आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'J', मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL MUMBAI BENCHES "J", MUMBAI

Before Shri Shamim Yahya, AM & Shri Ravish Sood, JM

ITA Nos.382 & 383/Mum/2015 : A.Ys 2010-2011 & 2011-2012

M/s.Bharat Bljlee Limited Electric Mansion, 6th Floor Appasaheb Marathe Marg Prabhadevi, Mumbai – 400 025. **PAN : AAACB2900K.**	**बनाम**/ Vs.	Dy.Commissioner of Income-tax Circle 6(1) Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी **की ओर से /Appellant by : Shri Ronak Doshi**

प्रत्यर्थी **की ओर से /Respondent by : Ms.Arju Garodia**

सुनवाई की तारीख / **Date of Hearing : 21.06.2017**		घोषणा की तारीख / **Date of Pronouncement : 07.08.2017**

आदेश / O R D E R

Per Shamim Yahya, AM

These are appeals by the assessee against respective orders of learned CIT(A) for the assessment years 2010-2011 and 2011-2012.

2. The grounds of appeal are common and the same read as under:-

Assessment Year 2010-2011:

"Ground I: Disallowance u/s 14A r.w. Rule 8D of the Income Tax Rules. 1962 ("the Rules") of Rs. 7,98,323/-:

1. On the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals) - 14, Mumbai ["the CIT(A)"] erred in upholding the action of the Deputy Commissioner of Income, Range 6(1), Mumbai ["the AO"] in disallowing the expenditure amounting to Rs. 7,98,323/- u/s. 14A of the Act, being the expenses incurred towards earning exempt income, computed as per Rule 8D of the Rules.

2. The Appellant prays that disallowance of Rs. 7,98,323/- be deleted i.e. the same be restricted to Rs. 29,265/- as computed by the Appellant.

Ground II: Lew of Interest
1. On the facts and circumstances of the case and in law, the Ld. AO erred in levying interest u/s. 234C of the Act.
2. The Appellant prays that levy of interest u/s. 234C of the Act to be deleted.

Ground III: General
The Appellant craves leave to add to, alter and/ or amend all or any of the foregoing grounds of appeal."

Assessment Year 2011-2012:

Ground I: Disallowance u/s 14A r.w. Rule 8D of the Income Tax Rules, 1962 ("the Rules") of Rs. S.55.676/-;

1. On the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals) - 14, Mumbai ["the CIT(A}"] erred in upholding the action of the Additional Commissioner of Income, Range 6(1), Mumbai ["the AO"] in disallowing the expenditure amounting to Rs. 8,55,676/- u/s. 14A of the Act, being the expenses incurred towards earning exempt income, computed as per Rule 8D of the Rules.

2. The Appellant prays that disallowance of Rs. 8,55,676/- be deleted i.e. the same be restricted to Rs. 30,803/-, as computed by the Appellant

Ground II: Lew of Interest c1
1. On the facts and circumstances of the case and in law, the Ld. AO erred in levying interest u/s. 234C of the Act.

2. The Appellant prays that levy of interest u/s. 234C of the Act to be deleted.

Ground III: General
The Appellant craves leave to add to, alter and/ or amend all or any of the foregoing grounds of appeal."

3. Since the facts and the adjudication by the learned CIT(A) are similar, we refer to the facts and figures from assessment year 2010-2011.

4. Briefly stated, during the captioned assessment year, the assessee earned exempt dividend income on investments in shares amounting to Rs.1,79,47,590. The assessee had not disallowed any expenditure u/s 14A suo moto in this regard. The assessee claimed before the A.O. that absolutely no expenditure can be attributed to the earning of the exempt income. Hence, the A.O. after considering the claim of the assessee applied Rule 8D of the Income Tax Rules, 1962 and disallowed an amount of Rs.7,98,323 u/s 14A of the Act, treating the same as expenditure incurred for earning of exempt income.

