

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Ravish Sood(JM)
I.T.A. No. 3124/Mum/2016 (Assessment Year 2009-10)

M/s. Lavgan Dockyard Pvt. Ltd. Bakhtawar, 4 th Floor Nariman Point Mumbai-400 021. PAN : AAACL6788P	Vs.	ITO Ward 9(2)(2) Mumbai-400021.
(Appellant)		(Respondent)

Assessee by	Shri Raturaj Gurjar
Department by	Ms. Pooja Swaroop
Date of Hearing	25.10.2017
Date of Pronouncement	25.10.2017

ORDER

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 28-02-16 passed by Ld CIT(A)-20 and it relates to the assessment year 2009-10. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition made by the AO u/s 14A of the Act.

2. The assessee is engaged in the business of ship repair and allied activities. The disallowance made by the AO u/s 14A of the Act was restored back to his file by the Tribunal and accordingly the AO completed the assessment by computing disallowance u/s 14A of the Act r.w. rule 8D(2)(iii) at Rs.3,05,315/, being 0.50% of the average value of investments. It is pertinent to note that the assessee had received dividend income of Rs.35,61,668/-. The Ld CIT(A) confirmed the addition and hence the assessee has filed this appeal.

3. The Ld A.R submitted that the assessee had made investments in four schemes of mutual funds in the immediately preceding year. During the year under consideration, the assessee has redeemed three schemes and continued to hold investment in one scheme. Accordingly he submitted that the assessee

did not make any fresh investments during the year under consideration. He further submitted that the dividends were received by the end of July, 2008 and all the dividend were received directly into the bank accounts. Accordingly he submitted that the assessee did not incur any expenditure in earning the dividend income. He further submitted the administrative expenses of the assessee stand at Rs.48.97 lakhs, out of which Rs.39.00 lakhs was incurred towards rent of stock yard, where bauxite was stored. He submitted that the above said rent cannot be linked to the dividend income. He submitted that all other expenses are also related to the regular business activities of the assessee. Accordingly he submitted that the tax authorities are not justified in computing the disallowance u/s 14A by applying the provisions of Rule 8D, in the facts and circumstances of the case. The Ld A.R also placed reliance on the decision dated 10.4.2017 rendered by the co-ordinate bench in the case of M/s Solitaire Appliances P Ltd (ITA No.6922/Mum/2014).

4. On the contrary, the Ld D.R submitted that the disallowance u/s 14A is required to be computed in terms of Rule 8D and accordingly contended that the order passed by Ld CIT(A) cannot be found fault with.

5. We heard the parties and perused the record. We notice that the assessee had made investments in the earlier years and hence all the investments have been brought forward during the year under consideration. No fresh investments have been made during the year under consideration. The assessee has redeemed three investments during the year under consideration and continued to hold one investment. Besides the above, the assessee has also received dividend income of Rs.35.61 lakhs during the year under consideration. These facts would show that the level of investment activity was low during the year under consideration and hence, having regard to the accounts, we are of the view that the provisions of Rule 8D should not have been applied by the AO. We notice that the administrative expenses incurred by the assessee stand at Rs.48.97 lakhs, out of which Rs.39.00 lakhs pertain to rent paid for stock yard. The Ld A.R also submits that all the

dividend income has been received by July, 2008. Further, it was stated that some other expenses cannot also be related to the investment activity. Hence, on a conspectus of the matter, we are of the view that the disallowance required to be made u/s 14A of the Act may be estimated at Rs.10,000/- and the same would meet the requirement of that section. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to restrict the addition u/s 14A of the Act to Rs.10,000/-. We order accordingly.

6. In the result, the appeal filed by the assessee is partly allowed.

Order has been pronounced in the Court on 25.10.2017.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

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

Mumbai; Dated : 25/10/2017

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//

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai