

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

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

**ITA No.3872/M/2014
Assessment Year: 2010-11**

The DCIT/ACIT, Central Circle-37, Room No.11, Aayakar Bhavan, M.K. Marg, Mumbai - 400020	Vs.	Shri Rakeshkumar Wadhwan, Wadhwan House, Union Park, Road No.5, Near Shatranj Hotel, Bandra(W), Mumbai-400 050 PAN: AAEPW7656G
(Appellant)		(Respondent)

**ITA No.3918/M/2014
Assessment Year: 2010-11**

Shri Rakeshkumar Wadhawan, Wadhawan House, Union Park, Road No.5, Near Shatranj Hotel, Bandra(W), Mumbai-400 050 PAN: AAEPW7656G	Vs.	The DCIT/ACIT, Central Circle-37, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Dr. K. Shivram, A.R.
Revenue by : Shri B.S. Bist, D.R.

Date of Hearing : 29.06.2016
Date of Pronouncement : 09.12.2016

ORDER

Per Sanjay Garg, Judicial Member:

The above titled cross appeals one by the assessee and the other by the Revenue are against the order dated 14.03.2014 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The sole issue raised by both the parties through their respective appeal is in relation to the disallowance of expenditure under section 14A of the Act

in relation to the tax exempt dividend income earned by the assessee during the year.

3. The brief facts of the case are that the assessee is an individual dealing in real estate and shares. The assessee during the year earned dividend income of Rs.1,55,56,132/- and claimed the same as exempt. The assessee did not make any disallowance as regards the expenditure incurred in relation to the earning of the above said tax exempt dividend income. The assessee claimed that no expenditure has been incurred during the year for earning of the above tax income as the same was earned on investments made in earlier years.

4. The Assessing Officer (hereinafter referred to as the AO) however rejected the contentions of the assessee and proceeded to make disallowance under section 14A read with rule 8D of the Income Tax Rules and computed the disallowance at Rs.1,33,30,888/- and added back the same into the income of the assessee. Being aggrieved by the above disallowance/addition, assessee preferred appeal before the Ld. CIT(A). The Ld. CIT(A) after considering the facts and circumstances of the case and the evidences on the file observed that the expenditure claimed by the assessee was relatable to the land development business of the assessee. He held that since there was no proximate relationship between the expenditure and the dividend income earned by the assessee, hence rule 8D was not applicable to the facts of the case of the assessee. He, however, observed that looking at the substantial amount of exempt income earned by the assessee, a certain amount of time and effort was indeed required for the management of the portfolios. He, therefore, considering the peculiar facts and circumstances of the case held that some reasonable expenditure might have been incurred by the assessee for management of such investments. He accordingly made an adhoc disallowance at the rate of 25% of the dividend income.

5. The Revenue has come in appeal before us agitating the action of the Ld. CIT(A) in making adhoc disallowance at the rate of 25% of the dividend

income as against the disallowance made by the AO as per the provisions of rule 8D of the Income Tax Rules. On the other hand, the assessee has preferred the appeal agitating the adhoc disallowance of 25% pleading that no disallowance under section 14A is attracted in this case.

6. We have heard the rival contentions and have also gone through the records. Admittedly, the AO has not pointed out as to which part of the expenses can be said to be directly or indirectly attributable to the dividend income earned by the assessee. The Ld. CIT(A), therefore, held that the satisfaction recorded by the AO was not objective satisfaction while rejecting the accounts of the assessee. However, the Ld. CIT(A) has taken the note of fact that certain time and effort might have been spent for management of the investments of the assessee. He, looking into the overall facts and circumstances of the case, has made an adhoc disallowance at the rate of 25% of the dividend income. In our view, the adhoc disallowance made by the Ld. CIT(A) is on the higher side. The assessee has specifically pleaded that no investment has been made during the year rather the dividend income pertained to the investments made during earlier years. Considering the overall facts and circumstances of the case, we restrict the disallowance to the extent of 8% of the dividend income earned by the assessee.

Before parting with the order, it is made clear that our restricting of the above adhoc disallowance will not hold any binding precedent in relation to any other case as the adhoc disallowance in this case is restricted as above owing to the peculiar circumstances of this case only.

7. With the above observations, the appeal of the Revenue is treated as dismissed whereas the appeal of the assessee is treated as partly allowed.

Order pronounced in the open court on 09.12.2016.

Sd/-
(Ashwani Taneja)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 09.12.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.