

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI N.K. PRADHAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.3660/MUM/2016 (A.Y: 2011-12)**

M/s. Capricon Realty Ltd.,  
Vithaldas Chambers, 3<sup>rd</sup> Floor,  
16, Mumbai Samachar Marg,  
Fort, Mumbai – 400 001

v. Asst. Commissioner of Income-  
tax, Circle – 2(1)(1)  
Room No. 561, 5<sup>th</sup> Floor,  
Aayakar Bhavan, M.K.Road,  
Mumbai-400 020

**PAN NO: AAACC 4297 J**

**(Appellant)**

**(Respondent)**

<b>Assessee by</b>	<b>:</b>	<b>Shri K. Gopal</b>
<b>Department by</b>	<b>:</b>	<b>Shri V. Vidhyadhar</b>
<b>Date of Hearing</b>	<b>:</b>	<b>05.04.2018</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>20.06.2018</b>

**ORDER**

**PER C.N. PRASAD:**

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 4, Mumbai dated 14.03.2016 for the Assessment Year 2012-13. The only issue in the appeal of the assessee is in confirming the disallowance u/s. 14A of the Act.

2. Briefly stated the facts are that, the assessee filed return of income on 29.09.2012 declaring income of ₹.6,80,03,100/- and the assessment

was completed u/s. 143(3) of the Act on 10.02.2015. While completing the assessment the Assessing Officer noticed that assessee claimed exempt income of ₹.1,70,79,064/- in the computation of income and suomoto disallowance u/s. 14A of the Act was made at ₹.2,86,214/-. The assessee was required to justify why disallowance u/s. 14A r.w. Rule 8D should not be made. The assessee submitted its reply explaining the reasons why there should not be further disallowance u/s. 14A apart from suomoto disallowance of ₹.2,86,214/- and breakup of the said expenses was also provided. Rejecting the contentions of the assessee the Assessing Officer analyzing the submissions of the assessee and by giving his reason and recording satisfaction rejected the working of disallowance of the assessee and computed the disallowance u/s. Rule 8D(2)(iii) of the Act i.e. 0.5% of average investments towards administrative expenses at ₹.36,59,735/-. However, since the assessee itself disallowed ₹.2,86,214/- the Assessing Officer computed the disallowance of ₹.33,73,521/- after reducing the suomoto disallowance made by the assessee. Against this assessee preferred appeal before the Ld.CIT(A) and the Ld.CIT(A) also confirmed the action of the Assessing Officer.

3. Learned Counsel for the assessee submitted that Assessing Officer not recorded satisfaction as to why the suomoto disallowance is not

acceptable. Referring to Para 41 of the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT [91 taxmann.com 154] he submitted that Assessing Officer needs to record satisfaction that, why suomoto disallowance u/s. 14A was not correct. He submitted that in this case no satisfaction is recorded.

4. Ld. DR however submitted that the Assessing Officer recorded his satisfaction and gave reasons why suomoto disallowance was wrong. Therefore, Assessing Officer is justified in invoking the provisions of Rule 8D(2)(iii) of the Act.

5. We have heard the rival submissions, perused the orders of the authorities below. We find that from the Assessment Order that, the Assessing Officer has given the following reasons in rejecting the computation of suomoto disallowance.

“It is found from the details filed that substantial amounts were invested in various long term and short term investments and Tax Free Bonds and shares. Further, analysis of the same indicates that investments are made in many forms such as Tax Free Bonds, Equity Shares, Trade Investments, etc aggregating to about ₹.70 crores. These investments cannot be managed without inherent expenses since no investments can be made without market analysis and expertise. The assessee could not have got the market expertise and the necessary staff for free and has to necessarily incur expenditure. It is not possible without sufficient expertise as to selection of securities and timely swaps. With increase in technicalities involved in market operations the assessee is bound to have expert advice and necessary staff to act in a time bound manner for proper investments. The assessee would be in receipt of various daily reports, fortnightly reports and monthly reports at regular intervals so that the assessee can take informed decisions regarding deployment/redemption of their investments in various schemes. These inputs have terms of substantial time as well as cost on account of conveyance, travelling, telephone/mobile bills, stationary etc. It is difficult to ascertain such cost in quantitative terms.

In the instant case it is difficult to segregate funds with reference to their sources and the assessee has not maintained separate books of accounts for exempt income and business income. Therefore, I am not satisfied with the working of disallowance shown by the assessee company in absence of co-relation of details.”

6. On a perusal of the above, we find that the Assessing Officer did record his satisfaction on the working of disallowance shown by the assessee company is not acceptable to him. In the circumstances, we do not see much force in the submissions of the assessee that the Assessing Officer has not recorded any satisfaction before invoking Rule 8D of the Act. Hence, the grounds raised by the assessee are rejected.

7. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on the 20<sup>th</sup> June, 2018.

Sd/-  
**(N.K. PRADHAN)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 20/06/2018  
Girdhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**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,

(Asstt. Registrar)  
**ITAT, Mum**