



IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI AMARJIT SINGH, JM

ITA No.1880/Mum/2017

(Assessment Year :2012-13)

DCIT 15(1)(1) R.No.470, 4 <sup>th</sup> Floor Aayakar Bhavan, M.K.Road Mumbai – 400 020	Vs.	M/s. Apollo Logisolutions Ltd., Survey No.59, Kon Savia Rasayami Road Somahane Panvel, Raigad
<b>PAN/GIR No.</b>		<b>AAECS1502L</b>
<b>Appellant)</b>	..	<b>Respondent)</b>

Revenue by	Shri V.Vidyadhar
Assessee by	Shri Madhur Agarwal
<b>Date of Hearing</b>	<b>05/03/2018</b>
<b>Date of Pronouncement</b>	<b>07/03/2018</b>

### आदेश / O R D E R

#### **PER R.C.SHARMA (A.M):**

This is an appeal filed by the Revenue against the order of CIT(A)-24, Mumbai dated 23/12/2016 for A.Y.2012-13 in the matter of order passed u/s.143(3) of the IT Act.

2. The only ground taken by the Revenue relates to deletion of disallowance of interest expenditure u/s.14A r.w.R 8D(2)(ii) of the IT Act.
3. Rival contentions have been heard and record perused.
4. Facts in brief are that the assessee is a company engaged in the business of Management of Container Freight Station, Transportation of containers and other related services. During the course of assessment proceedings, AO observed that the assessee had made investments

during the year under consideration and the AR of the assessee was asked to furnish applicability of section 14A of the Act and was also asked to explain as to why disallowance u/s 14A r.w. Rule 8D should not be made. Ld. AO considered the submissions made by the assessee and held that no activity could be said to be automatic and that there was application of interest bearing funds towards making investments for earning of exempt income. Accordingly, the AO computed the disallowance u/s 14A in respect of interest and other expenses at Rs.64.56 lakhs and added the same to the total income of the assessee.

5. By the impugned order, disallowance of interest was deleted by CIT(A) by observing that total non-interest bearing funds of the assessee as on 31/03/2012 was Rs.5966 Lakhs which includes share capital, reserves and debentures, was much more than the investments of Rs.1552.25 lakhs as on 31/03/2012. Hence, there is no interest expenditure incurred for earning the income which does not form part of the total income of the assessee-company. Therefore it has to be construed that the 2<sup>nd</sup> limb of rule 8D 2(ii) pertaining to disallowance of interest expenses should be considered as NIL.

6. However, CIT(A) has confirmed the disallowance made by AO under Rule 8D 2 (iii) against which assessee is not in further appeal before us.

7. Against the above order of CIT(A), revenue is in further appeal before us. Ld. DR relied on the order of AO. On the other hand, Learned AR invited our attention to the audited balance sheet of the assessee to

demonstrate that assessee was having sufficient interest free funds available in the form of share capital, reserves amounting to Rs.5966 lakhs, against which investment was only to the tune of Rs.1552.25 lakhs as on 31/03/2012. Reliance was placed on the decision of jurisdictional High Court in case of HDFC Bank Ltd., 366 ITR 505 in support of the proposition that in case of assessee having its capital profit, reserve and surplus, more than the investment, then it is presumed that investment is out of assessee's own interest free funds. In the instant case before us there is a categorical finding by the CIT(A) with regard to the interest free funds available with the assessee in the form of share capital and reserves amounting to Rs.5966 lakhs which was more than the investment of Rs.1552.25 lakhs as on 31/03/2012. This finding of CIT(A) is as per material on record and was not controverted by Department by bringing any positive material on record. Applying the proposition of law laid down by the jurisdictional High Court in the case of HDFC Bank Ltd., 366 ITR 505 and Reliance Utilities & Power Ltd., 313 ITR 340 (Bom), we are inclined to agree with the learned AR Mr. Madhur Agarwal that CIT(A) has correctly deleted the disallowance of interest.

**8. In the result, appeal of the Revenue is dismissed.**

Order pronounced in the open court on this 07/03/2018

**Sd/-**  
**(AMARJIT SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 07/03/2018  
Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai