

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “डी” मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**

**BEFORE S/SHRI B.R.BASKARAN, AM AND AMARJIT SINGH, JM**

आयकर अपील सं./I.T.A. No.7242 and 7243/Mum/2011  
(निर्धारण वर्ष / Assessment Years: 2007-08 and 2008-09)

Mr.Rajat Indulal Doshi, 1-E, 1 <sup>st</sup> floor, Dil Pazir Bhulabhai Desai road, Warden Road, Mumbai-400026	<b>बनाम/</b> Vs.	The Asstt. Commissioner of Income Tax, Circle No.16(1), Matru Mandir, Mumbai-400007.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN. :AABPD9790M

अपीलार्थी ओर से / Appellant by	Shri Bhupendra Shah
प्रत्यर्थी की ओर से/Revenue by	Shri S K Mishra

सुनवाई की तारीख / Date of Hearing : 8.9.2015  
घोषणा की तारीख /Date of Pronouncement: 7.10.2015

**आदेश / O R D E R**

**Per B R Baskaran, AM:**

Both the appeals filed by the assessee are directed against the separate orders passed by Ld CIT(A)-27, Mumbai for assessment years 2007-08 and 2008-09. Both the appeals were heard together and hence they are being disposed of by this common order, for the sake of convenience.

2. The solitary issue urged in both the appeals relate to the disallowance made u/s 14A of the Act.

3. The facts are that assessee is an individual and has earned exempted income in the form of dividend and long term capital gains. The AO computed the disallowance in both the years u/s 14A of the Act by

applying Rule 8D of IT rules. In the appellate proceedings, the Ld CIT(A) held that the provisions of Rule 8D shall not apply to AY 2007-08. However, he directed the AO to compute the interest disallowance in proportion to loan funds to total funds. In AY 2008-09, he upheld the disallowance made by the AO.

4. The contention of the assessee before us is that the assessee is possessing sufficient interest free funds to cover the investments and hence there is no requirement to make any disallowance out of interest expenditure as per the decision of the Hon'ble jurisdictional Mumbai High Court in the case of Reliance Utilities and power ltd (331 ITR 340). The Ld A.R also placed reliance on the decision rendered in the case of Hero Cycles (323 ITR 518).

5. On the contrary, the Ld D.R submitted that the assessee has not established one to one nexus between the interest bearing funds and the investments made.

6. We have heard rival contentions and perused the record. There is no dispute with regard to the fact that the provisions of Rule 8D shall not be applicable for AY 2007-08 in view of the decision of Hon'ble jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Ltd (328 ITR 81). However, it is submitted that the Ld CIT(A) has followed the same methodology as prescribed in Rule 8D for computing the interest disallowance for AY 2007-08. However, the main contention of the assessee is that there is no requirement to make any disallowance out of interest expenditure, since the interest free funds are far in excess of the investments made. In this regard, the assessee has placed reliance on the decision of jurisdictional High Court in the case of Reliance Utilities and power Ltd (supra). We notice that the tax authorities have not examined this contention of the assessee with reference to the Balance sheet and

funds position of the assessee. Hence, in our view, this issue requires fresh examination in both the years by duly considering the contentions of the assessee cited above. Accordingly, we set aside the order passed by Ld CIT(A) on this issue in both the years and restore them to the file of the assessing officer with the direction to examine this issue in accordance with the decision rendered by the jurisdictional High Court in the case of Reliance utilities and power Ltd (supra).

7. In the result, both the appeals filed by the assessee are treated as allowed for statistical purposes.

Pronounced accordingly on 7th Oct, 2015.

घोषणा खुले न्यायालय में दिनांक: 7th Oct, 2015 को की गई ।

**Sd**

**(AMARJIT SINGH)  
JUDICIAL MEMBER**

**sd**

**( B.R. BASKARAN)  
ACCOUNTANT MEMBER**

मुंबई Mumbai: 7th Oct, 2015.

व.नि.स./ SRL , 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)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

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