

आयकर अपीलीय अधिकरण मुंबई “जी” खंडपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI
सर्वश्री राजेन्द्र, लेखा सदस्य एवं रविश सूद, न्यायिक सदस्य
Before S/Sh. Rajendra, Accountant Member & Ravish Sood, Judicial Member
आयकर अपील सं./ITA No.7490/Mum/2016, निर्धारण वर्ष/ Assessment Year: 2012-13

A.C.I.T-3(2)(1), 6 th Floor, Aayakar Bhavan, M.K.Road, Mumbai – 400 020	Vs.	M/s.Indiabulls Wholesale Services Ltd., S.P.Centre, 41/44, C-Wing, Minoo Desai Marg, Colaba, Mumbai-5. PAN: AABCI7129N
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by : Shri Ram Tiwari - DR

Assessee by : None

सुनवाई की तारीख / Date of Hearing: 08/11/2017

घोषणा की तारीख / Date of Pronouncement: 03/01/2018

आयकर अधिनियम, 1961 की धारा(1)254 के अन्तर्गत आदेश
Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य, राजेन्द्र के अनुसार -Per Rajendra, AM:

Challenging the order dtd. 30/09/2016, of the CIT(A)-8, Mumbai the Assessing Officer(AO) has filed the present appeal. Assessee-company, engaged in the business of wholesale trading and retail business, real estate development and related activities, filed its return of income on, 28/ 09/ 2012, declaring income of Rs 8.55 crore. The(AO) completed the assessment on, 16/03/ 2015, u/s. 143(3) of the Act, determining its income at Rs 12.16 crores.

2. Effective ground of appeal is about deleting the disallowance of Rs. 3.61 crores made by the AO u/s.14A. During the assessment proceedings the AO found that the assessee had shown exempt dividend income of Rs.6,00,390/-, that it had made huge investment in equity shares that were capable of generating exempt income. He showcased the assessee as to why disallowance of expenses attributable for earning such exempt income should not be made as per the provisions of section 14A read with rule 8D of the Income Tax Rules, 1962 (Rules) after considering the submission of the assessee the AO referred to the circular No.5 of 2014, dated 11/02/2014A and the case of Godrej and Boyce Manufacturing Company Ltd. (Writ petition 785 of 2010 in ITXA 626/10) and made a disallowance of Ruby's 3.61 crores (Rs. 2.61 crores under rule 8D(2)(ii) and Rs.1,00,57,400/-, under rule 8D(2)(iii) of the Rules.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA) and made elaborate submissions. It relied upon certain case laws also. After considering the available material, he held that the AO had not discussed any of the arguments

raised by the assessee before him, that he had not explained as to why he was not such respect with the claim of the assessee that no expenditure had been incurred for earning exempt income, that the AO had not disputed the fact that the interest fund of the assessee in terms of share capital and reserves were more than the investment made by the assessee. He referred to the cases of Reliance Utilities and Power Ltd. (313 ITR 340), Maruti Udyog Ltd. (92 ITD 119), Hero Cycles Ltd.(323ITR518)and observed that the assessee had made specific claim about not incurring of any expenditure in relation to exempt dividend income, that the AO had applied the provisions of rule 8D without assigning any reason and in mechanical manner, that rule 8D was not automatic, that the AO had to give an objective satisfaction about incurring of expenditure in relation to exempt income, that there must be alive nexus between the expenditure incurred an tax-free income.Finally, he directed the AO to delete the disallowance made by him.

4.During the course of hearing before us the Departmental Representative (DR) referred to the circular number 5 of 2014(supra) and relied upon the order of the AO. None appeared on behalf of the assessee,as stated earlier

5.We have perused the material before us and have heard the DR.We find that assessee had made a specific argument before the AO that it had not incurred any expenditure for earning exempt income, that the AO had considered the investment made by the assessee, that he had made general observations about the provisions of section 14A and rule 8D of the Rules, that he had not specified the particular expenses that were directly related to tax-free income,that the FAA has clearly mentioned that the AO had not discussed anything about the dissatisfaction with regard to claim made by the assessee for not making disallowance u/s.14A of the Act,that the AO had not considered any argument made before him by the assessee, that FAA had given a finding of fact that the interest-free fund available with the assessee (Rs. 12.57 crores – share capital+ Rs.772.53 crores-reserves and surplus) were much more than the investment of Rs.201.14 crores.The purpose of introducing section 14A was to curb the tendency of certain assessees to claim double deductions by claiming expenditure against the exempt income.In our opinion, before making any disallowance u/s. 14A, the AO has to prove that certain expenses were incurred for earning exempt income. In the case under consideration the AO has failed to prove that assessee had claimed any expenditure against the tax-free income.If the assessee has not claimed any expenditure,there will not be any justification for making disallowance. Just because

the assessee has earned exempt income would not authorise the AO to make any disallowance automatically. Disallowance is directly related the expenditure incurred and not on earning of exempt income. Earning of tax-free income is the first leg of the transaction. But the second leg is equally important and that is incurring of expenditure for earning the said income. Until and unless both the conditions are fulfilled no disallowance can be made u/s. 14A. As the AO has failed to prove that assessee had incurred certain expenditure in relation to the dividend income, so, in our opinion, the order of the FAA does not require any interference from our side. Upholding his order, we decide the effective ground of appeal against the AO.

As a result, appeal filed by the AO stands dismissed.
फलतः निर्धारित अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 3rd January, 2018.
आदेश की घोषणा खुले न्यायालय में दिनांक 03 जनवरी 2018 को की गई।

Sd/-

Sd/-

(रविश सूद / Ravish Sood)

(राजेन्द्र / RAJENDRA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक/Dated : 03 .01.2018.

S.Gangadhara Rao, Sr.PS./JV, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त,
- 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR "G" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, जी खंडपीठ, आ.अधि.मुंबई
- 6.Guard File/गार्ड फाईल

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार Dy./Asst. Registrar
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.