



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

BEFORE SHRI R.C.SHARMA, AM

&

SHRI RAM LAL NEGI, JM

ITA No.1952/Mum/2016 & 1953/Mum/2016

(Assessment Year :2011-12 & 2012-13)

DCIT – 1(1)(1) 579, Aayakar Bhavan M.K.Road Mumbai – 400 020	Vs.	M/s. Bennet Coleman & Company Ltd., Times of India Building Dr. D.N.Road Fort, Mumbai – 400 001
<b>PAN/GIR No.</b>		<b>AAACB4373Q</b>
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Revenue by	Shri. H.N.Singh
Assessee by	Shri V. Mohan
<b>Date of Hearing</b>	<b>07/06/2018</b>
<b>Date of Pronouncement</b>	<b>15/06/2018</b>

**आदेश / O R D E R**

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

These are the appeals filed by the Revenue against the order of CIT(A)-2, Mumbai dated 31/12/2015 for the A.Y.2011-12 and 2012-13 in the matter of order passed u/s. 143(3) of the IT Act.

2. Appeals of Revenue are barred by seven days. Keeping in view the reasons given for delay, we condone the delay and appeals are now heard on merit.

3. Common grievance of Revenue in both the years relates to deletion of addition made by AO u/s.14A. At the outset, learned AR placed on

record order of the Tribunal in assessee's own case, wherein similar addition made u/s. 14A by disallowing interest claim was allowed by the

Tribunal in assessee's favour after having the following observation:-

*9. We have carefully considered the submissions and perused the records. We find that identical issue was considered by this ITAT in assessee's own case as referred here in above. We may gainfully refer to the ITAT's order in this regard as under: 6. We have heard the rival contentions of both the parties. We find that assessee has produced the chart showing the summary of source and application of funds which was also available before the AO and is extracted as under for the sake of better understanding of the facts: Sources 31.03.2006 31.3.2007 31.3.2008 31.3.2009 Share Capital Reserves and Surplus 2625 3119 3973 4347 Depreciation Reserve 523 669 843 1002 A 3180 3819 4848 5381 Application Investments on which tax-free income received 882 982 1996 2187 Investments in unlisted shares of subsidiary 313 374 514 807 Other Investments 173 324 613 812 B 1368 1680 3123 3806 SURPLUS (A – B) 1812 2139 1725 1575 It is clear from the records that the assessee has replied to show cause notice issued by the AO and furnished details before the lower authorities by means of above chart that the own funds over the years were sufficient to cover the investments in the shares and securities yielding exempt income. We also note that the borrowings of the assessee company have been utilised for other business requirements and not for making the investments as such. The entire interest expenditure on borrowing fund was incurred in connection with the operating revenue which has been offered to tax. Therefore, no disallowance is required to be made under section 14A of the Act. We also find merit in the contention of the AR that no objective satisfaction has been recorded by the AO before invoking the provisions of section 14A of the Act and the assessee is supported by the decision of the Hon'ble Jurisdictional Bombay High Court in the case of "Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT [(2010) 328 ITR 81 (Bom)]" in which it has been held as under:*

*"Sub-section (2) of section 14A does not enable the assessing officer to apply the method prescribed by Rule 8D without determining in the first instance the correctness of the claim of the assessee, having regard to the accounts of the assessee. .... The satisfaction envisaged by subsection (2) of*

*Section 14A is an objective satisfaction that has to be arrived at by the assessing officer having regard to the accounts of the assessee. .... An objective satisfaction contemplates a notice to the assessee an opportunity to the assessee to place on record all the relevant facts including his accounts and recording of reasons by the assessing officer in the event that he comes to the conclusion that he is not satisfied with the claim of the assessee."*

*From the above judgment it is clear that it is necessary for AO to give opportunity to assessee as to why rule 8D should not be invoked. Assessee has placed on all the relevant facts including his accounts qua the claim and it has also given the detailed working qua the suo motto disallowance Rs.1,18,11,210/- voluntarily made by the assessee for earning the exempt income in the return of income. The assessee has claimed that it had all the sufficient funds to cover investments in tax free securities which is corroborated by the financial audited report for various assessment years i.e. 2006-07 and 2007-08. Even the first appellate authority has recorded the findings that assessee's own funds were for more than the investments in shares and securities yielding tax free income. We notice that the assessee had sufficient own funds and is squarel covered by the ratio laid down by the decision of the Bombay High Court in the case of "CIT vs. Reliance Utilities and Power Ltd." (2009) 313 ITR 340 (Bom) which reads as under:*

*"16. If there be interest-free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest-free funds available. In our opinion, the Supreme Court in East India Pharmaceutical Works Ltd. v. CIT [1997] 224 ITR 627 had the occasion to consider the decision of the Calcutta High Court in Woolcombers of India Ltd. [1982] 134 ITR 219 where a similar issue had arisen. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in Woolcombers of India Ltd.' s case [1982] 134 ITR 219 the Calcutta High Court had come to the conclusion that the profits*

*were sufficient to meet the advance tax liability and the profits were deposited in the over draft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there was sufficient material and the assessee had urged the contention before the High Court. The principle, therefore, would be that if there are funds available both interest-free and over draft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this presumption is established considering the finding of fact both by the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal."*

*7. We, therefore, respectfully following the ratio laid down by the Hon'ble Bombay High Court inclined to set aside the order of CIT(A) on this issue and direct the AO to delete the disallowance as made u/s 14A of the Act.*

*10. We find there is cogency in the Id. Counsel of the assessee's submissions that the issue in present appeal is covered in favour of the assessee by the ITAT decision in assessee's own case earlier. It is not the case that the Hon'ble jurisdictional High Court has reversed the decision. As regards the Id. Departmental Representative's objection that current year's investments and source have not been examined by ITAT, we find that for the current year, the Id. Commissioner of Income Tax (Appeals) has given his findings that sufficient interest free own funds are available. This has not been disputed by the Id. Departmental Representative. Hence, we find that the order of the Id. Commissioner of Income Tax (Appeals) is in accordance with the ITAT decision in assessee's own case. Hence, we uphold the order of the Id. Commissioner of Income Tax (Appeals).*

3. We have carefully gone through the order of the Tribunal in assessee's own case dated 09/03/2018 and found that Tribunal have confirmed the order of the CIT(A) for deleting disallowance on account of interest by observing that assessee's own fund was much more than

investments so made. In both the years under consideration, we found that as per the audited balance sheet placed on record assessee's own interest free funds was much more than the investment so made accordingly, we do not find any infirmity in the order of CIT(A) for deleting the disallowance on account of interest.

4. In the A.Y.2011-12, Revenue is also aggrieved for deleting disallowance of software expenses related to website / portal.

5. We have considered rival contentions and found that during the year assessee has incurred expenditure of Rs.41,69,770/- relating to website which was treated by AO as capital expenditure. The CIT(A) deleted the addition by observing that a website enables dissemination of information relating to the assessee company and thus providing wider access to a large section of society. This gives rise to acquisition of any capital asset or any enduring advantage so as to constitute capital expenditure. Respectfully following the decision of the Hon'ble Delhi High Court in CIT vs. Indian Visit Com Pvt. Ltd. and that of the Hon'ble Mumbai ITAT in Dy. CIT vs. Mahindra Realty & Infra Developers Ltd., relied upon by the assessee Company

6. We do not find any infirmity in the order of CIT(A) for deleting the disallowance so made by AO and treating the same as Revenue in nature. We also found that similar issue has been decided by the Tribunal in its order dated 09/03/2018. Respectfully following the order of the Tribunal in assessee's own case and also keeping in view the nature of expenditure

incurred, we do not find any infirmity in the order of CIT(A) for deleting disallowance of website expenses.

7. In the A.Y.2012-13 also Department has taken similar ground with regard to deleting the disallowance made u/s.14A and software expenses related to website / portal. Following the reasoning given hereinabove, we do not find any infirmity in the order of CIT(A) for deleting the disallowance made u/s.14A and also website expenses and treating the exempt as Revenue in nature.

**8. In the result, both the appeals of Revenue are dismissed.**

Order pronounced in the open court on this 15/06/2018

**Sd/-**  
**(RAM LAL NEGI)**  
JUDICIAL MEMBER

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

Mumbai; Dated 15/06/2018

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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
ITAT, Mumbai