

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

Before Shri Sktijit Dey (JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.5757/Mum/2016  
(Assessment year: 2011-12 )

Dy.CIT, Cir.2(2)(1), Mumbai	vs	M/s SBI Commercial & International Bank Ltd (now merged with SBI), SBI Bhavan, Madam Cama Road, Nariman Point, Mumbai 400 021. PAN : AAACS8249J
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Appellant by	Shri Ram Tiwari
Respondent by	None

Date of hearing	02-11-2017
Date of pronouncement	08-11-2017

**ORDER**

Per G Manjunatha, AM :

This appeal filed by the revenue is directed against the order of CIT(A)-5, Mumbai dated 07-06-2016 and it pertains to assessment year 2011-12. The revenue has raised the following grounds of appeal:-

1. *"The order of the CIT(A) is opposed to law and facts of the case.*
2. *"On the facts and in the circumstances of the case and in law, whether the Ld.CIT(A) was right in directing the A. O. to delete the disallowances made u/s. 14A read with Rule 8D of Rs. 79.30,0871- without considering the fact that in the case of L & T Power Development Ltd. for A. Y. 2010-11, the action of the*

*A.O. was upheld by Ld. CIT(A) relying on the decision of the Chemivest Ltd. Vs. /TO (2009) 121 ITD 318 (Delhi ITAT) (SB), which was vest on the decision of the Hon. Supreme Court in the case of CIT Vs. Rajendra Prasad Moody (115 ITR 519) (SC) wherein also the identical issue was involved.”*

2. The brief facts of the case are that the assessee, a banking company, filed its return of income for the assessment year 2011-12 on 29-11-2011 declaring total income of Rs.2,03,90,830. The case was selected for scrutiny and notices u/s 143(2) and 142(1) were issued. In response to notices, the authorized representative of the assessee appeared from time to time and furnished the details, as called for. During the course of assessment proceedings, the AO noticed that the assessee has earned exempt income of Rs.7,65,720 and claimed the same as exempt u/s 10(34) of the Income-tax Act, 1961. The assessee has suo moto disallowed expenditure incurred in relation to earning exempt income for Rs.9,130 u/s 14A in its computation of income. Therefore, the assessee was asked to explain as to why expenses related to earning exempt income should not be disallowed u/s 14A r.w.r. 8D of IT Rules, 1962. The AO further observed that the assessee has not chosen to file any explanation. Therefore, he computed disallowance u/s 14A by invoking rule 8D and accordingly worked out total disallowance of Rs.7,93,087 and added back the same to the total income. Aggrieved by the assessment order, assessee preferred appeal before CIT(A).

3. Before the CIT(A), the assessee submitted that there is no disallowance u/s 14A r.w.r. 8D(2) is warranted as its investments are fully covered out of its own funds and no borrowed funds have been used for investments in shares. The assessee further contended that its investment in equity shares of State Bank of Bikaner & Jaipur for Rs.18,23,000 as against this, its own funds in the form of share capital and reserves and surplus are available to the extent of Rs.132.95 crores, therefore, the AO was incorrect in disallowing interest by invoking rule 8D. Insofar as expenditure, it has suo moto disallowed expenditure of Rs.9,130 whereas the disallowance as per Rule 8D(2)(ii) works out to R.9,122, therefore, no further disallowance is called for. The CIT(A), after considering the submissions of the assessee observed that the assessee has proved availability of its own funds to cover up investments in shares which generated exempt income. The CIT(A), further observed that insofar as disallowance of expenditure as per Rule 8D2)(iii), the assessee, on its own has disallowed Rs.9,130 which is more than the disallowance required to be made u/r 8D(2)(iii). Therefore, further disallowance was not called for. Relevant portion of order of CIT(A) is extracted below:-

*“4 I had considered the appellant submissions, here appellant earned an exempt income of Rs.7,65,7201- on the investments in State Bank of Bikaner and Jaipur of the shares of for the A.Y. 2011-12. According to A.O. investments in shares is Rs. I-*

*and AC). had applied Rule 8D disallowed a sum of Rs.79,30,0871-. In the Appellant submissions, appellant states that appellant Share Capital 100 Crs. & Reserves and Surplus 32.95 Crs. are more than the investments in assets which earned the tax free income. Hence, appellant states that there need not be any disallowance under Rule 8D(2) for the purpose of the interest. I agree with the contention of the appellant in view of the Bombay High Court case in CIT Vs. HDFC Bank Ltd. 366 ITR 505 where it is held that if the appellant share capital reserves and surplus exceeds the investment which earned the exempt income then it has to be presumed that appellant had invested from his own funds i.e. investments in assets tax fee exempt income. Hence, in view of the above decision of HDFC Bank Ltd. here no disallowance is required with respect to the interest as per 8D(2)(iii). Hence, A.O.'s disallowance of Rs.7055,089/- for 8D(2)(iii) is deleted. Here appellant's investment in equity shares of State Bank of Bikaner & Jaipur is Rs.18,23,000/-. Average Investment which earn exempt income is Rs.8,24,500/-. 05% average investment is as per Rule 8D(2)(iii) is Rs.9122.50. As appellant already disallowed in the return of income. Here no disallowance is required u/s 14A. Ground of appeal is dismissed."*

Aggrieved by the order of CIT(A), the revenue is in appeal before us.

**4.** The Ld.DR submitted that the Ld.CIT(A) was erred in deleting additions made by the AO u/s 14A r.w.r. 8D without considering the fact that in the case of L&T Power Development Ltd for the assessment year 2010-11, the action of the AO was upheld by Ld.CIT(A) relying upon the decision in the case of Chemivest vs ITO (2009) 121 ITD 318 (Del)(SB) which was based on the decision of the Hon'ble Supreme Court in the case of CIT vs Rajendra Prasad Moody 115 ITR 519 (SC) wherein the identical issue was involved.

The Ld.DR referring to the circular issued by the CBDT submitted that even if there is no exempt income earned during the year, disallowance as contemplated u/s 14A has to be worked out as per Rule 8D(2). Therefore, the CIT(A) was incorrect in deleting addition made by the AO.

5. None appeared on behalf of assessee despite service of notice by RPAD. We have heard the Ld.DR, perused material available on record and gone through the orders of authorities below. The AO disallowed expenditure incurred in relation to exempt income u/s 14A by invoking Rule 8D(2). It is the contention of the assessee that its investment in shares are fully covered by its own funds. Therefore, there is no requirement of disallowing interest u/re 8D(2). Insofar as expenditure, it has suo moto disallowed expenditure in relation to earning exempt income as per Rule 8D(2)(iii). Therefore, further disallowance in this regard is unwarranted. We find that the CIT(A) has given categorical finding that the assessee has own funds in the form of share capital as well as reserves and surplus, which cover up investments in shares. The assessee has invested in equity shares of Rs.18,23,000 as against which it has own funds in the form of share capital and reserves & surplus to the extent of Rs.132.95 crores. Therefore, we are of the considered view that the AO was incorrect in disallowing interest by invoking Rule 8D(2)(ii). Insofar as expenditure, the assessee has

suo moto disallowed an amount of Rs.9,130. The CIT(A) has quantified the disallowance as per Rule 8D(2)(iii) which works out to Rs.9,122. Since disallowance made by the assessee is more than the disallowance required to be made u/r 8D2)(iii), further disallowance was not called for. The CIT(A), after considering relevant provisions has rightly deleted additions made by the AO. We do not find any error or infirmity in the order of CIT(A). Hence, we are inclined to uphold the order of CIT(A) an dismiss the appeal filed by the revenue.

Order pronounced in the open court on 08<sup>th</sup> November, 2017.

Sd/-

sd/-

(Saktijit Dey)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 08<sup>th</sup> November, 2017

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai