble ITAT in assessee's own case in A.Y. 2007-08 deleted the disallowance for similar reasons. The reliance was also placed upon the recent judgment of Hon'ble Bombay High Court in the case of HDFC Bank v. DCIT 383 ITR 529.

4.1. Per contra, Ld. DR relied upon the orders of the lower authorities.

4.2. We have gone through the orders passed by the lower authorities as well as order of the Tribunal for A.Y. 2007-08. It is noted from the perusal of assessee's Balance Sheet dt 31st March 2002 that own funds of the assessee were aggregating to Rs. 307.53 crores where investment in tax free securities was to the tune of Rs.55.51 crores only. Thus, own funds of the assessee are in excess of investments. The identical situations had come up before the Tribunal in assessee's own case in A.Y. 2007-08, wherein vide its order 25.05.2016 in ITA No.1319/M/11 dated 25.5.2016), the Tribunal deleted the

disallowance of interest made by the AO u/s 14A, with following observations:

“6. We heard the parties on this issue. The assessee has demonstrated that own funds available with it is more than the investment made hence there is no requirement of making any disallowance out of interest expenditure. The view taken by the assessee is supported by the decision of Hon'ble High Court rendered in the case of CIT Vs. HDFC Bank Ltd. (366 ITR 505). Further the assessee has made fresh investment in two mutual funds and most of the shares have been brought forward from the earlier year. Under these set of facts, we are of the view that the disallowance u/s. 14A may be restricted to 2% of the dividend income earned by the assessee as held in the case of Godrej Agrovet Ltd. (ITA no. 934 of 2011 dated 8.1.2013) by Hon'ble Bombay High Court. The order of learned CIT(A) stands modified accordingly. We order accordingly.”

4.3. It is further brought to our notice that Hon'ble Bombay High Court in the recent judgment in the case of HDFC Bank v. DCIT 383 ITR 529 (Bom) has also deleted the disallowance of interest in case own funds of the assessee are more than the amount of investment made in tax free securities. Ld. DR did not controvert these facts and aforesaid legal position. Therefore, respectfully following the Tribunal for A.Y. 2007-08 as well as order of Bombay High Court, the disallowance of interest u/s 14A for Rs.2,11,000/- is hereby deleted. This ground is allowed.

5. Ground No.2 to 5 : In these grounds, the assessee has challenged the action of lower authorities in making disallowance out of administrative expenses u/s 14A read with rule 8D(2)(iii) to the tune of Rs.21,80,947/-. During the course of hearing, it was submitted by the Ld. Counsel that it had

made suo motto disallowance of Rs.49,763/-. The amount was worked out by the assessee on the basis of salary paid by the assessee to its employee who was looking after investments. But, the AO without recording any reasons as to why the working submitted by the assessee was incorrect, increased the amount of disallowance by computing the same at 0.5% of average value of investments which amounted to Rs.21,80,947/-. It was submitted that since AO did not give proper reasoning for increasing the disallowance, therefore, the disallowance should be deleted. An alternative submissions was made by the Ld. Counsel that invoking of Rule 8D(2)(iii) is not mandatory. The disallowance can be worked out on a reasonable basis, keeping in view activities of the assessee carried out in making investments and expenses incurred thereon and it is not necessary that 0.5% of the average value investment should be mandatorily disallowed. He also placed reliance on the judgment of Kolkata Bench of the Tribunal in the case of Allahabad Bank v. ACIT (ITA No.119/Kol/2012 dated 1.06.2016). In response to our query with regard to the disallowance sustained by the Tribunal in A.Y. 2007-08 @ 2% of the dividend income, it was submitted by the Ld. Counsel that in the impugned year no major expenses have been incurred therefore disallowance cannot be made of that magnitude.

5.1. Per contra, Ld. DR relied upon the order the Ld. CIT(A) and submitted that since decision of the Tribunal is being followed for A.Y. 2007-08 with regard to interest, therefore, the same should be followed with regard to administrative

expenses also and accordingly 2% of the dividend received during the year may be disallowed on account of administrative expenses.

5.2. We have gone through the orders of the lower authorities as well as judgment of the Tribunal for A.Y. 2007-08 and also judgment of Kolkata Bench of the Tribunal in the case of Allahabad Bank v. ACIT (ITA No.119/Kol/2012 dated 1.06.2016). In our view, since the Tribunal in assessee's own case has already held that 2% of the dividend income earned by the assessee in the given facts of this case would be reasonable disallowance, therefore, respectfully following the order of the Tribunal, we direct the AO to make disallowance @ 2% of the dividend income received by the assessee during the year under consideration, and the balance disallowance should be deleted. These grounds may be treated as partly allowed.

6. In the result, the appeal as may be treated as partly allowed.

Order pronounced in the open court on 10th October, 2016

Sd/-
(Sanjay Garg)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 19/10/2016

Patel, P.S./नि.स.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai