IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI G. S. PANNU, AM &

SHRI SANDEEP GOSAIN, JM

आयकरअपीलसं./ I.T.A. No. 1298/Mum/2013
(**निर्धारणवर्ष** / Assessment Year: 2008-09)

M/sMultimodel Storage Solutions Pvt. Ltd. C/o- Shankarlal Jain & Associates, Chartered Accounts, 12, Engineer Building, 265, Princess Street, Mumbai-400 002	**बनाम**/ Vs.	ACIT 7(2) Mumbai.
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No.		AABCS1088A
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri Satish Jain
प्रत्यर्थीकीओरसे/**Respondentby**	:	Shri Suman Kumar

सुनवाईकीतारीख/ **Date of Hearing**	:	08/01/2018
घोषणाकीतारीख / **Date of Pronouncement**	:	28/02/2018

आदेश / O R D E R

Per Sandeep Gosain, Judicial Member:

The Present Appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)-

9,Mumbaidated 03.12.2012 for AY 2008-09on the grounds of appeal mentioned herein below:-

1. Ld. CIT(A) erred in confirming disallowance as made by Ld. Assessing Officer of Rs.240111/- u/s.14A of the Income Tax Act, without properly appreciating facts of the case and law applicable thereto.

2. Ld. CIT(A) failed to appreciate disallowance made by Ld. Assessing Officer were out of administrative expenses under Rule 8D(2)(iii) of the Income Tax Act as against under Rule 8D(2)(ii).

3. Ld. CIT(A) failed to appreciate that investments held by appellant consists of investment income of which is liable to tax under Income Tax Act. Ld. CIT(A) should have considered income of following investments is liable to be taxed, hence such investments are outside the purview of Section 14A.

I. Investment in bonds u/s.54EC of Rs-85.90 Lakhs interest of which is subject to tax.

II. Investment in fixed maturity plan of Mutual Funds of Rs.366 Lakhs capital gain of which is liable to be taxed under the Income Tax Act.

4. It is prayed that correct disallowance be directed to be calculated under provision of section 14A-read-with ui&D2)(iii) of the Income Tax Act.

5. Appellant crave your honour's leave to add, alter or amend any ground of appeal at the time of hearing or before.

2. The brief facts of the case are that the assessee company is engaged in the business of warehousing. Return of income was filed on 26.09.08 by the assessee declaring total income at Rs. 1,04,63,440/-. Subsequently, the case of the assessee was selected for scrutiny and after serving statutory notices and seeking reply of assessee, order of assessee u/s 143(3) was passed thereby making disallowance u/s 14A of I.T. Act.

3. Aggrieved by the order of AO, assessee filed the appeal before CIT(A) and the Ld. CIT(A) after considering the case of both the parties partly allowed the appeal but confirmed the disallowance made by AO.

4. Aggrieved by the order ofLd. CIT(A), the assessee filed the present appeal before us on the grounds mentioned herein above.

Ground No. 1 to 4.

5. Since all the above grounds raised by the assessee are inter related and inter connected and relates to challenging the order of Ld. CIT(A) in confirming the disallowance made by AO of Rs. 2,40,111/- u/s 14A r.w.r. 8 D(2), therefore we thought it fit to dispose of the same through this common order.

6. At the very outset, Ld. AR submitted that the assessee has not incurred any expenses to earn the dividend and without prejudice, it was also submitted that disallowable on account of administrative expenses under rule 8D(3) will be Rs. 7,911/- as the same will be workable on investments-income of which is exempt under the provisions of I.T. Act. It was further submitted that the investments which are liable to be taxed, either as capital gain or interest will not be liable for any disallowance u/s 14A.

It was submitted by Ld. AR that the revenue authorities had held that disallowance will be applicable on the total investments held by the assessee as not only the dividend but also long term capital gain as claimed as exempt by the assessee. Ld

AR submitted that the details of investments are available in the audited accounts.

Ld. AR also drawn our attention to paper book which contains computation of income, balance sheet and profit and loss account, details of investment, etc. It was submitted that the details of investment have already been submitted which reflects the investments made by the assessee under the provisions of section 54EC of Rs. 85.90 lakhs, the interest earned thereon is liable to be taxed and the same has already been offered for taxation in the loan income which is at page no. 5. It was further submitted that the LTCG is exempted from taxation only in case of equity shares or units of mutual funds which consists of equity shares u/s 10(38) of the I.T. Act. It was contended that capital gain arising out of other investments in mutual funds are liable to be taxed and accordingly the items at serial No. 4, 5, 7 & 10 of the list are investment in mutual funds having fixed maturity plan, therefore, the capital gain whereof is taxable. It was also contended that capital gain arising during the year of item No. 6, 8 & 9 at page no. 9 had already been offered for taxation during

the year. Hence all the investments except two investments of Rs. 4,81,859 as on 31.05.01 are liable to be taxed.

Ld. AR further submitted that Ld. CIT(A) has failed to appreciate that investments held by assessee consists of investment income, which is liable to tax under the provisions of Income Tax Act. Hence, such investments are outside the purview of Section 14A of the I.T. Act.

7. On the other hand, Ld. DR relied upon the order passed by revenue authorities.

8. We have heard the counsels for both the parties as well as orders passed by revenue authorities and documents placed on record, judgment cited by the the parties, we find that Ld. CIT(A) while deciding these grounds had relied upon the decision of Hon'ble Spl. Bench in the case of **Daga Capital Management reported in (2008) 26 SOT 603 (Mum)** while making disallowance by taking 'value of investment' and not the share held as investment. Therefore, the revenue authorities have considered the shares held as stock-in-trade for the purpose of

disallowance. Whereas on the contrary, as per the facts of the present case, substantial investment made by the assessee do not earned dividend and the capital gains earned by the assessee are also taxable. We further noticed that the complete details of investment are available in the audited accounts. However, the revenue authorities without realizing the correct facts made disallowance without appreciating the facts that the investments held by the assessee are not entitled to receive any dividend and even the capital gains earned by the assessee are also taxable. Therefore, considering the facts and circumstances of the case and while applying the principles laid down in the judgment rendered by the Hon'ble Jurisdictional High Court in the case of **Godrej and Boyce Manufacturing Co. Ltd. Vrs. CIT (328 ITR 81)** wherein it was held that the invocation of rule 8D is neither automatic nor it can be mechanically applied. The recording of satisfaction by the AO in respect of the correctness of the submission /calculation of disallowance made by the assessee is mandatory which has not been done in this case.

Therefore, we set aside the order of disallowance made by AO and upheld by Ld. CIT(A) and direct the deletion of

additions u/s 14A r.w. rule 8D. With these directions, grounds raised by the assessee are **allowed**.

9. In the net result, theappeal filed by the assessee is **allowed**.

Order pronounced in the open court on 28th Feb, 2018

Sd/- *Sd/-*

(G. S. Pannu) (Sandeep Gosain)
लेखासदस्य / Accountant Member न्यायिकसदस्य / Judicial Member
मुंबई Mumbai;दिनांकDated : 28.02.2018
Sr.PS. *Dhananjay*

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार
(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**