

आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं./I.T.A. No.6508/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2012-13)

Asst. CIT (Cir.)-6(1)(2), R. No. 563, 5 th Floor, Aayakar Bhavan, M. K. Road, Churchgate, Mumbai-20	बनाम/ Vs.	M/s. ASK Wealth Advisors Pvt. Ltd. Ground Floor, Bandbox, House, 254-D, Dr. Annie Besant Road, Worli, Mumbai-400 025
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAFCA 9124 M		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Ms. Pooja Swaroop
प्रत्यर्थी की ओर से/Respondent by	:	Shri Shreyam B. Shah
सुनवाई की तारीख / Date of Hearing	:	07.11.2017
घोषणा की तारीख / Date of Pronouncement	:	17.01.2018

आदेश / ORDER

Per Shamim Yahya, A. M.:

This appeal by the Revenue is directed against the order by the Commissioner of Income Tax (Appeals) dated 06.05.2015 and pertains to the assessment year 2012-13.

2. The grounds of appeal read as under:

1) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowances made u/s 14A read with Rule 8D of Rs. 1,55,76,174/- without any supporting evidence and without bringing any basis on record."

- 2) " On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in deleting the disallowance of u/s 14A read with Rule 3D holding that the assessee has sufficient own funds and without any supporting evidence and especially when own funds formed common pool for the investment from which exempt income was earned."
- 3) "On the facts and in the circumstances of the case the order relied upon by the CIT(A) on the cases of J.M. Fincancial and Garware Wall Ropes to give relief to the assessee, have not been accepted on merits by the Department though in the former case appeal has not filed on grounds of low tax effect, and appeal has been filed in latter case, which has been admitted by the High Court."
- 4) "The appellant prays that the order to the Id. CIT(A) on the above grounds be set aside to the given facts of the case."
3. In this case, the Assessing Officer made the disallowance u/s. 14A r/w Rule 8D by holding as under:

3.1. On perusal of the computation of income, it is seen that the assessee company has made investments of Rs.2,82,00,000 and claimed interest payments of Rs.6,59,61,786. From the information available, I am not satisfied with the correctness of the claim of the assessee in respect of the expenditure, in relation to the income which does not form part of the total income under the Act. The assessee has been asked to offer its objections, if any, as to why disallowance under sec. under sec. 14A r.w.rule 8D should not be made. There is no reply from the assessee in this regard.

3.3. Section 14A(i) stipulates that for the purposes of computing; the total income under Chapter-IV, no deduction shall be allowed in respect of an expenditure "incurred" by the assessee "in relation to" an income which does not form part of the total income under the Income Tax Act. It is pertinent to note that as per Section 14A(2) of the Act if the AO is not satisfied with the correctness of the claim of the taxpayer of the expenditure related to exempt income, then the AO shall calculate the expenditure by applying Rule 8D of the Income Tax Rules. It may be stated here that, the issues arising out of application of sec. 14A and Rule 8D now stand settled by the judgment rendered by the Hon'ble Bombay High Court in the case of M/s. Godrej and Boyce Mfg Ltd. Vs DCIT(2010) 43 DTR 177 (Bom) in which it was decided that the provisions of Rule 8D are not ultra vires the provisions of section 14A

and do not offend Article 14 of the Constitution. Further, in view of the clear enunciation in Memorandum explaining the provisions of the Finance Bill, 2006 and further clarification by CBDT vide Circular No. 14 of 2006, sub section (2) of section 14A is applicable from A.Y.2007-08 onwards. The Hon. Bombay High Court in the case of Godrej and Boyce Mfg. Ltd., has held that the provisions of Rule 8D shall apply w.e.f. A.Y.2008-09. Therefore it is evident that all expenses connected with the exempt income have to be disallowed u/s.14A regardless of whether they are direct or indirect, fixed or variable and managerial or financial in accordance with the law. It is further evident that deduction in respect of expenditure incurred by the assessee in relation to exempt income and taxable income has to be determined as per the mechanism laid down in sub-section (B) of section 14A and the method as prescribed under Rule-8D. There is no discretion to the Assessing Officer for restricting the disallowance to the extent of exempt income as he has to follow the formula provided in Rule 8D.

3.4. The disallowance u/s.14A r w r 8D is worked out as under:

			Rs.	Rs.	Rs.
1		Expenses directly attributable			0
2	A	Interest cost		65961786	
	B	a) Opening balance of investments	28200000		
		b) Closing balance of investments	28200000		
		Average value of investment of which income is exempt (ab + cb) / 2	28200000		
	C	a) Opening balance of assets			
		b) Closing balance of assets	241023825		
		Average value of assets (ab + cb) / 2 =	198959734	120511912.5	
		A x B / C			15435174
3		0.5% of average value of investment of which income is exempt			141000
4		Total disallowance			15576174

3.5. Accordingly, the disallowance u/s. 14A rwr 8D which works out to Rs. 1,55,76,174. This amount is hereby disallowed and added back to, the total income of the assessee. Proceedings under sec. 271(l)(c) initiated separately, for furnishing inaccurate particulars of income in respect of expenditure relating to the exempt income, disallowable under sec. 14A read with Rule 8 D of IT Rules.

4. Upon the assessee's appeal, the ld. Commissioner of Income Tax (Appeals) decided the issue in favour of the assessee by observing as under:

The A.O. has erred in making disallowance u/s. 14A without bringing out on record as to how he has worked out the disallowance. It is seen that the appellant has not made any new investment this year except continuing with its existing investment in subsidiary company. Again, it is seen that its entire interest expenditure of Rs.6.60 crores debited in P & L account is incurred wholly and exclusively for its business and so does not warrant any disallowance. So provision of section 14A r.w. rule D is not attracted as in the appellant's case as confirmed by Hon. Mumbai ITAT in the case of Garware Wall Ropes (ITA Nos. 5408/Mum/2012) and in the case of J. M. Financial (ITA No. 92/Mum/2012).

5. Against the above order, the Revenue is in appeal before us.
6. Upon careful consideration, we are of the opinion that there is no infirmity in the principles followed by the Id. Commissioner of Income Tax (Appeals). The Id. Commissioner of Income Tax (Appeals) has given a finding that the assessee has sufficient own funds. Furthermore, he has observed that all the investments are coming from earlier year and no investment has been done during the year. However, the Revenue's grievance is that the Id. Commissioner of Income Tax (Appeals) has given the above said finding in a laconic manner without giving reference to the evidence and supportings which he has considered. There is also no remand from the Assessing Officer as the facts considered by the Id. Commissioner of Income Tax (Appeals) are not arising out of the Assessing Officer's order. Hence, it is not clear whether the submission considered by the Id. Commissioner of Income Tax (Appeals) were there before the Assessing Officer or not. Hence, we find ourself in agreement with the Revenue's contention that the Id. Commissioner of Income Tax (Appeals) has passed the order without reference to the detail of evidence which he has

appreciated and which is not been considered by the Assessing Officer. Hence, in the interest of justice, we remit the issue in this appeal to the file of the Assessing Officer. The Assessing Officer is directed to consider the issue afresh keeping in mind the observation as above and after giving the assessee proper opportunity of being heard.

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

Order pronounced in the open court on 17.01.2018

Sd/-

Sd/-

(Amarjit Singh)

(Shamim Yahya)

न्यायिक सदस्य / Judicial Member

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 17.01.2018

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