

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Ravish Sood(JM)
I.T.A. No. 4147/Mum/2016 (Assessment Year 2011-12)

ACIT (3)(1)(1) Room No. 607 Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. B. Arunkumar Capital & Credit Services Pvt. Ltd. 154/C, Mittal Court Nariman Point Mumbai-400 021. PAN : AAACB2156M
(Appellant)		(Respondent)

Assessee by	Shri Nilesh Joshi & Shri Vipul Mody
Department by	Ms. Pooja Swaroop
Date of Hearing	30.10.2017
Date of Pronouncement	31.10.2017

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the Revenue is directed against the order dated 16.3.2016 passed by the learned CIT(A)-8, Mumbai and it relates to A.Y. 2011-12. The Revenue is aggrieved by the decision of the learned CIT(A) in deleting the disallowance made by the Assessing Officer u/s. 14A of the Act.

2. We heard the parties and perused the record. The assessee is a company engaged in the business of giving loan, trading in shares and securities and making investments. The assessee filed its return of income for the year under consideration, wherein it made disallowance of ₹ 55.56 lakhs u/s. 14A of the Act. It is pertinent to note that the assessee had received dividend income of ₹ 17.61 lakhs during the year under consideration. However, during the course of assessment proceedings, the assessee filed revised computation of income, wherein it worked out the disallowance u/s. 14A of the Act at ₹ 4,07,375/-. The assessee had excluded disallowance worked by it under rule 8D(2)(ii) of the I.T. Rules relating to indirect interest expenditure. According to the assessee own funds available with it was more than the value of investment

and hence there was no requirement to make any disallowance towards indirect interest expenditure. The Assessing Officer, by placing reliance on the decision of Hon'ble Supreme Court rendered in the case of Goetze India Ltd. (284 ITR 323), took the view that the revised claim can be admitted only if it is made by way of filing revised return of income. Accordingly he disallowed the sum of ₹ 55.56 lakhs, as originally worked out by the assessee, u/s. 14A of the Act. The learned CIT(A) agreed with the contentions of the assessee and restricted the addition to ₹ 4,07,375/-. Aggrieved, the Revenue has filed this appeal before us.

3. At the time of hearing learned AR submitted that an identical issue was considered by the SMC Bench of the Tribunal in A.Y. 2010-11 in ITA No. 4148/Mum/2016 dated 29.12.2016, wherein the Tribunal has accepted the claim of the assessee for exclusion of interest disallowance, by following the decision rendered by Hon'ble Jurisdictional High Court in the case of CIT Vs. HDFC Bank Ltd. (366 ITR 505). He submitted that in the above said case, it was held that there is no requirement to make any disallowance out of interest expenditure if interest free fund available with the assessee is in excess of the value of investment.

4. We heard learned Departmental Representative, who supported the order passed by the Assessing Officer.

5. We noticed that the SMC Bench of the Tribunal has considered an identical issue in assessee's own case in A.Y. 2010-11 (supra) and has deleted the addition with the following observation :-

5. As the aforesaid Grounds of appeal reveal, the only point of dispute before the Tribunal is with regard to the action of the CIT(A) in deleting the disallowance out of interest expenditure of Rs.83,60,274/- as per Rule 8D(2)(ii) of the Rules . In this context, the CIT(A) has noticed that assessee was entitled to raise a fresh claim even otherwise than through a revised return. The CIT(A) observed that the claim of the assessee has been rejected on mere technicalities as the fresh claim was made through a written communication and not through revised return. The CIT(A) has

entertained the fresh plea by relying on the ratio of judgment of the Hon'ble Bombay High Court in the case of Pruthvi Brokers & Shareholders Pvt. Ltd. 349 ITR 336(Bom). Moreover, on the merits of the issue CIT(A) found that there was sufficient interest free funds available with the assessee to cover the investment and, therefore, it has ITA No.4148/Mum/2016 (Assessment Year 2010-11) to be presumed that such investments were out of interest free funds following the ratio of the judgment of the Hon'ble Bombay High Court in the case of CIT. Vs. Reliance Utilities And Power Limited., 313 ITR 340 (Bom). Consequently, following the judgments of the Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd., 366 ITR 505(Bom) and in the case of HDFC Bank Ltd. vs. DCIT, 383 ITR 529 (Bom), the interest disallowed in pursuance to Rule 8D(2)(ii) of the Rules has been deleted. Apart there from, the CIT(A) has observed in para - 5.1.6 of his order that the Assessing Officer has not given any justification for rejecting the claim of the assessee that no expenditure was incurred in earning dividend income. Accordingly, in this manner, the CIT(A) has allowed relief to the assessee, against which Revenue is in appeal before the Tribunal.

6. Though, the Ld. Departmental Representative has relied upon the order of the Assessing Officer in support of the Revenue, but no credible material argument has been put-forth as to how the decision of the CIT(A) is wrong, whereby the disallowance as per Rule 8D(2)(ii) of the Rules has been deleted following the ratio of the judgment of the Hon'ble Bombay High Court in the cases of Reliance Utilities & Power Ltd. (supra) and HDFC Bank Ltd.(supra). In the absence of any justifiable reason I find no reason to interfere with the conclusion of the CIT(A), which I hereby affirm. Even the reliance placed by the CIT(A) on the ratio of the judgment of the Hon'ble Bombay High Court in the case of Pruthvi Brokers & Shareholders Pvt. Ltd.(supra) to admit the fresh claim of the assessee is quite justified having regard to facts and circumstances of the case. It is quite clear that the fresh claim made by the assessee in relation to the computation of disallowance as per Rule 8D(2)(ii) of the Rules ITA No.4148/Mum/2016 (Assessment Year 2010-11) was a point requiring application of law for which the relevant facts are available on record. Therefore, CIT(A) made no mistake in admitting such fresh claim and allowing relief to the assessee. Under these circumstances, I hereby affirm the order of the CIT(A) and Revenue fails in its appeal.

6. We noticed that the Tribunal has applied the ratio laid down by Hon'ble Jurisdictional High Court in the case of HDFC Bank Ltd. (supra). In the year under consideration, the opening and closing balances of own capital available with the assessee was Rs.2226.99 lakhs and Rs.2699.45 lakhs respectively. The value of investments as on 1.4.2010 was Rs.812.00 lakhs and as on

31.3.2011 was Rs.793.37 lakhs. Since the value of investments was less than the amount of own funds available with the assessee, the decision rendered by jurisdictional High Court in the case of HDFC Bank Ltd (supra) shall be applicable. Under these circumstances, we do not find any infirmity in the order passed by the learned CIT(A) in deleting the interest disallowance.

7. In the result, appeal filed by the Revenue is dismissed.

Order has been pronounced in the Court on 31.10.2017.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

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

Mumbai; Dated : 31/10/2017

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