

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. 3679/Mum/2016**

(निर्धारण वर्ष / Assessment Year 2012-13)

The Dy. Commissioner of Income Tax, Circle-3(3)(1), Room No. 609, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	Vs.	M/s Sicom Investment & Finance Ltd. 402, Ground Floor, Solitaire Park-IV, Andheri Ghatkopar Link road, Chakala, Andheri (E), Mumbai-400 093
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
PAN No. <b>AABCS1131L</b>		

**प्रत्याक्षेप सं./ Cross Objection No. 317/Mum/2017**

(Arising in ITA No. 3679/Mum/2016 for AY 2012-13)

M/s Sicom Investment & Finance Ltd. 402, Ground Floor, Solitaire Park-IV, Andheri Ghatkopar Link road, Chakala, Andheri (E), Mumbai-400 093	Vs.	The Dy. Commissioner of Income Tax, Circle-3(3)(1), Room No. 609, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>

**Revenue by** : V Vidhyadhar, DR

**Assessee by** : MP Lohia & Nikhil Tiwari,  
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-764/14-15 dated 26.02.2016. The Assessment was framed by the Asst. Commissioner of Income Tax (OSD), Circle-3(3)(1), Mumbai (in short 'ACIT') for the A.Y. 2012-13 vide order dated 23.03.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first common issue in this appeal of the Revenue and the CO of the assessee is against the order of CIT(A)'s restricting the disallowance of expenses relatable to exempt income by the AO by invoking the provisions of section 14A read with section 8D of the Rules, 1962 (hereinafter the 'Rules'). For this Revenue has raised following ground No. 1 and assessee in its CO has raised following ground No. 1 to 5 as under:-

*"1. "Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in not considering the fact that the disallowance u/s 14A has to be computed as per rule 8D. When done accordingly, the disallowance worked out to Rs. 1,22,43,641/-, vis -a-vis the disallowance of Rs. 1,43,729/- made by the assessee without applying the said rule. The Hon'ble Bombay high Court in the case of M/s Godrej & Boyce Mfg. Co. Ltd. confirmed the application of rule 8D from A.Y. 2008-09 onward."*



*In assessee's CO*

*"On the facts and in the circumstances of the case the learned AO has;*

*1. erred in objecting to the order of CIT (A), wherein the Hon'ble CIT(A) partially deleted the disallowance on account of interest of Rs. 1,07,62,905/- under section 144 of the Act read with Rule 8D(ii) of the Rules;*

*2. without prejudice to above, erred in objecting the order of CIT(A), wherein the AO has incorrectly mentioned the amount of relief given by CIT(A) for deleting disallowance of interest of Rs. 1,22,43,641/-, under section 14A of the Act read with Rule 8D(ii) of the Rules, as against disallowance made by the AO on account of interest of Rs. 1,07,62,905/-;*

*3. without prejudice to the above, erred in not considering that the disallowance of interest under section 14A of the Act read with Rule 80(ii) of the Rules, if any, should be restricted, by only considering those investments from which dividend is received during the year:*

*On the facts and in the circumstances of the case the learned CIT(A) has;*

*4. erred in upholding the disallowance of Rs. 7,40,368/- made by the AO under section 14A of the Act read with Rule 8D(iii) of the Rules. i.e. disallowance of 0.5% of average value of investments;*



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*5. without prejudice to the above, disallowance under section 14A of the Act read with Rule 8D(iii) of the Rules, if any, should be restricted to 0.5% of average value of investments, by only considering those investments from which dividend is received during the year;"*

3. Briefly stated facts are that the assessee company is engaged in the business of non-banking finance company. The AO during the course of assessment proceedings noticed that the assessee has earned dividend income amounting to Rs. 15.55 crores, which is claimed as exempt under section 10(38) of the Act. The AO also noticed that the assessee has incurred interest expenditure of Rs. 10,59,78,509/- and according to him there is no evidence that interest bearing funds have not been invested in investments giving rise to exempt income to the assessee. Accordingly, the AO worked out the disallowance under Rule 8D(2)(ii) of the Act of interest expenses at Rs. 1,07,62,905/- relating to exempt income and also administrative expenses being 0.5% on average value of investment under Rule 8D(2)(iii) of the Act at Rs. 7,40,368/-. Aggrieved, against the disallowance, assessee preferred the appeal before CIT(A).

4. The CIT(A) following the earlier years decision deleted the disallowance made by AO under Rule 8D (2)(ii) of interest expenses by observing that the assessee has interest free funds available with it at Rs. 64.45 crore, which is more than the investment made in instruments giving exempt income, which is amounting to Rs. 12,31,47,093/- in quoted and unquoted shares. For this CIT(A) observed in Para 5.1.1 to 5.1.3 as under: -



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“5.1.1. These grounds pertain to disallowance of Rs. 1,15,03,273/- u/s. 14A of the Act. During the year under consideration, the appellant had earned an income by way of dividend received from Star Orechem Pvt Ltd of Rs.15,5500,000/- which was claimed exempt u/s 10(34). The appellant made the following investments, quoted investments of Rs.31,40,913/- and unquoted investment of Rs.12,0006,180/-. It is noted that the appellant company has opening net worth of Rs.6445 crores as on 01M April, 2011 as below:

a) Quoted shares Rs 31,40,913/-

b) Unquoted shares Rs. 12,.00,06,180/-

Total Rs.12,31 47,093/

51.2 I find that this issue had come up for decision before my Id predecessor for assessment year 2011-12. He had discussed the issue at para-5 of his order. In that year he noted that the total investments of the appellant were much lower than interest-free funds available with the assessee in terms of shareholder funds. Citing the decisions of Hon'ble Bombay High Court in CIT v. HOFCLTD. ITA No. 330 of 2012 and CIT v Reliance Utilities and Power Ltd 313 ITR 340, he observed 'it would have to be presumed that the investment made by the assessee would be out of the interest-free funds available with the assessee.' Accordingly, he deleted the addition of Rs. 124.17,8501- made by the assessing officer under Rule 80(2)(ii). However,



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*he upheld disallowance at the rate of 0,5% of average value of investment on the opening and closing day of the previous year made by the assessing officer for an amount of Rs, 8.85,536/- as per Rule 80 (2) (iii).*

*5.1.3 I find the facts and circumstances of the case have not changed for the instant year and, therefore, find no reason to deviate from the decision of my predecessor as regards the component of disallowance under Rule 8D(2)(ii).”*

Aggrieved, now Revenue is in second appeal before Tribunal.

5. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the assessee has available funds in the shape of reserve and surplus at Rs. 64.45 crores as on 01.04.11 in the shape of share capital at RS. 14.82 crores, reserve and surplus at Rs. 31.42 crore. The assessee has earned dividend from the investment in Star Orechem Pvt Ltd wherein the investment is to the tune of Rs. 15.50 crores. From these facts it is clear that there are sufficient own funds available with the assessee for making investment in the instruments giving rise to exempt income. Hence, the presumption is that the assessee have invested from own funds in the instrument giving rise to exempt income. Reason for this presumption is that the AO is not able to prove that there is any nexus between the investment made in giving rise to exempt income and loan taken by assessee or borrowed funds. Hence, respectfully following the Hon'ble jurisdictional High Court in the case of HDFC Bank Ltd. CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505, we confirm the order of CIT(A) deleting the addition.



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6. As regards to the order of CIT(A) confirming the disallowance under Rule 8D(2)(iii) the only plea raised before us that disallowance under 14A of the Act read with section Rule 8D(2)(iii) of the Rules should be restricted to 0.5% of average value of investment by only considering the investment from which dividend is received during the year. When this fact was confronted to the learned DR, he stated that the issue can be remitted back to the file of the AO for limited verification whether any expenditure relating to this investment has been incurred or not. We find that only dividend is earned by assessee from Star Orechem Pvt Ltd amounting to Rs. 15.55 crores which was claimed as exempt under section 10(38) of the Act. The AO can verify if any expenditure can be disallowed on account of administrative expenses under Rule 8D(2)(ii) of the Act. This issue of assessee's CO is allowed for statistical purposes.

7. The next issue in this appeal of Revenue and cross objection of the assessee is raised by way of ground No. 2: -

*Revenue*

*"2. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in directing the AO to treat Rs. 1,80,00,000/- written off on account of those shares as short term capital loss incurred by the assessee, without considering the fact that the assessee itself had admitted that the said loss had been claimed erroneously and also that there was no transfer of capital assets nor the assessee had relinquished its right over those shares as has been reflected in the concerned balance sheet"*

*Assessee in its CO has raised the following ground No. 6 and 7*



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*“Allowability of loss on account of write off of investment.*

*On the facts and in the circumstances of the case the learned AO has;*

6. *erred in objecting to the order of the CIT(A), wherein the Hon'ble CIT(A) deleted the disallowance on account of loss on write off of investment of Rs. 1.8 crore claimed as short term capital Loss.*

*On the facts and in the circumstances of the case the learned CIT(A) has;*

7. *without prejudice to the above, if the short term capital Loss on account of write off of investment of Rs. 1.8 crore is denied, then the same should be allowed as business loss under section 28 of the Act, as the assessee is engaged in the business of granting advances to various sectors by way of investments or loans.”*

8. Briefly stated facts are that the AO during the course of assessment proceedings noticed erroneous computation of short term capital gain. When he pointed out this to the assessee, the assessee vide letter dated 11.02.15 admitted that the shares of Peoplex Services Pvt Ltd (PSPL) have not been transferred and the claim of short term capitals loss can be claimed as business loss as the assessee has not transferred the shares but in fact has written off the shares in the books of accounts. The relevant portion of the letter has reproduced in the assessment order reads as under: -



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*“However, we have to slate and submit that since the shares of Peoplex Services Pvt. Ltd. have not been transferred, the claim of Short Term Capital Loss is not tenable and has been erroneously claimed.*

*The assessee company has actually written off the investment in the shares of Peoplex Services Pvt. Ltd., based on the evaluation of the investee company's business and the fact that the various business initiatives of the investee company have failed.”*

9. The AO added this amount of Rs. 1.80 crores claimed by assessee as short term capital. Aggrieved assessee preferred the appeal before CIT(A), who allowed the claim of the assessee by observing in para 5.2.6 as under: -

*“5.2.6 In view of the above, in my opinion, the loss should be allowed as short-term capital loss as the appellant has suffered extinguishment of all rights in the impugned shares of PSPL. The assessing officer is, therefore, directed to treat Rs.1 ,80,00,000/- written off on account of those shares as short-term capital loss incurred during the instant assessment year. Accordingly, this ground of appeal is allowed.”*

Aggrieved, now both are in appeal before us.

10. The learned Counsel for the assessee first of all objected to disallowance of loss of short term capitals and alternatively he stated the same should be allowed as business loss under section 28 of the Act as



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the assessee has engaged in the business of advances to various sectors by way of investment or loans. When it was pointed out that no verification has been carried and no facts are emerging from the orders of the lower authorities, both parties agreed before us that the issue can be remanded back to the file of the AO for fresh adjudication. The assessee is also free to claim it as short term capitals or business loss, as he be able to prove. The AO will decide accordingly. This common issue is set aside to the file of the AO and allowed for statistical purposes.

**11. In the result, the appeal Revenue is dismissed and CO of the Assessee is allowed for statistical purposes.**

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**