

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E, 'MUMBAI**

**BEFORE SHRI RAJENDRA, HON'BLE ACCOUNTANT MEMBER AND
SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER**

**ITA No. 508/MUM/2015
(Asst. Year : 2011-12)**

DCIT-5(2)(1),
Mumbai.

Vs.

M/s. India Nivesh Limited,
601/602 Sukhsagar,
N.S. Patkar Marg,
Girgaum Chowpatty,
Mumbai - 7.

(Appellant)

PAN : AABCI 6743 E
(Respondent)

Assessee by	:	Shri Ram Kumar Pugaliya - CA
Department By	:	Shri N. Sathya Moorthy - DR
Date of hearing	:	21/07/2016.
Date of pronouncement	:	19/10/2016.

ORDER

PER C.N. PRASAD, JUDICIAL MEMBER

This appeal is filed by the Revenue against the order of the Id.CIT(A)-9, Mumbai, dated 03/11/2014 for the Assessment Year 2011-12.

2. The only grievance of the Revenue in its appeal is that the Id.CIT(A) erred in deleting the disallowance made under section 14A read with Rule 8D of the IT Rules.

3. Brief facts of the case are that the Assessing Officer while completing the assessment, computed the disallowance under section

14A read with Rule 8D of the IT Rules at Rs. 1,33,45,224/- as against assessee's own disallowance of Rs. 1,34,090/-. Since the assessee itself has disallowed Rs. 1,34,090/-, he restricted the disallowance to Rs. 1,32,11,134/-.

4. On appeal, Id. CIT(A) following the order of the Tribunal in assessee's own case for the Assessment Year 2009-10, directed the Assessing Officer to re-work out the disallowance after excluding the old investments in subsidiary company as the assessee does not incur any administrative expenses to hold such investments.

5. The Departmental Representative placed reliance on the order of the Assessing Officer, whereas Authorized Representative of the assessee strongly placed reliance on the order of the Id. CIT(A).

6. We have heard the rival submissions and perused the orders of the authorities below. An identical issue has arisen before the Coordinate Bench of this Tribunal in assessee's own case for the Assessment Year 2010-11 in ITA No. 6600/MUM/2014 dated 23/09/2016, wherein following its earlier order in ITA No. 3692/MUM/2012 dated 13/08/2014 for the Assessment Year 2009-10, affirmed the order of the Id. CIT(A) in holding that while computing the disallowance under Rule 8D, investments made in subsidiary company should be excluded from investment. The Coordinate Bench held as under:-

"4. We have heard the arguments advanced by the learned representative of the parties and perused the record. Before discussing the matter of controversy further, it is necessary to advert the finding of the CIT(A) on this issue on record:-

"5.2. The only substantive issue in this appeal is against the disallowance made by the AO u/s.14A of I.T.Act. The AO has worked out the disallowance by applying Rule 80 of the I.T.Act,

whereas the appellant has suo moto disallowed only Rs.1,37,867/-, which was 20% of the dividend income earned by it. As regards the applicability of Rule 8D is concerned, in principle, I agree with the finding of the AO because in view of the decision of Hon'ble Bombay High Court In the case of Godrej & Boyce Ltd., disallowance has to be worked out under Rule 8D from the A.Y.2008-09 in the cases like the instant case, where due to common pool of funds and infrastructure, it is practically not possible to identify the exact amount of expenditure directly attributable to the earning of exempt income. However, I also agree to the contention of the appellant to the extent that under almost identical circumstances, the Hon 'ble ITAT Mumbai in the case of the appellant itself for A. Y .2009-10 has set aside the issue of disallowance u/s.14A with the specific observation that while calculating the proper disallowance under Rule 8D, the AO has to take into consideration the finding of ITA T Mumbai in the case of M/s. Garware Wall Ropes Ltd., wherein it was held that while working out the disallowance under Rule 8D, the investments made in subsidiary company has to be from the investments, because the appellant disallowance under Rule 8D by following the above referred direction of the Hon'ble ITAT for excluding the investment in subsidiary company. To this extent, the appeal is partly allowed."

5. On appraisal of the order, it is apparent on record that The matter of controversy has been decided on the basis of the assessee's own case for the A.Y.2009-10 by relying upon the case of ITAT Mumbai in the case of M/s.Garware Wall Ropes Ltd on the point of provision u/s.14A read with Rule 8D. The Assessing Officer has been directed to re-assess the expenditure incurred to earn the exempt income by excluding the investment made in the subsidiary company. It has been specifically directed that all the investments made in the subsidiary company has to be excluded from the investment because the appellant did not incur any administrative expenditure to hold such investment. Moreover the matter of controversy has been decided on the basis of the observation made in case of M/s. Garware Wall Ropes Ltd.(Supra). Nothing illegality and infirmity has been observed in the finding of the CIT(A) on record. The CIT(A) has passed the order judiciously and correctly which does not require to be interfere with at this appellate stage."

7. Respectfully following the said decision, we hold that there is no infirmity in the order passed by the Id. CIT(A) in giving direction to the Assessing Officer to exclude investments made in subsidiary companies while computing the disallowance under section 14A read with Rule 8D of IT Rules.

8. In the result, appeal of the Revenue stands dismissed.

Order Pronounced in the open Court on 19th October, 2016

Sd/-
(RAJENDRA)
Accountant Member

sd/-
(C.N. PRASAD)
Judicial Member

Dated : 19th Oct., 2016.

vr/-

Copy to:

1. *The Assessee.*
2. *The Revenue.*
3. *The CIT*
4. *The CIT(A)*
5. *The D.R.*
6. *Guard file.*

By order

//True Copy//

Assistant Registrar
I.T.A.T., Mumbai