

आयकर अपीलिय 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. 3664/Mum/2016

(निर्धारण वर्ष / Assessment Year 2012-13)

The Dy. Commissioner of Income Tax, Circle 3(2)(1), Room No. 608, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	Vs.	M/s Indian Express Newspapers (Mumbai) Ltd. Express Towers, Nariman Point, Mumbai-400 021
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No. AAACI2555F		

Revenue by : V Vidhyadhar, DR

Assessee by : V Mohan, AR

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-748/14-15 dated 29.02.2016. The Assessment was framed by the Asst. Commissioner of Income Tax, Mumbai (OSD)-3, (in short 'ACIT') for the A.Y. 2012-13 vide order dated 16.02.2015 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 of the Act read with section 8D of the Income Tax Rules, 1962 (hereinafter the 'Rules'). For this Revenue has raised the following three grounds: -

"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. 65,80,982/- and upholding the suo moto disallowance made by assessee at Rs. 8,76,8371- holding that the onus was upon the Assessing Officer to prove that interest expenditure was incurred for making investments capable of earning exempt income.?"

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. 65,80,982/- 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 A. Y. 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) was 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 finds.?"



3. Briefly stated facts are that the AO on going through the profit and loss account and computation of income noted that the assessee has made investment in shares to the tune of ₹ 17,47,09,860/- and received exempt income under section 10(38) of the Act at Rs. 1,29,42,407/- on the said investment. The assessee has made computation of disallowance and suo moto disallowance of a sum of ₹ 8,76,837/- 14A of the Act being 0.5% of the average value of investment. As the assessee has not included the interest component in term of Rule 8D(2)(ii) of the Rules, the AO has made disallowance of interest at ₹ 57,04,148/-. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) deleted the disallowance as the AO has not recorded any satisfaction by observing in para 5.1.4 and 5.1.5 as under:-

“5.1.4 In order to invoke the provisions of Rule 80 of the IT Rules, it is a pre-requisite for the assessing officer to verify the claim of the appellant and record his objective satisfaction regarding the assessee's claim of expenses incurred or no expenditure incurred in relation to the exempt income having regard to the accounts of the assessee. In this case, it was claimed that the appellant had not incurred any expenditure by way of interest or any other expenditure in relation to the exempt income. A suo moto disallowance was made by the appellant. A far more rigorous rejection of the appellant's contentions and methodology of suo moto disallowance was required from the AO, in absence of which rule 8D could not be invoked in a mechanical and automatic manner. This view also finds support in following judicial pronouncements:

*Godrej & Boyce Mfg-Co. Ltd vs. DCIT [2010]
234 CTR 001 (Bom);*



*Maxopp Investment Ltd vs CIT [2011] 203
Taxman 364/247 CTR 162 (Delhi HC);*

*CIT vs. I.P. Support Services India (P) Ltd.
(ITA 283/2014) (Delhi HIC);*

*CIT vs. Taikisha Engineering India Limited
370 ITR 338 (Del);*

*CIT vs. Abhishek Industries Ltd. ([2015] 231
Taxman 85) (Punjab & Haryana)*

*Auchtel Products Ltd (ITA No. 3183,2649 &
3185/Mum/2011) (Order dated 30 April
2012);*

*DCIT vs. Jindal Photo Ltd (2011-TIOL-653-
ITAT-Del):*

REI Agro Ltd. v. DCIT [2013] 144 ITD 141

*ACIT v. Magarpatta Township Development
& Construction Co. Ltd (2015] 152 ITD 469
(Pune).*

*Fali S Nariman vs. Addl. CIT [2015] 68 SOT
134 (Mum. ITAT)*

*ACIT vs. Pawan Kumar Jhunjunwala [2016]
66 laxmann.com 13 (kol. ITAT)*

*Damodar Valley Corporation vs. CIT [2016]
66 Taxmann.com 25 (Kol. ITAT)*

*CIT vs. Om Prakash Khaitan [2015] 376 ITR
390 (Delhi)*



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*DCIT v. Subramanya Constructions & Development Co. Ltd. (ITA No. 404/2013):
and*

JM Financial Limited vs. ACIT (I.T.A No. 4521/Mum/2012

5.1.5 I find that a similar issue had come up in the appellants case for assessment year 2010-11 and decided by my learned predecessor in his appellate order dated 26/08/2014. He has discussed this issue at para 5.2 on pages 3-6 of his order In that order, my predecessor had upheld disallowance made by the AO under section 14A read with Rule 5(2)(ii). However, as in from the facts of the instant assessment year, the interest paid by the appellant is clearly not attributable to investment which earns exempt income The appellate order 2010-11 also does not take into consideration the above judicial pronouncements of both jurisdictional and other higher courts. Therefore, I differ from the view taken by my learned predecessor and direct the AO to restrict disallowance under section 14A to Rs. 8,76,834/- suo moto made by the appellant and the balance additional disallowance made by the AO is deleted. Accordingly, this ground of appeal is allowed.”

Aggrieved, now Revenue came in second appeal before Tribunal.



4. We have heard the rival contentions and gone through the facts and circumstances of the case. We find from the facts of the case that the assessee has made investment to the tune of ₹ 17,47,09,860/- from where the assessee has earned exempt income. The assessee before us claimed that it has more interest free funds than investment i.e. reserve and surplus at ₹ 205 Crore. The learned Counsel for the assessee also relied in the earlier years order of Tribunal in assessee's own case for AY 2010-11 in ITA No. 6780/Mum/2014 dated 22.06.2016, wherein assessee's own funds were more than the investments of tax free investments and Tribunal has deleted the disallowance following the decision of Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom.), wherein Hon'ble Bombay High Court has held that the presumption is in favour of assessee that has invested the tax free income earned from securities from the interest free funds in case revenue could not prove nexus. As the facts are exactly identical in this year also, respectfully following earlier year's Tribunal's decision in, assessee's own case, in ITA No. 6780/Mum/2014 for AY 2010-11 vide order dated 22.06.2016, we affirm the order of CIT(A) deleting the disallowance. This issue of Revenue's appeal is dismissed.

5. The next issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance of deduction of land Revenue. For this Revenue has raised the following ground No.4: -

"4. Whether on the facts and circumstances and in law the Ld. CIT(A) is right in allowing the assessee's claim of deduction of land revenue of Rs. 1,94,648/- while computing income from house property without appreciating the fact that no such deduction is allowable as per the provisions of income tax Act 1961 in the computation of income from house property?"



6. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the CIT(A) in AY 2010-11 has deleted the disallowance on the grounds that the Municipal tax are liable for deduction. The CIT(A) in this year following the order of his predecessor in assessee's own case for AY 2010-11 allowed the claim by observing Para 5.2.1 as under: -

“5.2.1 This ground pertains to disallowance of Rs. 194,548/- being the Land Revenue Tax paid by the appellant. This issue has also come up in appeal before my learned predecessor in appellants own case for assessment year 2010-11. At para 5.3.2, CIT(A) held that undisputedly, the said payments are in the nature of taxes paid and akin to municipal taxes and therefore, an allowable deduction. I do not find any reason to depart from the decision of my learned predecessor and therefore the disallowance of Rs 1,94,648/-on this account is deleted. This ground of appeal is allowed.”

7. We find no infirmity in the order of CIT(A). Hence, this issue of Revenue's appeal is also dismissed.

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

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

आदेश की घोषणा खुले में 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



ITA No. 3664/Mum/2016

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