

**आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "डी" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**

**BEFORE HON'BLE S/SHRI JOGINDER SINGH (JM), AND RAJESH KUMAR,(AM)**

I.T.A. No.1699/Mum/2016  
(निर्धारण वर्ष / Assessment Year:2011-12)

Dy.Commissioner of Income Tax -1(1)(2), Room no.579, Aayakar Bhavan, M K Road, Mumbai-400020.	बनाम/ Vs.	M/s. Graviss Hospitality Ltd. Hotel Intercontinental, 135, Netaji Subash Road, Marine Drive, Mumbai-400020
अपीलार्थी की ओर से / Revenue by	:	Shri Rajat Mittal
प्रत्यर्थी की ओर से/ Assessee by	:	Shri Mahesh Rajora

**PAN : AAACOO480F**

सुनवाई की तारीख /Date of Hearing	:	23.10.2017
घोषणा की तारीख /Date of Pronouncement	:	24.11.2017

**आदेश / ORDER**

**PER RAJESH KUMAR, A. M:**

This is an appeal filed by the revenue which is directed against the order of the Id.CIT(A)-2, Mumbai, dated 28.12.2015 for the assessment year 2011-12.

2. The issue raised by the revenue in the first grounds of appeal is against the deletion of disallowance of expenses u/s 14A of the Income Tax Act, 1961 to the tune of Rs.17,92,649/- at the rate of 0.5% of the average investment without establishing the nexus between investment in shares and assessee's own funds and the issue raised in ground no.2 is against the

restriction of addition u/s 14A to Rs.17,92,649/- while computing books profit u/s 115JB of the Act.

3. At the outset, the Id.AR submitted that the issue raised by the revenue stands covered in favour of the assessee and against the revenue by the decision of the Co-ordinate Bench of the Tribunal in ITA No.5693/Mum/2011 (AY-2008-09) order dated 17.6.2015 wherein the similar issue was decided by the Tribunal with identical facts. The Id.AR, therefore, requested that the same principle may be adopted in the present case and appeal of the revenue be dismissed.

4. The Id. DR fairly agreed with the submissions of the Id.AR that the issue raised in the present case is covered by the decision in the case of assessee(supra) rendered by the Co-ordinate Bench of the Tribunal for the assessment year 2008-09.

5. We have carefully considered the rival contentions, perused the impugned orders and cases cited by the Id.AR including the decision rendered by the Tribunal in the assessee's own case dated 17.6.2015(supra) wherein it has been observed and held as under :

*"8. We find that the facts and circumstances of the case for the year under consideration are identical to that of A.Y. 2009-10. We may further observe that the Hon'ble Bombay High Court in the case of "Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT" (supra) has categorically held that resort can be made to Rule 8D of the Income Tax Rules, if the AO is not satisfied with the correctness of the claim*

*made by the assessee in respect of such expenditure. The satisfaction of the AO has to be arrived at having regard to the accounts of the assessee. Sub section 2(14) does not ipso-facto enable the AO to apply the method prescribed by the rules straightway without considering whether the claim made by the assessee in respect of such expenditure is correct. The satisfaction of the AO must be arrived at on an objective basis. A perusal of the assessment order under consideration reveals that the AO has failed to follow the guidelines of objective satisfaction as laid down by the Hon'ble Bombay High Court in the case of "Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT" (supra) while making the disallowance. The AO has straightway applied Rule 8D for working of the disallowance against the mandate of the provisions of section 14A of the Income Tax Act. We may further observe that the Ld. CIT(A) having regard to the accounts of the assessee has observed that the assessee has not incurred any interest/indirect expenditure for earning of the exempt income. The balance sheet of the assessee reveals that the assessee had reserve and surplus of Rs.2,69,82,76,106/- as on 31.03.08 as against the total investments of Rs.69,33,10,403/-. The reserve and surplus investments of the assessee as on 31.03.06 was at Rs.1,31,08,13,906/- and therefore there was an increase of about Rs.138 crores in reserve and surplus during the year. The total investments of the assessee as on 31.03.07 was at Rs.3,98,81,678/- which have increased to Rs.69,33,10,403/- as on 31.03.08 and so there was the investment of Rs.66 crore during the year under consideration. The loan liability of the assessee had considerably decreased during the year and the net current assets of the assessee had increased to Rs.72,19,41,777/- as against of Rs.11,32,40,029/- as on 31.03.07. The Ld. D.R., from the balance sheet has tried to explain that there is an increase in the fixed assets of the assessee and the assessee has also used its funds in repayment of the loan amount and hence it cannot be said that the entire surplus was used by the assessee for making investments. However, after considering the overall facts and circumstances and the explanation of the assessee regarding the utilization of the loan amount and also considering that there is sufficient increase in own/surplus funds of the assessee and there being no decrease in the loan liability and also considering the quantum of investment made in relation to reserve and surplus fund available, we do not find any infirmity in the order of the Ld. CIT(A) while deleting the disallowance on account of indirect expenditure under Rule 8D(2) of the Act. We further find that most of the investments made by the assessee during the year are in mutual funds which do not require any specific incurring of expenditure which are generally done through*

*agents. Otherwise, there is no considerable increase of the investment in equity shares etc. The assessee has already disallowed a sum of Rs.2 lakh. Considering the nature of investments of the assessee during the year under consideration, we do not find any justification on the part of the AO in straightway applying Rule 8D and without recording any dissatisfaction in relation to the suo-moto working made by the assessee. Even otherwise, facts for the year under consideration are squarely cover with the decision of the Tribunal in the own case of the assessee in the subsequent year. We therefore do not find any justification for the Ld. CIT(A) to confirm the disallowance under Rule 8D(2)(iii) of the Income Tax Rules without considering the working/computation offered by the assessee and also without ignoring the nature of investments made by the assessee. The order of the Ld. CIT(A) confirmed the disallowance under Rule 8D(2)(iii) is therefore set aside. In view of our observations made above, the disallowance under section 14A is restricted to the suo-moto disallowance of Rs.2 lakh offered by the assessee and the remaining disallowance over and above the disallowance offered by the assessee himself is therefore ordered to be deleted.”*

6. The facts before us in the current year are similar to one as decided by the co-ordinate Bench of the Tribunal and hence, following the same decision of the Co-ordinate Bench of the Tribunal in assessee’s own case, we dismiss the appeal of the revenue.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 24th Nov, 2017.

Sd  
**(JOGINDER SINGH)**  
Judicial Member

sd  
**( RAJESH KUMAR)**  
Accountant Member

**मुंबई Mumbai; दिनांक Dated : 24.11.2017**

Sr.PS:SRL:

**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,**

True copy

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