

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.4072/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2012-13)

ITO 3(3)(4), Mumbai, Room No.672, Aayakar Bhavan, M.K. Road, New Marine Lines, Mumbai-400020.	बनाम/ Vs.	M/s. Venktesh Investment & Trading Pvt. Ltd. 612, Raheja Chambers, Nariman Point, Mumbai-400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCV2567M		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Shri Ram Tiwar (Sr. AR)
Assessee by:	Shri Nitesh Joshi

सुनवाई की तारीख / Date of Hearing: 25.05.2018

घोषणा की तारीख /Date of Pronouncement: 20.06.2018

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 28.03.2016 passed by the Commissioner of Income Tax (Appeals) -8, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2012-13.

2. The revenue has raised the following grounds: -

1. “On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below.
2. "Whether on the facts and circumstances of the case and in law, the Ld, CIT(A) has erred in not considering the fact that the amount of disallowance of Rs.38.30.654A u/s 14A

has to be computed as per Rule 8D when the computation of The assessee was not found to be correct and as held in the order of the Hon'ble High Court in the case of M/s. Godrej S, Boyce Mfg, Co. Ltd."

3. " The appellant prays That the order of the CIT(A) on the above ground be set aside and that of the Assessing Officer be restored "
"The appellant craves leave to amend or alter any ground or add new ground which may be necessary"

3. The brief facts of the case are that the assessee filed its return of income on 24.09.2012 declaring total income to the tune of Rs.29,22,700/-. The return was processed u/s 143(1) of the Act dated 15.03.2013. Thereafter the case was selected for scrutiny by issuance of notice u/s 143(2) of the Act dated 07.08.2013 which was served upon the assessee. Further, notices u/s 142(1) of the Act dated 02.05.2014, 23.07.2014 & 31.10.2014 were also issued and served upon the assessee. The assessee company was engaged in the business of investment in shares, debentures and financing activities. During the year under consideration, the assessee claimed the dividend income to the tune of Rs.8,94,02,957/- and disallowed the expenses to earn the exempt income to the tune of Rs.98,346/-. The Assessing Officer was not satisfied and assessed the expenditure to incur the exempt income to the tune of Rs.38,30,654/-. The total income of the assessee was assessed to the tune of Rs.73,42,460/- and book profit to the tune of Rs.11,91,905/-. The assessee was not satisfied, therefore, the assessee has filed an appeal before the CIT(A) who allowed the claim of the assessee in respect of disallowance u/s 14A r.w. Rule 8D of the Act and restricted the same to the extent of Rs.98,346/- declared by assessee. Aggrieved by this order the revenue has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the revenue has argued that the CIT(A) has described the number of cases and has described the submission of the assessee and also described certain authorities but nowhere applied the mind to decide the issue therefore, the CIT(A) has wrongly set aside the addition raised in view of provision of Section 14A r.w. Rule 8D of the Act, hence, the finding of the CIT(A) is not justifiable and is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has refuted the said contentions. On appraisal of the assessment order, we noticed that the Assessing Officer has applied the provision u/s 14A r.w. Rule 8D (i)(ii)(iii) of the Act. The Assessing Officer assessed the expenditure attributable to exempt income and also assessed the interest expenses and also assessed the expenses in view of provision u/s 8D(2)(iii) of the Act. The AO assessed the disallowance u/s 14A of the Act to the tune of Rs.38,30,654/-. On appraisal of the order of the CIT(A), we noticed that the CIT(A) has reproduced the submission of the assessee and after quoting certain authorities deleted the addition excluding the suo-moto disallowance of Rs.98,346/-. There is no reasons on record to delete the addition raised by the AO u/s 14A r.w. Rule 8D of the Act. It is also not discussed in which circumstances, the assessee was not under obligation to assess the expenditure to earn the exempt income in view of the provision u/s 8D(ii)(iii) of the Act. The order of the CIT(A) is clearly non-speaking and nowhere justify the deletion raised by the AO. In view of the said circumstances, we set aside the finding of the CIT(A) on this issue and restored the matter before the CIT(A) to decide the issues afresh by considering the each and every provision of the Section

14A r.w. Rule 8D (i)(ii)(iii) of the Act. It is also necessary that before passing the order, the CIT(A) would give fair and reasonable opportunity of being heard to the assessee in accordance with law.

5. In the result, the appeal filed by the **revenue is hereby allowed for statistical purpose.**

Order pronounced in the open court on 20.06.2018.

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 20.06.2018.
vijay

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai