

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
 (समक्ष)Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T.A. Nos. 57 & 58/Kol/2016
Assessment Years: 2010-11 & 2011-12

Rajendra Kumar Bachhawat (PAN: AEEP8725R)	Vs.	Assistant Commissioner of Income- tax, Circle-33, Kolkata.
Appellant		Respondent

Date of Hearing	26.09.2017
Date of Pronouncement	29.11.2017
For the Appellant	S/Shri Anil Kochar & S.L.Kochar, Advocates
For the Respondent	Shri Arindam Bhattacharjee, Addl. CIT

ORDER

Per Shri A.T.Varkey, JM

These are appeals filed by the assessee against the separate orders of Ld. CIT(A)-9, Kolkata dated 24.11.2015 for AYs 2010-11 and 2011-12. For both the appeals the assessee has raised similar/identical grounds, therefore, the order passed in the lead case of AY 2010-11 will be followed also in the other case.

2. The main grievance of the assessee is against the action of the AO which has been confirmed by the Ld. CIT(A) wherein the AO disallowed an amount of Rs.5,78,652/- u/s. 14A of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) read with Rule 8D of the Income-tax Rules, 1962 (hereinafter referred to as the “Rules”)

3. Brief facts of the case are that the AO noted after perusal of the P&L Account and computation of income that the assessee received dividend income of Rs.1,65,68,906/- exempted u/s. 10(34) of the Act which does not form part of the total income of the assessee. The AO noted that the assessee has debited Rs.11,67,658/- as interest on the unsecured loan raised by him during the year, therefore, the AO asked the assessee to submit the explanation and the computation of disallowance u/s. 14A of the Act read with

Rule 8D of the Rules. It was brought to the knowledge of the AO that assessee in his computation of income has himself made disallowance in computing the income from business to the extent of Rs.1,19,819/-. The AO thereafter, applied Rule 8D of the Rules and disallowed a sum of Rs.5,78,652/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A), who was pleased to dismiss it and thereby confirmed the order of AO. Aggrieved, the assessee is in appeals before us.

4. We have heard rival submissions and gone through facts and circumstances of the case. We note that the assessee maintains two portfolios, wherein one he transacts shares as an investor and other that of a trader. As per the assessee, the investment made in his personal/self books of account wherein assessee has made investments in shares, the assessee has shown to have received Rs.1,65,68,906/- as dividend income. The assessee's other portfolio wherein he does the share trading is done through his proprietorship concern named M/s. Rajendra Kumar Bachhawat and in its books of account, the assessee has shown to have received dividend income of Rs.72,759/- which the assessee claims to have not claimed as exempt u/s. 10(34) of the Act and was offered to tax.

5. We note that the AO calculated the disallowance by applying Rule 8D of the Rules at Rs. 6,98,471/- and since the assessee has already offered Rs.1,19,919/-, addition was restricted to the tune of Rs.5,78,652/-. We note that in respect to the assessee's portfolio, wherein he does trading and the shares are held as stock-in-trade, Rule 8D of the Rules does not apply. For this proposition of law, we rely on the decision of the coordinate bench of this Tribunal which held that if the assessee is holding shares as stock-in-trade, Rule 8D computation does not apply and this view of the Tribunal has been upheld by the Hon'ble jurisdictional High Court in CIT Vs. G.K.K. Capital Markets Pvt. Ltd. (2017) 78 Taxman.com 341 (Cal), therefore, no disallowance in respect to the shares held in trading account wherein shares are held as stock in trade ought not to have been done by the AO.

6. Coming to the portfolio maintained by the assessee wherein the assessee had held shares as investments in his self account, we note from the Balance Sheet as on 31.03.2010, the assessee had own fund in the capital account to the tune of Rs.12,21,95,321/- (i.e. more than Rs.12 cr.) and we note that there is no loan liability and that the investments made by assessee is only to the tune of Rs.4,94,67,743/- which is very less compared to the capital

account held by the assessee. Therefore, no disallowance can be made under Rule 8D(2)(ii) of the Rules. Coming to the application of Rule 8D(2)(iii) of the Rules, we are of the considered opinion that when computation is made under this limb of the Rules, the investment to be taken only is in respect of dividend bearing scrips should only be taken for the purpose of calculating Rule 8D(2)(iii) as held by the Coordinate Bench decision in CIT Vs. REI Agro Ltd. in ITA No. 1423/Kol/2011 which decision was confirmed by the Hon'ble Calcutta High Court vide order dated 09.04.2014. So, it is no more res integra that for the purpose of computing disallowance u/s. 14A of the Act read with Rule 8D(2)(iii) of the Rules, only the investment giving rise to exempt income should be considered. With the aforesaid observation, we set aside the impugned order and remand the issue back to the file of AO to recompute the disallowance as directed above.

5. In the result, both the appeals of assessee are partly allowed.

Order is pronounced in the open court on 29th November, 2017

Sd/-

Sd/-

(J. Sudhakar Reddy)
Accountant Member

(Aby. T. Varkey)
Judicial Member

Dated :29th November, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Rajendra Kumar Bachhawat, C/o, S.L.Kochar, Advocate, 86, Canning Street, Kol-1.
2. Respondent – ACIT, Circle-33, Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary