

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA NO. 6574/MUM/2013
(Assessment Year : 2010-11)

MCX Stock Exchange Limited
2nd floor, Exchange Square,
CTS No. 255, Suren Road,
Chakala, Mumbai 400 093.

Vs DCIT-8(2), Mumbai
(Respondent)

PAN : AAFCM6924F (Appellant)

Appellant by : Shri Nimesh Bhimani
Respondent by : Rajeshwari Motwani

Date of Hearing : 05/05/2016
Date of Pronouncement : 05/05/2016

ORDER

PER AMIT SHUKLA, JM :

The aforesaid appeal has been filed by the assessee against the impugned order dated 01.08.2013 passed by CIT(A)-17, Mumbai for the quantum of assessment passed u/s. 143(3) of the Income Tax Act, 1961 for the Assessment Year 2010-11.

2. In the appeal, assessee has raised the following grounds :-

"1) *On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals)-17 had erred in confirming disallowance made by the Assessing Officer u/s. 14A r.w Rule 8D.*

2) *On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals)-17 erred in not considering various Judicial Pronouncements of various tribunals and High Courts cited & directly applicable in the case of the appellant wherein it was held that 1% or less of exempt income is reasonable disallowance u/s 14A under the given circumstances.*

3) *On the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals)-17 has erred in stating that the appellant was not able to show from its books of accounts that expenses are allocated on some genuine and creditable basis especially when the appellant had disallowed on scientific basis u/s 14A of Rs.532007/- and detailed working was produced before Assessing Officer as well as CIT(A) and no infirmity was observed in the quantum of expenses disallowed or method of working out such disallowance.*

4) *The appellant prays that:*

i) Addition made u/r 8D may be deleted and amount disallowed u/s. 14A be allowed;

ii) Alternatively disallowance u/s 14A r.w. Rule 8D be restricted to 1% of exempt income.

iii) Any other relief your honours may deem fit."

3. The brief facts are that in the computation of income the assessee has shown dividend income from investment of Rs.3,13,66,224/- which was claimed as exempt. In response to the show cause notice as to why disallowance u/s. 14A r.w Rule 8D should not be made, the assessee submitted its computation of disallowance u/s. 14A which aggregated to Rs.5,32,007/- which was mostly on account of administrative expenses, details of which are as under :

| <i>Sr. No.</i> | <i>Particulars</i> | <i>Amount in Rs.</i> | <i>Remarks</i> |
|----------------|---|----------------------|--|
| 1 | <i>Rent</i> | <i>31,104</i> | <i>On the basis of rent paid for area allocated to treasury department</i> |
| 2 | <i>Salary</i> | <i>310,212</i> | <i>On the basis of salary paid to person working for treasury department</i> |
| 3 | <i>Travelling & Conveyance Expenses</i> | <i>1,17,094</i> | <i>On the basis of expenses apportion to treasury department</i> |
| 4 | <i>Communication expenses</i> | <i>51,355</i> | <i>-- do --</i> |
| 5 | <i>Printing & Stationary expenses</i> | <i>19,759</i> | <i>-- do --</i> |
| 6 | <i>Xerox charges</i> | <i>2,483</i> | <i>-- do --</i> |
| | <i>Total</i> | <i>5,32,007</i> | |

It was further submitted that the company did not have any borrowed funds and all the investments were made out of its own funds. Therefore, there was no interest expense debited to the Profit & Loss account. The assessee's detailed submissions have been incorporated by the Assessing Officer from pages 2 to 4 of the assessment order. However, the Assessing Officer rejected the assessee's contention and computation of disallowance made by the assessee. Since there was no direct expense relating to earning of exempt income and also no interest expenditure, therefore, Assessing Officer proceeded to disallow indirect expenditure under Rule 8D(2)(iii). He also referred to the decision of the Hon'ble Bombay High Court in the case of *Godrej Boyce Mfg. Co. vs. DCIT* reported in *328 ITR 81* and also the Special Bench decision of ITAT, Delhi Bench in the case of *Chem Invest Ltd. vs. ITO*, *317 ITR 86 (AT)*, and accordingly, disallowed the indirect expenditure of Rs.35,25,158/- after taking 0.5% of the average value of investments. Since the assessee itself has disallowed Rs.5,32,007/-, the balance amount of Rs.29,93,151/- was added back to the income

of the assessee. The Ld. CIT(A) too has confirmed the said disallowance.

4. Before us, the Ld. Counsel submitted that out of the total investments made, sum of Rs. 12,75,00,000/- was made in the subsidiary company as a strategic investment and, therefore, same could not have been taken into computation of disallowance because it was for business consideration. Further, the Assessing Officer has not given his 'satisfaction' as to how the disallowance made by the assessee was unreasonable and not in accordance with the expenses debited vis-à-vis earning of the exempt income. Further, the assessee has own surplus funds, therefore, the disallowance made by the Assessing Officer is too high and excessive.

5. On the other hand, the Ld. DR submitted that the Assessing Officer has categorically rejected the assessee's working and has come to a conclusion that formula prescribed under Rule 8D is clearly attracted and accordingly, he has worked out the disallowance of indirect expenses @ 0.5% of the average value of investments which should be sustained.

6. After considering the rival submissions and on perusal of the relevant findings given in the impugned order, we find that the sole dispute is with regard to disallowance of indirect expenses under Rule 8D(2)(iii) which has been worked out by taking 0.5% of the average value of investments. Before us, it has been pointed out that so far as investments in the subsidiary company is concerned, they have been made for acquiring controlling interest and are in the nature of strategic investment. Once that is so, then, the investments made in

the subsidiary company should be excluded from the working of average value of investments. As regards the other contentions raised by the Ld. Counsel that assessee had surplus funds, same are not relevant for the purpose of Rule 8D(2)(iii). Accordingly, we direct the Assessing Officer to exclude the investments made in the subsidiary company and work out the average value of investments with regard to the investments and compute the disallowance under sub-clause (iii) of Rule 8D(2). With this direction, the grounds raised by the assessee are treated as partly allowed.

7. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 5th May, 2016.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date : 5th May, 2016

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "B" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai