

**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI**  
**BEFORE SHRI R.C.SHARMA, AM**  
**&**  
**SHRI RAM LAL NEGI, JM**

**ITA No.7396/Mum/2016**  
**(Assessment Year :2009-10)**

Ms. Soumyalatha S. Shetty 22, Bhulabhai Desai Road Mahalaxmi Chamber Mumbai – 400 026	Vs.	DCIT 5(1)(2) Aayakar Bhavan Mumbai
<b>PAN/GIR No.ABMPS8762L</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Shri Jivraj P Jain
Revenue by	Shri Bipin J Jain
<b>Date of Hearing</b>	<b>09/11/2017</b>
<b>Date of Pronouncement</b>	<b>10/11/2017</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the assessee against the order of CIT(A)-10, Mumbai dated 22/09/2016 for A.Y.2009-10 in the matter of order passed u/s.143(3) of the IT Act.

2. The only grievance of assessee relates to disallowance made u/s.14A r.w.Rule 8D.

3. Rival contentions have been heard and record perused. The facts of the case, in brief, are that the assessee is an individual having income from salary, house property, capital gains and other sources. It furnished its return of income for A.Y.2009-10 on 28/09/2009 declaring total income of Rs.97,52,650/-. Thereafter the assessee has filed revised return on

30/09/2010 declaring total income of Rs.97,89,200/-. Further, the assessment was completed u/s 143(3) on 23/11/2011 determining the total income of Rs.98,02,980/-. Subsequently, CIT-5, Mumbai has passed an order u/s 263 holding that the assessment passed u/s 143(3) of the Act was erroneous and prejudicial to the interest of the revenue. Accordingly, Notice u/s 143(2) was issued on 05/03/2015 and duly served on the assessee. The AO has completed the assessment u/s. 143(3) r.w.s.263 of the Act determining the total income of Rs.1,00,14,050/- on 25/03/2015 by making the additions/ disallowances u/s.14A r.w. Rule 8D amounting to Rs.2,11,073/-.

4. It was argued by learned AR that assessee has not claimed any expenditure towards earning of the exempt income, therefore, no disallowance is warranted u/s. 14A.

5. I had carefully gone through the profit and loss account and computation of income so filed by the assessee before the lower authorities and found that no expenditure was claimed by assessee towards earning of the dividend income. Even AO has nowhere pointed out any such expenditure and he merely relied on the computation of provision contained under Rule 8D. The logical interpretation of section 14A and Rule 8D of the Income Tax Rules, it is the requirement of the law that facts of each case have to be examined by the Assessing Officer and the expenditure, as is relatable to the exempt income, is to be disallowed. Sub-section (1) of section 14A is the basic and primary provision, which provides for disallowance of an expenditure incurred in relation to exempt

income. Sub-section (2) is only supplementary to provisions of sub-section (1) and cannot override the same. In any case language of sub-section (2) also makes it clear that Rule 8D can be invoked only if the Assessing Officer is not satisfied as regards the claim of the assessee. In the case of Raptakos Brett & Co. Ltd.,(2015) 58, Taxmann.Com 115, Mumbai Tribunal 10/06/2015, it was held by Tribunal that once assessee makes claim before Assessing Officer that no expenditure attributable to earning of dividend income, Assessing Officer is required under statute to satisfy himself having regard to accounts of assessee about correctness of claim of assessee otherwise he cannot mechanically proceed to make disallowance u/s.14A r.w.r. 8D.

6. In view of the above discussion, since no expenditure was claimed by assessee towards earning of exempt income, the disallowance made by the AO is not tenable.

**7. In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on this 10/11/2017

**Sd/-**  
**(RAM LAL NEGI)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 10/11/2017  
Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai