

**आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'बी', मुंबई ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI**  
**BEFORE SHRI R.C.SHARMA, AM**  
**&**  
**SHRI SANDEEP GOSAIN, JM**

आयकर अपील सं./ITA No.4544/Mum/2014

(निर्धारण वर्ष / Assessment Year :2010-2011

Smt. Nirupama P. Shah, 60-B, Dolat, East West Road No.2, JVPD, Vile Parle (W), Mumbai-400049	Vs.	ACIT-21(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>ABCPS 9838 F</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Nilkanth Khandelwal  
राजस्व की ओर से /Revenue by : Shri Randhir Gupta  
सुनवाई की तारीख / Date of Hearing : **28/07/2016**  
घोषणा की तारीख/Date of Pronouncement **29/07/2016**

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the assessee against the order of CIT(A)-Mumbai, for the assessment year 2010-2011.

2. In this appeal, the assessee is aggrieved for disallowance made u/s.14A read with rule 8D.

3. At the outset, Id. AR placed on record order of the Tribunal in case of Shri Harendra D Shah, ITA No.4367/Mum/2014, order dated 7-1-2016, another family member for the A.Y.2010-2011, wherein exactly similar issue has been decided by the Tribunal after having following observations :-

*"2. We heard the parties and perused the record. The facts relating to the issue are that the assessee is engaged in the business of trading in derivatives, equity and commodities besides derives income from salary received from Dolat Investment Ltd and rental*

income. The assessee disclosed a dividend income of Rs.2000/- during the year under consideration and claimed the same as exempt. However, the assessee did not make any disallowance u/s 14A of the Act. The assessee also declared Short Term Capital Gains (STCG) of Rs.12.10 lakhs. During the course of assessment proceedings, he agreed with the AO that the STCG may also be assessed as business income, meaning thereby the assessee accepted that he is a trader in shares and securities.

3. Before the AO, the assessee submitted that no disallowance u/s 14A is required to be made, since average value of investment is ZERO. However, the AO noticed that the assessee has computed the average value of investment by considering only those investments on which the assessee had received dividend. Further, the Balance sheet filed by the assessee disclosed that the assessee is holding investments to the tune of Rs.7.20 crores. Accordingly, the AO held that the disallowance u/s 14A is required to be computed as per Rule 8D of the IT Rules. Accordingly, the AO computed the disallowance as per Rule 8D at Rs.6,96,586/- and assessed the same. The Id. CIT(A) confirmed the addition made by the AO and hence, the assessee has filed this appeal before us.

4. The Id. AR submitted that the AO has not recorded the satisfaction required u/s 14A before rejecting the claim made by the assessee. However, on a perusal of the assessment order, we notice that the AO has recorded his satisfaction in para 5.4 of the assessment order. Accordingly, we reject the above said contention of the assessee.

5. The Id. AR further submitted that the assessee has made 99.35% of investment only in group companies and hence they fall in the category of strategic investment. By drawing support from the decision rendered by the Co-ordinate Bench of the Mumbai Bench of the Tribunal in the case of J M Financial Limited V/s ACIT in ITA No.4521/Mum/2012, the Id AR submitted that no disallowance is called for u/s 14A, in the case of strategic investment since the purpose of investment is to hold controlling stake in the group concerns and not for earning any dividend income. The Id. AR submitted that an identical issue was expressed by the Co-ordinate Bench of Tribunal in the case of Garware Wall Ropes Ltd V/s CIT (2014) 65 SOT 86(Mumbai). The Id. AR further submitted that the assessee is dealing in trading in derivatives, equity and commodities and hence the investment held by the assessee forms part of his stock-in-trade. Accordingly, by placing the reliance on the decision of Hon'ble jurisdictional Bombay High Court in the case of CIT vs. India Advantage Securities Ltd, the Id.AR submitted that no disallowance u/s 14A of the Act is called for. The Id.AR further submitted that the assessee has received dividend of Rs.2000/- only and accordingly, the disallowance u/s 14A, if any, should not exceed the amount of Rs.2000/-.

6. On the contrary, the Id. DR placed strong reliance on the order of Id.CIT(A).

7. The assessee has furnished the statement of investment made in shares of various companies. We notice that the total investment

held in shares by the assessee is Rs.6.23 crores, out of which, the investment made in group companies stand at Rs.6.21 crores. Thus, we notice that the assessee has made investment of Rs.2 lakhs only in other companies. Hence, there is merit in the contention of the assessee that 99.35% of investment have been made in the group companies as strategic investment to retain control over these companies. Further, we notice that the assessee is having its own funds of about 4.27 crores as on at the yearend as against the total investment of Rs.6.23 crores in shares. Hence, the investment of Rs.2.00 lakhs made in other companies is sufficiently covered by the own funds. Further, the assessee earned dividend income of Rs.2000/- only during the year under consideration. Hence, by following various decisions relied upon by the assessee, the disallowance out of interest expenditure is not called for.

8. Under these set of facts and on a conspectus of the matter, we are of the view that the disallowance made u/s 14A should be restricted to the dividend income of Rs.2000/-. Accordingly, we set aside the order of Id. CIT(A) and direct the AO to restrict the disallowance to Rs.2000/-.

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

As the facts and circumstances in the instant case are *pari materia*, respectfully following the order of the Tribunal, we direct the AO to restrict the disallowance under rule 8D to the extent of actual amount of dividend so received during the year under consideration.

**4. In the result, appeal of the assessee is allowed in part.**

Order pronounced in the open court on this 29/07/2016.

**Sd/-**  
**(SANDEEP GOSAIN)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 03/08/2016

प्र.कु.मि/pkm, नि.स/ 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), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई /  
ITAT, Mumbai

सत्यापित प्रति //True Copy//