

IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI
**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.2207/M/2015 (Assessment Year: **2011-2012**)

Nipra Financial Services Private Limited, 501, Corporate Arena, D.P. Piramal Road, Goregaon (W), Mumbai – 400 062.	बनाम/ Vs.	ACIT-4(2), Mumbai.
स्थायी लेखा सं./PAN : AABCN1311K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by :	Ms. Hetal D. Maru
प्रत्यर्थी की ओर से/ Revenue by :	Shri Vaibhav Jain

सुनवाई की तारीख /Date of Hearing : 06.12.2016

घोषणा की तारीख /Date of Pronouncement : 23.12.2016

आदेश / O R D E R

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the assessee against impugned order dated 21.1.2015, passed by Ld CIT (A)-9, Mumbai for the assessment year 2011-2012. In this appeal, the assessee is mainly challenged the disallowance u/s 14A of Rs. 6,83,463/- which has been made under Rule 8D of the Income Tax Rules, 1962 (the Rules).

2. Brief facts are that, the assessee-company is engaged in sub-broking, arbitrage and trading in shares and derivatives and providing portfolio management services. During the year, assessee has earned tax free dividend income of Rs. 1,66,701/-, which has been claimed as exempt. In the computation of income, for the purpose of disallowance u/s 14A of the Act, the assessee has *suo moto* disallowed Rs. 18,408/-. However, Ld Assessing Officer proceeded to make the disallowance under Rule 8D and made disallowance of interest expenditure under Rule 8D(2)(ii) of Rs. 5,40,388/- and disallowance of indirect expenditure under Rule

8D(2)(iii) of Rs. 1,43,074/-. After setting off of the disallowance made by the assessee, the net disallowance has worked out to Rs. 6,65,054/-.

3. Before the Ld CIT (A), the detailed submissions were made on various points like, the assessee had surplus / interest free funds from where the assessee had made investment in securities and secondly, certain investments made in the shares were stock-in-trade, therefore, same should not form part of working of the average value of investment under Rule 8D(2)(iii). The assessee's various contentions on this issue have been incorporated in detail by the Ld CIT (A) from pages 3 to 12 of the appellate order. However, CIT (A) confirmed the disallowance made by the AO and directed the AO to only remove the investments which are taxable and not to include the interest on the term loan which has been utilised for acquiring office premises.

4. Before us, Ld Counsel for the assessee submitted that so far as the availability of surplus funds are concerned, the assessee had funds of more than Rs. 6.97 Crs in the form of 'reserves & surplus' and share capital. Against the said funds, the investment made is only Rs. 35,77,702/-. Thus, in view of the principle laid down by the Hon'ble jurisdictional High Court in the cases of CIT vs. Reliance Utilities & Power Ltd [2009] 313 ITR 340; and CIT vs. HDFC Bank Ltd[2014] 366 ITR 505, no disallowance of interest should be made. As regards to the disallowance of indirect expenditure, Ld Counsel submitted that some of the shares were kept as stock-in-trade, which were not for the purpose of investment or for earning of dividend income and therefore same should not be included for the purpose of disallowance and secondly, no reasons has been given by the AO as to why the disallowance offered by the assessee was not correct.

5. On the other hand, Ld DR relied upon by the order of the CIT (A).

6. After considering the rival submissions and on perusal of the impugned orders as well as the relevant material placed on record, we find that so far as the disallowance of interest expenditure under Rule 8D(2)(ii) is concerned, the same cannot be made in the light of the fact that the assessee had huge surplus funds which far exceeds the investments made in shares. Thus, in view of the ratio laid

down by the Hon'ble jurisdictional High Court in the case of Reliance Utilities & Power Ltd (supra) and in the case of HDFC Bank Ltd (supra), no disallowance of interest can be made. So far as the disallowance of indirect expenditure of Rs. 1,43,074/- is concerned, we find that the Ld CIT (A) has directed the AO to remove those investments which are capable of earning taxable income. Apart from that, we further direct the AO to remove the quantum of shares held as stock-in-trade from the working of average value of investment following the ratio laid down by this Tribunal in the case of DCIT vs. M/s. India Advantage Securities Ltd vide ITA No.6711/Mum/2011 (AY 2008-09), dated 14.9.2012, which has been affirmed by the Hon'ble Bombay High Court. Thus, with these directions, AO is directed to compute the disallowance accordingly, under Rule 8D(2)(iii). Thus, the appeal of the assessee is partly allowed for statistical purposes.

7. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 23rd December, 2016.

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

मुंबई Mumbai; दिनांक 23.12.2016
व.नि.स./ OKK, Sr. PS

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

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