

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “D” KOLKATA*

Before **Shri Aby.T Varkey, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

**ITA No.1570/Kol/2016**  
Assessment Year :2010-11

DCIT, Circle-10(1), Aayakar Bhawan, 3 <sup>rd</sup> Floor, P-7, Chowringhee Square, Kolkata-69	<b>V/s.</b>	M/s Anjana Projects Pvt. Ltd., 13, Mahendra Road, Bhowanipure, Kolkata-25 <b>[PAN No.AAECA 4280 H]</b>
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Arindam Bhattacharjee, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Subash Agarwal, Advocate
सुनवाई की तारीख/Date of Hearing	06-02-2018
घोषणा की तारीख/Date of Pronouncement	28-03-2018

**आदेश /ORDER**

**PER Waseem Ahmed, Accountant Member:-**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-4, Kolkata dated 19.05.2016. Assessment was framed by DCIT, Circle-10(1), Kolkata u/s 263/143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated Nil for assessment year 2010-11. The Revenue has raised the following grounds:-

- “1. Whether the Ld. CIT(A) was correct in giving fresh direction to the AO to segregate the opening and closing investment which actually yielded exempt income and to recomputed the disallowance made u/s. 14A read with Rule 8D(2)(iii)?*
- 2. Whether the Ld. CIT(A) was correct in not appreciating the fact that Rule 8D(2)(iii) does not actually make any distinction into the investments whether they actually yielded exempt income or not?*

3. *Whether the Ld. CIT(A) was correct in giving fresh direction to the AO. despite the fact that the constitutional validity of Rule 8D has been upheld by Bombay High Court Godrej & Boyce Mfg. Co. Limited vs. CIT [2010] 328 ITR 81 (Bom)(HC)?*

4. *That the appellant craves to add, delete or modify any of the grounds of appeal before or at the time of hearing.”*

Shri Arindam Bhattacharjee, Ld. Departmental Representative appeared on behalf of Revenue and Shri Subash Agarwal, Ld. Advocate appeared on behalf of assessee.

2. Inter-connected issue raised by Revenue in this appeal is that Ld. CIT(A) erred in directing the Assessing Officer to compute the disallowance u/s 14A of the Act r.w.s 8D(2)(iii) of the Income Tax Rule, 1962 on the basis of investments which have yielded dividend income.

3. Briefly stated facts are that assessee is an individual and engaged in business of investment and finance. The assessee during the year has earned dividend income of ₹24,62,121/- and long term capital gains on shares subject to Security Transaction Tax (STT for short) of ₹32,27,428/- which was claimed exempted from income tax. During the course of assessment proceedings, AO invoked the provisions of Rule 8D(2)(iii) of the IT Rules 1962 and made the disallowance of ₹7,04,931/- on account of administrative expense. The disallowance made by the AO was added to the total income of assessee.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who directed the AO to make the disallowance under Rule 8D(2)(iii) of the IT Rules, 1962 after considering the investments which have yielded dividend income during the year.

Aggrieved by the above finding of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

5. Before us Ld. DR relied on the order of AO. The Id. AR on the other hand relied the order of Id. CIT(A).

6. We have heard the rival contentions of both the parties and perused the materials available on record. It is settled proposition of law that for making the disallowance in respect of administrative expense under Rule 8D(2)(iii) of

IT Rules, the investment which have given rise to the dividend income during the year can only be considered for the purpose of disallowance under Rule 8D(2)(iii) of IT Rules. In holding so we find guidance & support from the order of Coordinate Bench of this Tribunal in the case of *REI Agro Ltd. v. Dy. CIT [2013] 35 taxmann.com 404/144 ITD 141 (Kol.)* which was also affirmed by the Hon'ble Calcutta High Court vide Order dated 09.04.2014 in GA No. 3581 of 2013, wherein it was held that the disallowance as per Rule 8D shall be made by taking into consideration only those shares, which have yielded dividend income in the year under consideration. Therefore we direct the AO to make the disallowance under rule 8D after considering the investments which have yielded the dividend income during the year. Thus we find no infirmity in the order of Id. CIT(A). We hold accordingly. Hence the ground of appeal of the Revenue is dismissed.

**7. In the result, Revenue's appeal stands dismissed.**

Order pronounced in the open court 28/02/2018

Sd/-  
(Aby. T. Varkey)  
(Judicial Member)  
Kolkata,

Sd/-  
(Waseem Ahmed)  
(Accountant Member)

\*Dkp

दिनांक:- 28/03/2018 कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-DCIT, Cir-10(1), Aayakar Bhawan, 3<sup>rd</sup> Fl, P-7, Chowringhee S. Kol-69
2. प्रत्यर्थी/Respondent-M/s Anjana Projects Pvt.Ltd., 13, Mahendra Rd, Bhowanipure, Kol-25
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of  
Office/DDO  
आयकर अपीलीय अधिकरण,  
कोलकाता ।