

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

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA NO. 376/MUM/2017 : A.Y : 2012-13

ACIT-2(2)(2),
Mumbai (Appellant)

Vs. M/s. Milton Plastics Ltd.,
4th floor, Asian Building,
R. Kamani Marg, Ballard Estate,
Mumbai 400 001 (Respondent)
PAN : AAECM2999P

Appellant by : Shri V. Justin

Respondent by : None

Date of Hearing : 21/08/2017

Date of Pronouncement : 29/09/2017

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the Revenue is directed against the order of CIT(A)-5, Mumbai dated 10.10.2016, pertaining to the Assessment Year 2012-13, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 30.03.2015 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In its appeal, the Revenue has raised the following Grounds of appeal :-

“ 1. Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) erred in holding that disallowance made u/s 14A of the I T Act, as per Rule 8D(2)(ii) is not correct since the reserve & Surplus of the assessee company is more than investment relying on the decision in the case of HDFC Ltd.(366 ITR 505) without appreciating the fact that the decision of HDFC Ltd. is not applicable to the instant case since the same relate to A.Y. 2001-02 to 2005-06 which is prior to the insertion of Rule 8D of the I.T. Rules w.e.f. A.Y. 2008-09 which is mandatory if A.O is satisfied that the disallowance u/s. 14A is required to be made.

2. Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) erred in holding that disallowance made u/s 14A of the I T Act, as per Rule 8D(2)(ii) is not correct since the reserve & Surplus of the assessee company is more than investment relying on the decision in the case of HDFC Ltd. (366 ITR 505) without appreciating the fact that the decision of the Hon'ble High Court in this case of M/s. HDFC Ltd. is relying on the decision in the case of M/s. Reliance Utilities & Power Ltd. wherein the assessee had established the nexus of investment with own funds.”

3. At the time of hearing, it was noticed that none appeared on behalf of the respondent-assessee inspite of service of notice by RPAD. On the other hand, the Id. DR appeared on behalf of the Revenue.

4. Accordingly, in view of Rule 25 of the Income Tax (Appellate Tribunal) Rules, 1963, the appeal of the Revenue is being disposed off *ex-parte* the respondent-assessee after hearing the appellant-Revenue on merits.

5. As the Grounds of appeal reveal, the solitary grievance of the Revenue arises from the action of CIT(A) in deleting the disallowance of Rs.1,38,63,400/- made by the Assessing Officer out of interest expenditure in terms of Rule 8D(2)(ii) r.w.s. 14A of the Act.

6. The relevant facts in relation to the dispute before us are that in the course of assessment proceedings, the Assessing Officer noted that assessee had made investments, which generate exempt income and, therefore, the expenditure in relation to such income was liable to be disallowed in terms of Sec. 14A of the Act. The Assessing Officer worked out the disallowance u/s 14A of the Act as per the formula contained in Rule 8D(2) of the Rules whereby the disallowance out of interest expenditure as per Rule 8D(2)(ii) of the Rules was made at Rs.1,38,63,400/- and as per Rule 8D(2)(iii) of the Rules out of other expenditure was made at Rs.4,64,918/- thereby making a total disallowance of Rs.1,43,28,018/-.

7. Before the CIT(A), assessee brought out that the investment in securities which generate exempt income was to the extent of Rs.1,45,32,000/- whereas the Share Capital and Reserves & Surplus of the assessee stood at Rs.40,86,19,495/-. On this basis it was canvassed that the investments were far less than the assessee's own non-interest bearing funds, i.e. Share Capital and Reserves & Surplus and, therefore, in view of the judgment of the Hon'ble Bombay High Court in the case of *HDFC Bank Ltd., 366 ITR 505 (Bom)* the interest expenditure could not be subject to disallowance in terms of Sec. 14A of the Act. The CIT(A) has accepted the plea of the assessee and applying the ratio of the judgment of the Hon'ble Bombay High Court in the case of *HDFC Bank Ltd. (supra)*, the disallowance of interest expenditure in terms of Sec. 14A of the Act has been deleted. Against such a decision of the CIT(A), the Revenue is in appeal before us.

8. Before us, there is no dispute that the judgment of the Hon'ble Bombay High Court in the case of *HDFC Bank Ltd. (supra)* is squarely applicable to the facts of the case, as noted by the CIT(A). Pertinently, there is no dispute to the factual finding arrived at by the CIT(A) that the own interest-free funds of the assessee, namely the Share Capital and Reserves & Surplus were enough to cover the investments which have yielded the exempt income and, therefore, there is a presumption that such investments are out of interest-free funds. The aforesaid proposition is fully supported by the judgment of the Hon'ble Bombay High Court in the case of *Reliance Utilities & Power Ltd., 313 ITR 340 (Bom)* and the same has also been found to be applicable in the context of Sec. 14A of the Act by the Hon'ble Bombay High Court in the case of *HDFC Bank Ltd.* in Writ Petition no. 1753 of 2016 dated 25.02.2016.

9. The argument of the Revenue that the decision relied upon by the CIT(A) in the case of *HDFC Bank Ltd.* reported in 366 ITR 505 (Bom) is not applicable as it pertains to an assessment year prior to the Assessment Year 2008-09 is unfounded and without merit. In fact, in its subsequent judgment dated 25.02.2016 (*supra*) in the case of *HDFC Bank Ltd.* in Writ Petition no. 1753 of 2016, the aforesaid proposition has been held by the Hon'ble Bombay High Court to be applicable in the context of Sec. 14A of the Act even in relation to Assessment Year 2008-09. Therefore, we find no merit in the appeal of the Revenue challenging the decision of the CIT(A) to delete the disallowance out of interest expenditure made u/s 14A of the Act by applying the ratio of

the judgment of the Hon'ble Bombay High Court in the case of HDFC Bank Ltd., in 366 ITR 505 (Bom) (supra).

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 29th September, 2017.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 29th September, 2017

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "E" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai