

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM

आयकर अपील सं./ ITA No. 3661/Mum/2016

(निर्धारण वर्ष / Assessment Year 2011-12)

The Dy. Commissioner of Income Tax, Room No. 608, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	Vs.	M/s J.M Financial Products Ltd. 7 th Floor, Cnergy, Appasaheb Marathe Marg, Prabhadevi, Mumbai-400 025
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No. AAACJ1236G		

Revenue by : Abhijit Patankar, DR

Assessee by : Dr. K Shivaram
Sanjay Parikh, ARs'

Date of hearing: 16-05-2018 Date of pronouncement : 31-05-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-8, Mumbai [in short CIT(A)], in appeal No. CIT(A)-8/IT-590/14-15 dated 15.02.2016. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle-3(2), Mumbai (in short 'DCIT') for the A.Y. 2011-12 vide order dated 20.03.2014 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The first issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance of expenses relatable to exempt income made by AO by invoking the provisions of section 14A read with Rule 8D of the Rules (hereinafter the Rules). For this Revenue has raised the following ground No. 1 to 3 as under: -

"1. Whether on the facts and in the circumstances and in law the Ld. CIT(A) is right in deleting the disallowance of expenses made by the AO u/s. 14A r.w.r 8D at Rs. 18,41,43,609/- and upholding the suo moto disallowance made by assessee at Rs. 58,51,272/-?"

2. Whether on the facts and circumstances and in law the Ld. CIT(A) is right in deleting the disallowance of expenses made by the AO u/s. 14A at Rs. 18,41,43,609/- without appreciating the fact that as per the decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce Ltd., disallowances of expenses for AY 2008-09 onwards are to be made under rule 8D2 only?

3. Whether on the facts and circumstances and in law the Ld. CIT(A) is right in deleting the disallowance of expenses u/s 14A by accepting the claim of the assessee that investments were made from own funds without actually verifying the sources of such investments, without appreciating that the assessee had not proved it before the Assessing Officer or in appeal proceedings that investments were actually made from own funds.?"



3. Briefly stated facts are that the AO during the course of assessment proceedings noticed that the assessee company has claimed exempt income to the tune of ₹ 21,18,60,437/- on the investment made amounting to ₹ 117,01,03,078/-. The assessee filed computation of disallowance under rule 8D and claimed that it has incurred expenditure on earning of this exempt income at ₹ 58,51,272/-. The computation reads as under: -

<i>Particulars</i>	<i>Amount (₹)</i>
<i>Total compensation Cost</i>	<i>16,58,52,262</i>
<i>Compensation costs of persons handling investment activity</i>	<i>82,95,456</i>
<i>% of Time Spent</i>	<i>25%</i>
<i>Compensation cost based on the time spent</i>	<i>20,73,864</i>
<i>% of Administration cost of Employee Costs</i>	<i>182.14%</i>
<i>Administrative cost</i>	<i>37,77,336</i>
<i>Total expenses to be considered for disallowance u/s 14A</i>	<i>58,51,200</i>

4. The AO gone into the computation of disallowance made by the assessee and invoked the provisions of Rule 8D(2)(ii) of the rules to make disallowance of interest expenditure at ₹ 17,67,13,024/- and also administrative expenses under Rule 8D(2)(iii) of the Rules i.e. 0.5% on average value of investment at ₹ 1,32,81,785/-. Thereby a total disallowance was made, after allowing the suo moto disallowance made by AO of ₹ 58,51,200/-, at ₹ 18,41,43,609/-. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) deleted the disallowance for the reason that the assessee has given scientific methodology for computing the disallowance attributable to earning of exempt income amounting to ₹ 58,51,2000/- and the AO has not recorded any satisfaction. He deleted the disallowance by observing in Para 5.1.4 as under:-



“5.1.4 In the instant case, I find that the Assessing Officer has not given any justification for rejecting the detailed and scientific methodology of computing expenses attributable to earning of exempt income submitted by the appellant nor has he given any specific reasons for rejecting the computation of indirect expenses as submitted by the appellant He has also not taken into consideration the fact that the appellants own funds by way of share capital of Rs. 544,50,00,000/- and reserves of Rs. 210,8481087/- were more than the investments made Moreover. I find that my Ld. Predecessor has given relief to the appellant on account of interest expenditure under rule 8D(2)(ii) for AY. 2010-11 vide order dated 26.03.2015 Therefore, in view of the facts and circumstances of the case and the ratio of various judicial pronouncements as mentioned above the Assessing Officer is directed to accept suo moto disallowance of ₹ 58,51,200/- made by the appellant under section 14A and the balance disallowance is deleted. These grounds of appeal are therefore allowed.”

Aggrieved, now Revenue is in appeal before Tribunal.

5. Before us, the learned Sr. Departmental Representative Shri Abhijit Patankar drew our attention to suo moto disallowance made by assessee and pointed out that the AO has not gone into the investment made by the assessee and financial position of the assessee company i.e. loan liability. He particularly drew our attention to the balance sheet and stated that in view of the accounts of the assessee it is clear that the suo moto disallowance made by the assessee is not commensurate with the



exempt income. On the other hand, the learned Counsel for the assessee argued that the investment made in exempt income, the total investment giving tax exempt income is Rs. 117.01 crores and interest free capital / funds that the assessee company to the tune of ₹ 755.35 crores in the share of share capital reserves available with the assessee. He argued that this was explained before AO vide letter dated 12-03-2014, which is reproduced in the assessment order, clearly states that the assessee's investment in giving rise to tax free income, is much less than the interest free capital as narrated above. Further, the learned Counsel referred to the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT [2018] 402 ITR 640 (SC) wherein the Hon'ble Supreme Court has held that the positive satisfaction is to be recorded by the AO for making disallowance. Hon'ble Supreme Court held as under: -

“41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/ making the investment in shares is to be examined by the AO.”



6. The learned Counsel for the assessee also drew our attention to Schedule 14 of the Act of the assessee's accounts, wherein administrative expenses are disclosed and stated that the AO could not point out which expenses are relatable to exempt income. He also relied on the Tribunal decision in assessee's own case for immediately preceding year, wherein Tribunal has deleted the disallowance by following the Decision of Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom.) by observing in Para 6 to 8, 10 as under:-

"6. We have heard the rival contentions and gone through the facts and circumstances of the case. As regards to Revenue's appeal in ITA No.3940 & 3941/Mum/2015 for the AY 2010-11, we find that in the case of JM Financial Products Ltd. in ITA No. 3941/Mum/2015, the AO has disallowed the interest of Rs. 8,80,69,042/-. The assessee before CIT(A) and the AO argued that assessee has sufficient own funds to make investment and he filed complete chart in his paper book, which is read as under: -

<i>Year Ended</i>	<i>Share Capital</i>	<i>Investment</i>
<i>31 March , 2009</i>	<i>6,72,87,73,548</i>	<i>2,09,34,91,521</i>
<i>31 March, 2010</i>	<i>7,13,80,61,021</i>	<i>4,22,63,74,510</i>

7. Similarly, we find that in the case of JM Financial Investment Managers Ltd. in ITA No. 3940/Mum/2015, the AO has disallowed the interest of Rs. 77,89,257/-. The assessee before CIT(A) and the AO argued that assessee has sufficient own funds to make investment and he filed complete chart in his paper book, which is read as under: -



<i>Year Ended</i>	<i>Share Capital</i>	<i>Investment</i>
<i>31 March , 2009</i>	<i>11,52,56,543</i>	<i>82,70,32454</i>
<i>31 March, 2010</i>	<i>118,75,46,437</i>	<i>90,44,15,132</i>

8. *In view of the above facts and circumstances, assessee has share capital and resources which is much more than the investment of tax free incomes and once assessee has sufficient own funds for making investment, then the presumption will be that no disallowance can be made on account of interest. This view of ours is supported the decision of Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (supra) and Reliance Utilities Ltd. (supra). Accordingly, we are of the view that the CIT(A) has rightly deleted the addition in both the years and we confirm the same. This common issue of both the appeals of Revenue is dismissed.*

.....

10. *In the present case also the assessee in the case of JM Financial Investment Managers Ltd. has made suo moto disallowance of Rs. 30,09,078/- on account of employees' compensation cost, interest cost and security transactions tax. Similarly, in the case of JM Financial Products Ltd., the assessee earned exempted income of Rs. 6,49,62,982/- on a total investment during the year at Rs. 414,26,11,058/-. The assessee suo moto disallowed a sum of Rs. 28,64,511/- on account of compensation cost of employees as well as administration cost. The AO in both the cases has not rejected the computation of disallowance made by assessee and once the assessee's disallowance*



held to be incorrect, the AO cannot invoke the provision of Rule 8D of the Rules. Accordingly, we delete the disallowance and allow the appeal of the assessee.”

7. We find from the above that the issue is squarely covered in favour of assessee and against the Revenue in Tribunal's order in assessee's own case in earlier year. The facts and circumstances being exactly identical, respectfully following the same we confirm the order of CIT(A) deleting the disallowance. The appeal of Revenue on this issue is dismissed.

8. The next issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance of expenses relatable to exempt income by invoking the provisions of section 14A read with Rule 8D of the Rules, (hereinafter the Rules) while computing the book profit under section 115JB of the Act. For this assessee has raised the following ground No. 4 and 5:-

“4. Whether on the facts and circumstances and in law the Ld. CIT(A) is right in deleting the disallowance of expenses u/s. 14A of Rs. 18,41,43,609/- made by assessing officer while computing book profit u/s 115JB of the IT. Act?

5. On the facts and circumstances and in law the Ld. CIT(A) erred in not considering the fact that Hon'ble Delhi High Court in its decision in the case of Goetze (India) Ltd (361 ITR 505) has held that the adjustments are to be made IT Act on account of disallowances of expenses u/s 14A of the I. T. Act and reversed the decision of the Hon 'ble JTAT Delhi.”



9. At the outset, it is noticed that this issue is squarely covered in favour of assessee and against the revenue by the decision of Hon'ble special Bench of this Tribunal Delhi Bench in the case of ACIT vs. Vireet Investments (P.) Ltd. [2017] 58 ITR (AT) 313 (Delhi - Trib.) (SB), respectfully following the same, we delete the disallowance. This issue of Revenue's appeal is dismissed.

10. **In the result, the appeal Revenue is dismissed.**

Order pronounced in the open court on 31-05-2018.

आदेश की घोषणा खुले मे दिनांक 31.05.2018 को की गई ।

Sd/-
(G MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 31-05-2018
Sudip Sarkar /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.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI