

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "T", MUMBAI
BEFORE SHRI D.KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No.3033/Mum/2016 (Assessment Year- 2013-14)

Jayant R Pardiwala, 219, High Tech Industrial Centre, Caves Road, Jogeshwari(E), Mumbai-400060. PAN: AAAPP4718N	Vs.	ACIT, 24(1), Prayatyksh Kar Bhawan, Bandra Mumbai-400020.
(Appellant)		(Respondent)

Assessee by : Dr. K. Shivram Sr Advocate
with Ms. Neelam C. Jadhav
Advocate

Revenue by : Sh. B.C. S.Nayak- CIT (DR)

Date of hearing : 23.02.2017

Date of Pronouncement : 15.03.2017

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JM:

1. This appeal by assessee u/s 253 of the Income-tax Act ('the Act') is directed against the order of Ld. Commissioner of Income Tax (Appeals) [for short 'the CIT(A)] -42, Mumbai dated 04.01.2016 for Assessment Year (AY) 2010-11. The assessee has raised the following grounds of appeal:

1. The learned CIT(Appeals) erred in law and on the facts of the case in confirming the disallowance under section 14A read with Rule 8D of Rs. 8,72,168/-. (Ground I&II)

2. Brief facts of the case are that the assessee filed return of income for relevant AY on 21.09.2010 declaring income of Rs. 2,53,97,410/-. The assessment was completed u/s 143(3) of the Act. The Assessing Officer (AO) while passing the assessment order disallowed a sum of Rs. 8,72,168/- under section 14A read with Rule 8D. On appeal before Commissioner (Appeals) the disallowance under

section 14A read with Rule 8D was confirmed. Thus, further aggrieved by the order of Id CIT (A), the assessee has filed the present appeal before us.

3. We have heard the Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the Revenue and perused the material available on record. The learned AR of the assessee argued that assessee is engaged in the business of high-tech printing machinery, computer software and their annual maintenance contract. The assessee earned exempt income in the terms of gain from mutual funds, gain on sale of share and bonds totaling Rs.1,00,42,529/- and also earned exempt dividend of Rs. 12,55,203/-. No voluntary disallowance was made as assessee has not incurred any expenses in earning the exempt income. The assessee has sufficient interest-free funds available with. No borrowed funds were utilized for earning the exempt income. Rule 8D is not applicable to the assessee for the reasons that amount calculated as per formula required under Rule 8D is giving absurd result. The artificial disallowance of expenses exceeds the total expenditure incurred by the assessee. The assessee is availing services of fund managers and stockbrokers as free of cost for the purpose of investment and earning tax-free income. As brokers and agents gets hefty commission from mutual funds because of huge size of investment made by the assessee. Nothing was charged from the assessee for the reasons that the assessee provided good investment to them. The assessee is not required to make any expenditure by way of travelling or deploying any staff. In fact no direct or indirect expenditure of any nature for earning the tax-free income was incurred. The assessee is getting 'free home delivery' services from mutual funds agents, brokers and fund managers. All portfolio analyses are managed by the fund's manager in order to get more business from the assessee. No staff has been employed by assessee for handling the portfolio. The similar disallowance was made against the assessee for assessment year 2009-10. The assessee filed appeal before Commissioner (Appeals), wherein the disallowance was restricted to 2% of the total exempt income of the assessee by First Appellate Authority vide order dated 10 May 2013. The copy of order passed by Commissioner (Appeals)

for assessment year 2009-10 and the profit and loss account showing the availability of interest-free funds with the assessee is also placed on record. The Id AR for assessee voluntarily offered 2% of the exempted income for disallowance under section 14A read with Rule 8D. On the other hand the learned DR for the revenue supported the order authorities below. However, on a specific query, if the revenue has filed appeal against the order of Commissioner (Appeals) for assessment year 2009-10. The learned DR for revenue fairly submitted that as per record available with him there is no such reference for filing appeal by Revenue for assessment year 2009 -10.

4. We have considered the rival contention of the parties and further gone through the orders of authorities below. From the perusal of balance sheet, we have seen that assessee owned a fund of Rs. 25,21,56,844 /- as on 31st of March 2010. The assessee borrowed fund of Rs.15,00,000 /-. A sum of Rs. 2495/-only was debited from the personal account of assessee on account of Demat Charge. The total investment during the year was only Rs.16,82,77,652 /-. The Hon'ble jurisdictional High Court in CIT Vs Reliance Utility Services Ltd. 313 ITR-340(Bombay) held that if the assessee owned sufficient interest-free fund, the presumption is in favour of assessee that investment was made from the fund available with assessee and no interest disallowance can be made. Further Hon'ble jurisdictional High Court in HDFC Bank Ltd. v. DCIT (2014) 366 ITR 505(Bombay) and in HDFC Bank Limited v. DCIT (2016) 67 taxmann.com 42(Bombay) held that no disallowance is warranted for interest paid by the assessee company under Section 14A of the Act read with Rule 8D(2)(ii) of Income Tax Rules if the assessee owned sufficient interest free fund available with him. The assessee has claimed that no borrowed fund was utilized for earning the tax free income. The revenue has not rejected the books of account of the assessee before invoking the procedure to calculate the disallowance under Rule 8D. Further, we have seen that for assessment year 2009- 10, the learned CIT(Appeals) restricted the similar disallowance under section 14A read with rule 8D to 2% of the total exempt income of the assessee. We have further noticed

that assessing officer was not having the benefit of the passed by Ld Commissioner (Appeals) on 10th May 2013 for Assessment Year 2009- 10, however, the order was available when the impugned order dated 4th January 2016 was passed. Hence keeping in view the principle of consistency we direct the assessing officer to follow the order for Assessment Year 2009-10 and restrict the disallowance under section 14A read with rule 8D to 2% of the exempt income, which in our view will meet the end of justice. In the result the appeal of the assessee is partly allowed.

5. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on this 15th March, 2017.

Sd/-
(D.KARUNAKARA RAO)
ACCOUNTANT MEMBER
Mumbai; Dated 15/03/2017

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Copy of the Order forwarded to :

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

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai