

IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” Bench, Mumbai  
Before Shri B.R. Baskaran (AM)& Ramlal Negi (JM)

I.T.A. No. 3211/Mum/2013  
(Assessment Year 2009-10)

Shearson Investment & Trading Co. Pvt. Ltd. Industry House 159, Churchgate Reclamation Mumbai-400 020.	Vs.	DCIT 1(3) Aayakar Bhavan M.K.Road Mumbai-400 020.
(Appellant)		(Respondent)

PAN No.AABCS4653H

Assessee by	Smt. Arti Vissanji
Department by	Shri J. Saravanan
Date of Hearing	6.10.2016
Date of Pronouncement	19.10.2016

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 16.1.2013 passed by learned CIT(A)-2, Mumbai and it relates to A.Y. 2009-10.

2. The assessee is aggrieved by the decision rendered by learned CIT(A) on following issues :

- a) Disallowance made u/s. 14A of the Act
- b) Disallowance of legal expenses

3. The assessee is a NBFC company and is also dealing in shares and securities. The first issue relates to the disallowance made u/s. 14A of the Act. The assessee declared ₹ 56.01 lakhs as dividend income and claimed the same as exempt. The disallowed a sum of ₹ 1,11,514/- u/s. 14A of the Act. When the Assessing Officer asked for the basis of working out the disallowance, the assessee submitted that it has made disallowance of expenses in proportion to the dividend income to the total income. Hence the Assessing Officer proceeded

to compute the disallowance as per Rule 8D of the I.T. Rules. Accordingly he computed the disallowance u/r. 8D(2)(ii) of the rules of ₹ 1,31,20,421/- and u/r. 8D(2)(iii) at 0.5% of average value of the investment at ₹ 52,56,555/-, both aggregating to ₹ 1,83,76,976/- u/s. 14A of the Act.

4. Learned CIT(A) agreed with the Assessing Officer that the disallowance is required to be made as per Rule 8D. However he noticed that the Assessing Officer has not correctly worked out the value of tax free investment. Accordingly, he restored the matter to the file of the Assessing Officer with the direction to correctly compute the value of tax free investment and accordingly re-compute the disallowance u/s.14A of the Act.

5. Learned AR submitted that the interest free funds available with the assessee is more than the value of tax free investment and hence there is no requirement to make disallowance of interest expenditure u/r. 8D(2)(ii) of the Act, as per the decision of Hon'ble Bombay High Court in the case of HDFC Ltd. (366 ITR 505). She further submitted that investment shown in the books of account includes share application money, debentures, preference shares (0%) and jewellery. Learned AR submitted that these items cannot be considered as tax free investments and accordingly pleaded that they have to be excluded for the purpose of Rule 8D of the I.T. Rules. She submitted that the disallowance u/r. 8D(2)(iii) should be worked out by considering the investment, which yield exempt income.

6. On the contrary, learned Departmental Representative submitted that the assessee did not maintain separate books of account and hence the Assessing Officer applied provisions of Rule 8D of the I.T. Rules. Learned Departmental Representative further relied on the decision dated 3.7.2013 rendered by the Coordinate Bench in the case of Mr. Dadiba Pundole (ITA No. 423/Mum/2012) and submitted that the assessee has to show one to one nexus between interest free funds and investment.

7. We have heard the rival contentions on this issue. With regard to the disallowance made u/r. 8D(2)(ii) out of interest expenditure, the same is required to be made as per the decision rendered by Hon'ble Bombay High Court in the case of HDFC Ltd. (supra). The assessee has claimed that interest free fund available with it, is more than the value of investments and hence there is no requirement to make any disallowance out of interest expenditure. We find merit in this contention of the assessee. Accordingly, we set aside the order passed by learned CIT(A) on this issue and direct the Assessing Officer to examine the balance-sheet and work out the disallowance u/r 8D(2)(ii) in accordance with the decision rendered in the case of HDFC Ltd. (supra).

8. With regard to disallowance of expenses u/r. 8D(2)(iii), learned AR submitted that the investment, which yield taxable income should be excluded from the value of investment. She also pointed out that investment in the form of jewellery, share application money, debentures and 0% preference shares should be excluded. We find merit in the said contentions also. We have already noticed that learned CIT(A) has restored the matter relating to computation of tax free investment to the file of the Assessing Officer. Accordingly, we direct the Assessing Officer to examine this issue also by duly considering the contentions of the assessee and take appropriate decision in accordance with the law.

9. The next issue relates to disallowance of legal expenses. The assessee has subscribed shares in a company named M/s. Melstar Information Tech. Ltd. In that connection, it incurred a sum of ₹ 22.05 lakhs towards legal and professional fees. The Assessing Officer disallowed the same by invoking provisions of section 35D of the Act and allowed 10% thereof as per sec. 35D.

10. The learned CIT(A) however took the view that the above expenses should be disallowed u/s. 14A of the Act. Learned CIT(A) noticed that the Assessing Officer had allowed 10% of the above said expenses u/s. 35D of the Act. Since he took the view that these are disallowable u/s. 14A of the Act, he

set aside the order passed by the Assessing Officer on this issue and held that the above expenses is disallowable u/s 14A of the Act.

11. We have heard the parties on this issue and perused the record. We noticed that the assessee has incurred these expenses in connection with subscription to an open offer of shares made by the company referred above. Accordingly, we are of the view that this expense is required to be considered as a direct expense incurred in connection with the purchase of shares and hence they have to be capitalized with the cost of shares. With these views, we modify the order of learned CIT(A) and hold that these expenditures are capital in nature and required to be added to the cost of shares. Hence the disallowance made by the Ld CIT(A) is upheld on the above said reasoning.

12. In the result, appeal filed by the assessee is treated as partly allowed for statistical purposes.

Order has been pronounced in the Court on 19.10.2016

Sd/-  
(RAMLAL NEGI)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 19/10/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai

PS