

**आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

श्री शमीम याहया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 4145/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2012-13)

Smt. Anita Ashwin Nagda E/25, 9 <sup>th</sup> Floor, Indraprastha C.H.S. Ltd., Jain Mandir Road, Sarvodaya Nagar, Mulund (W), Mumbai-400 080	<b>बनाम/</b> Vs.	Income Tax Officer, Ward 15(3)(4), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAEPN 8150 G		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Dr. P. Daniel
प्रत्यर्थी की ओर से/Respondent by	:	Ms. N. Hemlatha
सुनवाई की तारीख / Date of Hearing	:	09.10.2017
घोषणा की तारीख / Date of Pronouncement	:	01.01.2018

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against order of the Id. Commissioner of Income Tax (Appeals)-24 dated 22.02.2017 and pertain to the assessment year 2012-13.

2. The grounds of appeal read as under:

1. The learned CIT(A) erred in confirming the order of the Assessing Officer.
2. The learned CIT(A) erred in confirming the disallowance u/s. 14A r.w. rule 8D of Rs.2,77,153/- in the case of an assessee, who does not have any business income.
3. Brief facts of the case are that the assessee is an individual having salary income as director M/s. Sovereign Tradexport Pvt. Ltd. She has e-filed her return of income for Assessment year 2012-13 on 30.11.2012 declaring total income of Rs.20,17,240/-. The assessment was completed u/s. 143(3) of the I. T. Act, 1961 on 27.03.2015 determining the total income Rs.22,94,390/-.
4. During the course of assessment proceedings, the Assessing Officer found that the assessee had during the relevant financial year earned an amount of Rs.1,34,065.50 as dividend income which was claimed as exempt u/s. 10(34). In the balance sheet, the assessee had shown investments in shares and mutual funds to the tune of Rs.69,32,869/-. Further, the assessee shown unsecured loans to the tune of Rs.1,14,74,640/- and she had claimed in the P & L account interest paid of Rs.12,42,000/-. Hence, the Assessing Officer considered that the provisions of section 14A r.w.r. 8D are applicable in her case and show caused as to why disallowance should not be made. The explanation of the assessee was not acceptable to the Assessing Officer and, accordingly, the disallowance u/s. 14A read with Rule 8D at Rs.2,77,153/- was computed by the Assessing Officer and added to the income of the assessee.

5. Upon the assessee's appeal, the Id. Commissioner of Income Tax (Appeals) confirmed the Assessing Officer's action by holding as under:

2.4 I have given my careful consideration to the submissions, perused the material on record and duly considered the factual matrix of the case as also the applicable legal position.

2.4.1 Ground No. 4(a) is against the action of the Id AO in disallowance u/s 14A rwr 8D amounting to Rs.2,77,153/-. The appellant had during the year earned an exempt income of Rs.1,34,065/-. She had substantial borrowed funds on which the interest expenditure has been claimed. The Id AO, being not convinced with the appellant's explanations, considered that the issue is squarely covered by the provisions of section 14A rwr 80. Accordingly, he computed the disallowance at Rs.2,77,153/- and added to the appellant's income.

2.4.1.1 During the appeal proceedings, the AR has objected to the addition made invoking the provisions of section 14A. He argued that interest free funds are available with the appellant and are more than the investment made in the shares and securities and hence no disallowance u/s 14A rwr 8D was warranted. The Id AR has also argued that total interest expenditure incurred was less than the interest income earned during the year. The Id AR has thus 'tried to netting of the interest and shown at reduced figure of the expenditure claimed in the accounts. He has further referred to the balances of the capital account of the appellant for the year and the immediate preceding year and . stated that the capital balance as on 31-03-2012. exceeded the investment made in the shares and securities. The Id AR has relied on several case laws in support of their claim.

2.4.1.2 The contention of the appellant cannot be accepted. From the submissions made and it is noticed that the appellant shown to have the following on asset side

Fixed-assets	Rs.90,39,944/-
Current assets	Rs.1,70,99,963/-
Investments	Rs.70,00,743/-

2.4.1.3 The aggregate total of the assets of the appellant as on 31-03-2012 was Rs. 3.31.40650/- which is more than the capita! .balance of Rs 2.09 crores The above said current investment includes 'advance' of Rs.1,30,83,499/- to

M/s. Sovereign Tradexport. It goes to explain that the capital balance was insufficient to make investments and the appellant must have utilised the borrowed funds also for the purpose of making investment in shares and securities. Hence it cannot-be ruled out that interest bearing funds were not routed for making investment wherefrom the exempt income was earned. It is also important to observe that part of interest cost that was charged to the revenue account must be attributable proportionately to the investment made /in shares on which the exempt income was earned. Taking into consideration the facts of the case as narrated above, I am of the considered view that the provisions of sec.14A r.w. Rule 8D are clearly applicable in appellant's case in view of the decision of Hon'ble jurisdictional High Court in the case of *Godrej & Boyce Mfg. Co.* 328 ITR 81 since the assessment year pertains to A.Y. 2012-13 and the ld AO has rightly invoked the provisions of section 14A rwr 8D. I do not find any reason to delete the same, therefore, uphold the addition made by the AO and hence this ground raised by the appellant is dismissed.

6. Against above order assessee is in appeal before the ITAT.
7. I have heard both the counsel and perused the records. Learned counsel of the assessee submitted that the assessee had sufficient interest-free own funds, which was utilized for making the investments. In this regard, it was submitted that the decision of Hon'ble Bombay High Court in the case of *HDFC Ltd.* duly covers the issue in favour of the assessee.
8. Upon careful consideration and hearing both the ld. Counsel, I find that the assessee has duly submitted the decision of Hon'ble Bombay High Court in the case of *HDFC Ltd.* (132 DTR 89) before the ld. Commissioner of Income Tax (Appeals). The said decision has duly considered the decision of *Godrej & Boyce Mfg. Co. Ltd.*

v. Dy. CIT [2010] 328 ITR 81 (Bom). However despite the same, the Id. Commissioner of Income Tax (Appeals) has decided the issue against the assessee.

9. I find that the said decision was rendered after duly considering the decision of *Godrej & Boyce Mfg. Co. Ltd* (supra). In such circumstances, it was incumbent upon the Id. Commissioner of Income Tax (Appeals) to decide the issue in accordance with the ratio emanating from the decision of the case of *HDFC Ltd.* (supra)

10. Hence, if the assessee has sufficient interest-free funds, no disallowance on account of interest for investment in tax-free investments is permissible. Hence, I remit the issue to the file of Id. Commissioner of Income Tax (Appeals). The Id. Commissioner of Income Tax (Appeals) is directed to consider the issue in accordance with the decision of Hon'ble Bombay High Court in the case of *HDFC Ltd.* (supra). Needless to add, the assessee should be granted adequate opportunity of being heard.

11. In the result, this appeal by the assessee stands allowed for statistical purposes.

*Order pronounced in the open court on 01.01.2018*

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :01.01.2018

व.नि.स./Roshani, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**