

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI D. KARUNAKARA RAO, A.M.  
AND SHRI AMARJIT SINGH, J.M.

आयकर अपील सं./I.T.A. No.4126/Mum/2014  
(निर्धारण वर्ष / Assessment Year: 2010-11)

Deputy Commissioner of Income Tax (OSD)-2(3), Office of the DCIT (OSD)-2(3), R.No.552, Ayakar Bhavan, M.K. Road, Mumbai- 400 020.	<b>बनाम/</b> Vs.	M/s. Pharmed Limited, Pharmed House, 141,Walchand Hirachand Marg, Mumbai-400001.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACP 2191A		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Durga Dutt
प्रत्यर्थी की ओर से/Respondent by	:	Shri Anuj Kisnadwala

सुनवाई की तारीख / Date of Hearing	:	07/12/2015
घोषणा की तारीख / Date of Pronouncement	:	11/12/15

आदेश / ORDER

PER D. KARUNAKARA RAO, A. M.:

This is an Appeal by the Revenue against the Order by the Commissioner of Income Tax (Appeals)-5, Mumbai dated 20.03.2014. The whole issue raised in this appeal relates to disallowance of Rs.11,93,687/- u/s 14A of the Act r.w.r.8D. The grounds raised are as under.

1. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in deleting the disallowance of Rs.11,93,687/- made by the AO u/s 14A r.w.r.8D without appreciating that the assessee failed to establish the nexus between the funds invested in assets yielding tax-free income and the own funds.*
  
2. At the outset, in connection with the above ground the ld. Counsel for the assessee submitted that the CIT(A) attended to the above issue and allowed the claim of the assessee after relying on the order of the Tribunal in the assessee's own case for the assessment year 2008-09. He brought our attention to paragraph 4.2 of the order of the Tribunal where there is the reference to Tribunal orders dated 31-12-2012 in the Appeal (ITA No. 6569/Mum/11). It also brought to our notice that the year under consideration, similar issue was examined by the CIT(A) and held that the assessee has got its own funds ( Share Capital plus reserves and surplus) to the tune of Rs.14.37 crores. He also mentioned the total investment in shares is only Rs.9.03 crores. After considering the above, CIT(A) held no disallowance is called for allocating any proportionate interest. Accordingly, he deleted the addition of Rs. 11,93,687/- This amount constitute the balance amount after considering the assessee's *suo motto* disallowance amounting to Rs. 4,51,712/-. After hearing both the parties, we perused the said paragraph 4.2 of the order of the CIT(A) and find the same reads as under.

*“Though these grounds, the assessee has challenged the disallowance (of Rs.11,93,687/-) u/s 14A r.w.r. 8D. The AO noted that assessee had earned dividend (exempted income) of Rs.4,70,674/- and had made suo moto disallowance of Rs. 4,51,712/- u/s 14A (computed at 0.5% of average investment as per clause (iii) of Rule 8D(2); and that in spite of the interest*

*expenses of (Rs.21,51,545/-) debited in the P&L A/c, no allocation/disallowance thereof was made as per clause (ii) of Rule 8D(2). Accordingly, AO computed the disallowance of Rs.16,45,399/- and after reducing the disallowance made by the assessee suo motto (Rs.4,51,712/-), he added the amount of Rs.11,93,687/- into the total income of the assessee. In the context, it was submitted that identical issue had arisen in 2008-09 and the CIT(A) had confirmed the disallowance but the Hon'ble ITAT vide its order dated 31.12.2012 in ITA No6569/Mum/2011, had restored the matter back to the file of the AO with a direction to verify from the Balance Sheet of the assessee whether assessee had sufficient own funds to make such investments and then after being satisfied, not to make any disallowance as regards to the interest cost. As regards to the other expenditure, the Hon'ble ITAT directed the assessee to furnish detailed allocation of expenses before the AO and the AO was directed to verify the details as per provision of Sec 14A r.w.r.8D. In the context, for the year under consideration it is noted that share capital and reserves and surplus amounted at Rs.14.37 crores whereas the investment remained at Rs.9.03 crores. It is also noted that the gross block of fixed assets (before depreciation ) is shown at Rs.6.60 crores and thus this is a case where the investment together with the gross block of fixed assets has been more or less equal to the available funds in the form of share capital and reserve. Therefore, it is held that no disallowance is called for (for allocating proportionate interest) as per clause (iii) of Rule 8D(2). Further, the assessee has on its own made disallowance per clause (ii) of Rule 8D(2). Therefore, no further addition u/s 14A was called for. Accordingly, the addition of Rs.11,93,687/- on account of disallowance made u/s 14A is deleted.”*

3. From the above it is evident the CIT(A) got into some confusion with regard to the disallowance of proportionate interest and mentioned “no disallowance called for ( for allocating of proportionate interest)” as per clause (iii) of Rule 8D. In our view, the same needs to be read as clause (ii) instead. Further, the CIT(A) has also committed the identical mistake when it comes to clause (ii) of Rule 8D. The CIT(A) directed to rectify the same and quantify the exact relief granted to assessee after granting the reasonable opportunity of

being heard before assessee. Accordingly, the ground raised by the Revenue is dismissed in principle.

In the result, appeal of the Revenue is dismissed protanto.

*Order pronounced in the open court on 11<sup>th</sup> December, 2015*

Sd/-  
(Amarjit Singh )  
न्यायिक सदस्य / Judicial Member  
मुंबई Mumbai; दिनांक Dated : 11.12.2015  
Ps. Ashwini Gajakosh

Sd/-  
(D. Karunakara RAO)  
लेखा सदस्य / Accountant Member

**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 - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

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