5. Upon assessee's appeal, the learned CIT(A) concluded as under:-

"I have considered the facts of the Case the submission of the appellant and the order of the AO. I have also perused the order of my Ld. predecessor on the issue. The facts and the argument made by the appellant are the same as was in the last year. My Ld. Predecessor on the issue has interalia held as under;

"6.14 I have considered the above submissions of the appellant and also the decisions cited in this regard. Subsection (1) of 14A of the act prescribes that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of total income under the Act. Sub-section(2) prescribes that if the Assessing officer, having regard to the correctness of the claim of the assessee in respect of such expenditure is not satisfied, he shall determine

the amount of expenditure incurred in relation to such income in accordance with the method as may be prescribed. Subsection (3) prescribes that the provisions of subsection (2) shall a/so apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income. With effect from A.Y. 2008-09, rule 8D has been introduced, which lays down the method of computation of the expenditure in regard to exempt income for the purpose of disallowance under section 14A.

6.15 If one reads subsection (3) along with subsection (2), it simply means that in a case where the assessee claims that no expenditure has been incurred in respect of the exempt income, the AO shall determine the amount of expenditure incurred in relation to such income : in accordance with the method as may be prescribed in view of the provisions of subsection (2). Therefore, since from assessment year 2008-09, rule 8D is applicable, the AO shall be free to compute the disallowance of expenditure as per this rule in respect of the exempt income in all such cases where the assessee claims that no expenditure has been incurred in respect of the said income and no suo motto disallowance of expenditure has been made by the assessee. This is quite logical as well, because it cannot be the case of any investor that he has not incurred even a single penny for making such investment and earning of exempt income there-from. This is exactly the case of the appellant, where accounts are kept on a mixed fund basis, and for the purpose of investment in shares, mutual funds etc, separate accounts have not been kept. Although the appellant has given a number of arguments based on the facts of its case, still, in spite of that, due to reasons cited above, it cannot be accepted that the appellant has not incurred even a single penny for making investment, maintaining the investment portfolio and thereby earning exempt income. The argument of the assessee that major investments are made in one single company and therefore no expenditure is incurred for making tax free investment which will yield exempt income is not correct. Expenditure directly and indirectly are incurred for monitoring the investments. Even if the requirement of AO's satisfaction in

this regard is considered necessary, the very knowledge of the fact on the part of the AO that the appellant has not disallowed any expenditure suo-moto, was sufficient for him to compute the disallowance under rule 8D read with section 14A of the Act.

6.16 The latest decision available on this issue is the judgement of Hon'ble Bombay High Court in the case of Godrei & Boyce Mfg. Co. Ltd._ 328 ITR 81, wherein the Hon'ble Court has held that the dividend income and income from mutual funds, falling within the ambit of Section 10 of the Act are not includible in computing the total income of the assessee. Consequently, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to such income. It has also been held that provisions of rule 8D of the IT. Rules, 1961 shall apply with effect from assessment year 2008-09. It is held by the High Court that the disallowance for the purpose of section 14A shall be computed a per rule 8D and the said rule is constitutionally valid. In view of this decision therefore, it is evident that the AO was justified in computing the disallowance under rule 8D in respect of the appellant's exempt income because the appellant had not made any disallowance suo-moto and claimed that absolutely no expenditure has been incurred in relation to the earning of exempt income. The decision of Hon'ble Bombay High Court is binding and tho AO has simply followed the same. Hence I have no choice than to reject the contention of the appellant. This is without prejudice to the decision of Hon'ble ITAT in the Appellant's own case in the A.Y. 2004-05, A.Y. 2005-06 and A.Y. 2006-07, which are not governed by Rule 8D as it is applicable only w.e.f. A.Y. 2008-09. The Hon,b!e High Court has held as under, in this regard:

6.17 Hence, without prejudice to the decision of Hon'ble ITAT in the Appellant's own case in the A.Y. 2004-05 to 2009-10, which are not governed by Rule 8D, and in view of the above observations of Hon'ble High Court, I hold that in view of the facts of the case of the appellant, where it has claimed that absolutely no amount of expenditure had been incurred for earning of the exempt income and where no such expenditure was disallowed suo-moto, the AO had no choice but to compute

the disallowance u/s. 14A as per the method prescribed by Rule 8D. Therefore, the AO's action is upheld.

6.18 The appellant has made a without prejudice claim that if any disallowance is sustained, then the amount of disallowance should be allowed to be capitalized along with the cost of investments. In regard to this claim, a number of case laws have been cited. / have considered this claim of the appellant vis-a-vis the case laws cited in this regard. I however do not agree with the appellant because what is being disallowed is a part of the claim of expenditure debited in the P&L account on a proportionate basis as per rule 8D. It is not in the nature of a capital expenditure, so that it can be capitalized along with the cost of investments. The case laws cited by the appellant do not support the arguments of the appellant because in all those cases the question was the capitalization of direct interest expenditure incurred for purchase of shares/property. In the case of the appellant however, neither any direct expenditure has been admitted by the appellant nor has the AO disallowed any such expenditure u/s. 14A of the Act. It should be kept in mind that the disallowance of proportionate indirect expenditure u/s. 14A of the Act in respect of the exempt income has been provided only with a view to compute the real taxable income of an assessee and the expenditure disallowed is purely of revenue nature. Hence there can be no question of capitalizing the same with the cost of the asset.

6.19 Thus, ground of appeal No.4 and 5 are dismissed". .

3.12 I do not find any incongruity in the order of my Ld predecessor. The facts remaining the same, respectfully following the decision of my Ld Predecessor, the action of the AO is upheld."

6. Against the above order, assessee is in appeal before us.

7. We have heard both the Counsel and perused the records. The learned Counsel of the assessee summarized his submissions as under:-

Gr. No.	Particulars	Amount (in Rs.)	A.O.		CIT(A)		Assessee / Appellant relies on	In favour of
			Para	Pg.	Para	Pg.		
1.	Disallowance u/s 14A of the Income tax Act, 1961 ("the Act") r.w.r. 8D(2)(ii) of the Income-tax Rules, 1962 b("the Rules")	600,303	5.6	11-12	3.11 – 3.12	6-8	**Upto March 31, 2006 Hon'ble Tribunal has given a factual finding that the tax-free investments Mere out of o« n funds and not out of borrowed funds and hence, no expenses can be said to have** been **incurred for the purpose of acquiring the said investments. Reliance is placed on the following orders of IT AT in Appellant's own case :** In the Appellant's own case for A.Y. 1999-00 (ITA No. 6017/Mum/2003) In the Appellant's own case for A.Y. 2004-05 (ITA No. 6359, 6428/Mum/2007) In the Appellant's own case for A.Y. 2005-06 (ITA No. 6410/Mum/2008) In the Appellant's own case for A. Y. 2006-07 (ITA No. 1813, 183 l/Mum/2010) I **Post April 01, 2006, the following tax free investments were made by the Appellant:** **- Equity Shares of Hindustan Oil Exploration Company (AY 2007-08) – Rs. 38 Lakhs - the Appellant relies on the following case laws wherein it was held that where own funds arc substantially higher than the tax-free investments, a presumption lies that the tax-free investments have been made out** of own **funds and not borrowed funds** **- Equity Shares of Hindustan Oil Exploration Company Ltd. (AY 2008-09) – Rs.156 Lakhs - there is a live nexus between the amount of fixed deposit matured and the amount of investment made** In the Appellant's own case for A.Y. 2008-09 (ITA No. 4053, 4160/Mum/2012) In the Appellant's own case for A.Y. 2009-10 (ITA No. 3227/Mum/2013) **wherein the Tribunal** has **upheld** the **order** of the CIT(A) and decided the issue in favour of the Department. Against the said order, the Appellant has filed a Miscellaneous Application ("MA") **dated** June 30. 2016. The Appellant most humbly submits that the Tribunal, while deciding the issue has not considered the binding decisions of Jurisdictional High Court and other Tribunal orders including those in the Applicant's Civil case. The said MA is pending disposal. . I CIT v. Reliance Utilities & Power Limited (313 ITR 340) (Bom.) CITv. HDFC Bank (366 ITR 505) (Bom.) I1DFC Bank Ltd. v. DCIT (383 ITR 529) (Bom.) f CIT v. Microlabs Limited (ITA No. 471 of 2015) (Kar.) \ Mrs, AnahaitaNalin Shah v. ACIT (ITA No. 7115/Mum/2013) (Mum.) In the case of Hind Filters Ltd. v. ACIT (ITA No. 1792 & 417/M/20I3), interest disallowance for A.Y. 2009-10 **was** deleted In the case of Palm Grove Beach Hotels Pvt. Ltd. v. ACIT (ITA No, 863/M/2013), interest disallowance for A.Y. 2009- 10 was deleted In the case of Dena Bank v. DCIT (ITA No. 3676 & 4113/M/2012), interest disallowance for A.Y. 2008-09 was deleted	Assessee Assessee Assessee Assessee Assessee Department
	Disallowance u/s 14A of the Act r.w.r. 8D(2)(iii) of the Rules	227,285					For warranting disallowance u/s 14A of the Act, the expenditure must have actually been incurred for the purpose of earning exempt income. Maxopp Investments Ltd. v. CIT (203 Taxman 364) (Del HC) CIT v. Hero Cycle Ld. (323 ITR 518) (P&H) CIT v. UTI Bank Ltd. (215 Taxman 8) (Guj.) ACIT v. SIL Investments (73 DTR 233) (Del-T)	

8. The learned Counsel of the assessee further submitted that in view of the decisions as above, the issue in this appeal should be referred to the Assessing Officer for fresh consideration. He reiterated that assessee has sufficient interest-free funds and assessee has actually not incurred any expenditure to earn the exempt income.

9. Per contra, the learned Departmental Representative fairly agreed that the issue can be remitted to the file of the Assessing Officer.

10. We have carefully considered the submissions and perused the records. WE find ourselves in agreement with the proposition that if sufficient interest-free funds are available for making the investment in exempt income, disallowance u/s 14A is not justified. This proposition is duly supported by the decision of Hon'ble jurisdictional High Court in the case of CIT v. Reliance Utility & Power Limited (313 ITR 340) and CIT v. HDFC Bank (366 ITR 505) (383 ITR 529).

11. Furthermore, the assessee's plea that assessee has not actually incurred any expenditure in earning the said exempt income also needs consideration in view of the Hon'ble Apex Court decision in the case of Godrej & Boyce Mfg. Co. v. DCIT (Civil Appeal No.7020 of 2011 vide order dated 8.5.2017). In this case the Hon'ble Apex Court has expounded as under:- (Head Notes only)

> *"S.14A disallowance has to be made also with respect to dividend on shares and units on which tax is payable by the payer u/s 115-O & 115-R. Argument that such dividends are not tax-free in the hands of the payee is not correct. Section 14A cannot be invoked in the absence of proof that expenditure has*

actually been incurred. If the AO has accepted for earlier years that no such expenditure has been incurred, he cannot take a contrary stand for later years if the facts and circumstances have not changed."

12. In view of the aforesaid discussion, in our considered opinion, the issue is to be remitted to the file of the Assessing Officer to consider the issue afresh keeping in mind the discussion hereinabove and the case laws referred above. Needless to add, the assessee should be granted adequate opportunity of being heard.

13. In the result, these appeals filed by the assessee stand allowed for statistical purposes.

Order pronounced on this 07th day of August, 2017.

Sd/-	Sd/-
(Ravish Sood)	**(Shamim Yahya)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated : 07th August, 2017.
Devdas*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A), Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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