

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “एक-सदस्य मामला” मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

**श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष**  
**BEFORE SHRI C.N. PRASAD, JM AND SHRI RAJESH KUMAR, AM**

ITA NO.4612/Mum/2016  
(निर्धारण वर्ष / Assessment Year: 2011-12)

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| Dy. Commissioner of Income Tax<br>4(1)(1),<br>Room No.640, 6th Floor,<br>Aayakar Bhavan,<br>M K Road,<br>Mumbai-400020 | <u>बनाम/</u><br>Vs. | M/s Crescent Finstock Ltd,<br>Kanta Terrace, 1 <sup>st</sup> floor,<br>533, Kaladevi Road,<br>Mumbai-400002 |
| स्थायी लेखा सं./जीआइआर सं./PAN : AAACC6420F  |                     |   |
| (अपीलार्थी /Appellant)   | :                   | (प्रत्यर्थी / Respondent)   |

|                                   |   |                    |
|-----------------------------------|---|--------------------|
| अपीलार्थी की ओर से / Appellant by | : | Smt.Beena Santosh  |
| प्रत्यर्थी की ओर से/Respondent by | : | Shri Dharmesh Shah |

|                                       |   |            |
|---------------------------------------|---|------------|
| सुनवाई की तारीख /Date of Hearing      | : | 26.12.2016 |
| घोषणा की तारीख /Date of Pronouncement | : | 29.12.2016 |

**आदेश / ORDER**

**PER RAJESH KUMAR, A. M:**

The Revenue is in appeal against the impugned order dated 16/03/2016 of the Id. First Appellate Authority, Mumbai for the assessment year 2011-12.

2. The first issue raised in this appeal is that the Id. CIT(A) has erred in not applying the provisions of sub-clause (c) of Clause (B) of sub-section

18 of Section 2 of the IT Act and thus erred in holding that the subsidiary company Double Dot Finance Ltd is a company in which public are substantially interested and thereby deemed dividend has not arisen in the hands of the assessee.

3. Facts of the case in brief are, during the course of assessment proceedings, the AO observed that the assessee company has borrowed a sum of Rs.27 lakhs from its subsidiary company namely Double Dot Finance Ltd (DFL). The AO found that the paid up share capital of DFL is Rs.17,51,26,600/- consisting of 17512660 equity shares of Rs.10 each out of which the assessee company held 1,04,77,727 shares which works out to 59.8% of the paid up share capital of DFL. Further, accumulated profits as on 31.3.2011 available with DFL amounted to Rs.11,10,37,662/-. The AO therefore concluded that since the assessee was holding share capital of more than 10% in the DFL, the provisions of section 2(22)(e) of the Act were applicable. Accordingly, issued show cause notice to the assessee as to why the provisions of section 2(22)(e) of the Act should not be invoked which was responded by the assessee vide letter dated 6.1.2014 stating that the DFL being a company in which the public are sufficiently interested and therefore the provisions of section 2(22)(e) of the Act were not applicable. The AO did not find reply of the assessee convincing and substantive and finally added a sum of Rs.27 lakhs in the total income of the assessee under deeming provision of section 2(22)( c )

of the Act in the hands of the assessee. During the first appellate proceedings, the Id.CIT(A) deleted the addition by observing and holding as under :

*"5.3. I have considered the stand of the AO as well as submission of the appellant. During the course of appellate proceeding the Ld. AR has drawn my attention to the fact that the Hon'ble IT AT, Mumbai in appellants own case for AY 2008-09 ITA No. 6955/MUM/2013 dated 1.5.2015 has decided the issue in favour of the appellant. The Ld. AR further filed copy of Asst Order dated 9/2/2015 in its own case for AY 2012-13 passed by Smt Jaba Basu, ITa 4(1)(1), Mumbai where the AO has not made out any disallowance u/s 2(22)(e) of the I.T.Act, 1961. In view, of these facts the issue is to be treated as covered in favour of appellant in AY 2011-12. Accordingly the AO is directed to delete the above amount added u/ s 2(22)(e) of the LT. Act, 1961.*

*In the result, this ground of appeal is Allowed."*

4. Before us the Id.AR submitted that the issue raised in the present appeal is covered in favour of the assessee in its own case by the decision of Co-ordinate Bench of the Tribunal in ITA No.1546/Mum/2012 dated 18.7.2014 for the assessment year 2008-09 and in ITA No.6955/Mum/2013 for the assessment year 2010-11, dated 1.5.2015. The Id. AR submitted before us that in view of the aforesaid decision of the Co-ordinate Bench of the Tribunal in assessee's favour, the appeal filed by the revenue deserves to be dismissed.

5. The Id. DR fairly agreed with the contentions of the Id.AR on this issue.

6. After hearing both the parties and on perusal of the records we find that the issue raised by the revenue in ground no.1 stands covered in favour of the assessee and against the revenue. For the sake of brevity, we reproduce the relevant finding of the decision as under :

"4. We have heard both the parties and perused the orders of the Revenue Authorities in general and order of the CIT (A) in particular. On perusal of the said order of the CIT (A), we find the said para 4.8 is relevant in this regard and the same reads as under:

"4.8. I have considered the contention of the AO as well as the Ld AR. From the above discussion, the following points emerge.

- i. The subsidiary company viz Doubledot Finance Limited is not a Private Limited Company but is a company in which public is substantially interest as more than 51% (58.53%) of the Equity share capital of Doubledot Finance Limited has been held unconditionally throughout the financial year by Crescent Finstock Limited (the appelland company).
- ii. Crescent Finstock Limited is a company listed on the Vadodara Stock Exchange.
- iii. Vadodara Stock Exchange is a recognized stock exchange (SEBI approved) for the purposes of the Income Tax Act.
- iv. The CBDT circular 372 of 1983 clearly stated that a subsidiary of a company which is a listed company or a wholly owned subsidiary of such subsidiary company referred to earlier are both "Companies in which the public are substantially interested.
- v. This view is roe than amply reinforced by the cases cited by the appelland and discussed earlier in the order.
- vi. It is not envisaged by law that only wholly owned subsidiary of a Listed Company shall be company in which the public are substantially interested.

- vii. If one were to carefully consider the totality of the provision as contained in section 2(18)(B), it is abundantly clear that the stipulation of "Wholly owned subsidiary" applies only to the Holding Company and not to the company in which the shares are held.
- viii. Section 2(18)(B) has also made a further distinction between subsidiary companies which are in the nature of Manufacturing Companies and Nonmanufacturing companies in order to qualify as a subsidiary it is sufficient that only 40% of the shares be held by the Holding Company whereas in the Non-manufacturing section it has to be not less than 50%."

5. Considering the above, we are of the opinion that the CIT (A) has rightly adjudicated the issue and it does not call for any interference. Accordingly, grounds raised by the Revenue are dismissed."

Respectfully following the above decision of the Co-ordinate Bench, ground no.1 raised by the revenue is dismissed.

7. The issue raised in grounds no.2 is against the direction of Id.CIT(A) to AO to delete the disallowance of Rs.15,59,189/- made under rule 8D(2)(iii) of the Income Tax Rules, 1962. During the course of assessment proceedings, the AO noticed that the assessee has earned a dividend of Rs.45,604/- and claimed the same as exempt under section 10(34) of the Act, whereas there was no corresponding disallowance qua expenses attributable to earning of the said income. In response to the query raised by the AO, the assessee vide letter dated 6.1.2014 submitted that no expenses were incurred for earning exempt income during the relevant assessment year which was found by the AO to be not convincing and

after rejecting the same calculated the disallowance of Rs.22,28,038/- comprising of Rs.7,37,482/- under rule 8D(2)(ii) and Rs.15,59,189/- under rule 8D(2)(iii) and added the same to the total income of the Assessee. The FAA deleted the disallowance as made under rule 8D(2)(iii) of Rs.15,59,189/- while sustaining the assessment under rule 8D(2)(ii) by observing and holding as under :

*" Since the appellant has not made any suo-motto disallowance, therefore, keeping in view of the above discussions, disallowance made by the AO u/s.14A r.w. Rule8D(2)(ii) is upheld.*

*As regards disallowance under Rule 8D(2) (iii) the AO has made disallowance of Rs 15,59,189/-, the appellant has filed copy of from Hon'ble IT AT in its own case for AY 2009-10 ITA no.5179/Mum/2011-12 order dated 14/8/2014 wherein the Hon'ble ITAT vide para 8 & 9 has decided the issue in favour of the appellant. Therefore, as of now, respectfully following the decision of Hon'ble ITAT in appellants own case, the issue of disallowance under rule 8D(2)(iii) is treated as covered in favour of appellant in the present facts of the case. Accordingly, AO is directed to delete the amount of Rs.15,59,189/-"*

Aggrieved by the order of the Id. CIT(A), the revenue is in appeal before this Tribunal. The assessee has not challenged the confirmation of disallowance made under rule 8D(2)(ii).

8. At the time of hearing the Id.AR vehemently submitted before us that the issue is now covered in favour of the assessee by the decision of the Co-ordinate Bench of the Tribunal in ITA No.5175/Mum/2012 (AY-2009-10) dated 14.8.2014. The Id. AR submitted that the issue in hand

and the relied upon by the assessee are identical and therefore ground raised by the revenue be dismissed.

9. On the contrary, the Id.DR relied on the order of the AO.

10. We have carefully considered the rival contentions and perused the material placed before us including the orders of authorities below and cases relied upon by the assessee. We find that the issue raised by the revenue is now decided in favour of the assessee by the co-ordinate bench of the Tribunal in ITA No.5175/Mum/2012 dated 14.8.2014 for the assessment year 2009-10, wherein the Tribunal vide para 8 at pages 11 and 12 of the paper books has decided the issue as under :

*“8. We have heard the rival submission and also perused the relevant record. Before us, the only dispute with regard to disallowance under section 14A, is administrative expenses which has been made after taking 0.5% of the average investment value, as envisaged in rule 8D. The learned counsel has pointed out that the major investment is on account of equity shares in subsidiary company which too was devolved on demerger of the said company in the earlier years. Insofar as the mutual fund are concerned, as on 31st March 2009, the mutual funds were not appearing in the Balance Sheet. Thus, no effort was made or any time was consumed for making any analysis of the investment which has resulted into exempt income of ` 26,310, by way of dividend. The assessee has already disallowed the sum of ` 1,200 on account of demat charges which is sufficient and directly attributable to the exempt income. Under these facts and circumstances, we are of the opinion that simply relying on rule 8D, for the purpose of disallowance, cannot be held to be applicable, because the Assessing Officer having regard to the accounts of the assessee as well as the nature of expenses incurred which can be said to be attributable for the earning of exempt income, has not pointed out what are the expenses which could be said to be have been incurred or attributable on the*

*administrative expenses. Only when the Assessing Officer is not satisfied with the correctness of the claim of the assessee, he can proceed to apply rule 8D. In this case, such a requirement has not been fulfilled by the Assessing Officer. Accordingly, we do not find any merit in the disallowance made by the Assessing Officer under rule 8D and accordingly, the disallowance made by the Assessing Officer under rule 8D and confirmed by the learned Commissioner (Appeals) stands deleted. This ground raised by the assessee is thus allowed"*

11. From the above, we find that the facts of the cases before are identical to one as adjudicated by the Tribunal and therefore, respectfully following the same we are inclined to dismiss the ground no.2 of the revenue's appeal by upholding the order of Id.CIT(A).

12. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 29th Dec,2016

Sd

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**(C.N. Prasad)**

**(Rajesh Kumar)**

**न्यायिक सदस्य / Judicial Member**

**लेखा सदस्य / Accountant Member**

मुंबई Mumbai; दिनांक Dated :29.12.2016

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)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

True copy

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