

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री एन. के. प्रधान लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI N.K. PRADHAN, AM

आयकर अपील सं./ ITA No. 2318/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

Dy. Commissioner of Income Tax

Circle 7(3)(2), Room No. 669A, Aayakar (अपीलार्थी / Appellant)
Bhavan, M.K. Road, Churchgate, Mumbai-20

Vs.

PHL Fininvest Pvt. Ltd.

Piramal Tower, Ganpatarao (प्रत्यर्थी / Respondent)
Kadam marg, Lower Parel, Mumbai-13

स्थायी लेखा सं./PAN NO. AAACN5024A

अपीलार्थी की ओर से / Appellant by	:	Shri Abi Rama Karthikeyan, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Yogesh A Thar Ms. Manshi Padhiar, ARs'

सुनवाई की तारीख / Date of hearing:	23-08-2018
घोषणा की तारीख / Date of pronouncement :	31-08-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-13, Mumbai [in short CIT(A)], in appeal No. CIT(A)-13/DCIT-7(3)(1)/82/2015-16 dated 17-01-2017. The assessment was framed by the Dy. Commissioner of Income Tax, Circle-7(3)(1) Mumbai (in short 'DCIT'/ 'AO') for the A.Y. 2012-13 vide order



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dated 26-03-2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in the appeal of Revenue is against the order of CIT(A) restricting the disallowance of expenses relatable to exempt income under section 14A of Act read with Rule 8D of the Income Tax Rules (hereinafter the 'Rules'), 1962 to the extent of dividend income earned from Mutual Funds amounting to ₹ 31,43,480/- as against the disallowance made by AO at ₹ 1,45,99,068/-. For this Revenue has raised the following three grounds: -

"1. Whether, on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) is right in restricting disallowance u/s. 14A of the Act to the extent of the dividend income earned from the Mutual Funds amounting to ₹ 3,47,480/- without appreciating that disallowance of ₹ 55,35,601/- was made u/s.14A of the Act in the return of income and disallowance of ₹ 1,45,99,068/- was determined u/s.14A of the Act r.w.r 8d of the Rules.

2. Whether, on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) is right in holding that the entire investment of ₹ 5.16 crores in M/s Piramal Glass Ltd should be excluded from the purview of the computation u/s. 14A of the Act r.w.r. 8D of the Rules being of strategic nature whereas the statutory provisions does not grant any such exemption to the strategic investments which are capable of yielding exempt income.



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3. Whether, on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) is right in holding that disallowance u/s. 14A of the Act should be restricted to the exempt income earned without appreciating that there is so much provision in the statutory scheme envisaged in section 14A of the Act read with Rule 8D of the Rules.”

3. Briefly facts are that the assessee is engaged in the business of finance and investment activities. During the course of assessment proceedings, the AO on perusal of the profit and loss account and computation of income noticed that the assessee company has claimed dividend income as exempt amounting to ₹ 1,02,18,363/-. The AO required the assessee to explain as to why the expense relating to exempt income be not disallowed in view of the provisions of section 14A of the Act read with Rule 8D of the Rules. The assessee before AO contended that no expenses are incurred for the purpose of earning of exempt income other than the disallowance computed by the assessee suo moto at ₹ 55,35,601/-. The AO has not accepted the disallowance made suo moto and by invoking the provisions of Rule 8D of the Rules i.e. Rule 8D(2)(ii) of Rules disallowance at ₹ 1,19,25,502/- and under Rule 8D(2)(iii) disallowance at ₹ 65,002/-. Thereby, the AO made total disallowance for sum of ₹ 1,19,90,504/- at the first instance. Apart from this, the AO also noted that the assessee has made investment of ₹ 470 crores in Mutual Fund of Birla Sun Life Cash Plus Daily Dividend Reinvestment Scheme and accordingly, disallowance of proportionate rate of interest depending upon its investment is to be worked out and the same is worked out at ₹ 50,00,685/-. Further, the AO also disallowed the proportionate interest expenditure on account of amount invested of ₹ 470 crores in Birla Sun Life Cash Plus Daily Dividend Reinvestment



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Scheme for 45 days as invested from 30.01.2012 to 15.02.2012 and on dividend income earned of ₹ 31,43,480/-. Accordingly, the AO disallowed proportionate expenses of ₹ 8,44,165/-. Finally, the AO computed the disallowance at ₹ 1,45,99,068/- as under : -

“.....Therefore, an amount of ₹ 2,01,34,669/- (1,19,90,504/- + 8,44,165/-) is held as being attributable to the exempt income claimed under section 10 of the Income-tax Act, 1961 and a net disallowance of ₹ 1,45,99,068/- {(2034669-5535601 (disallowed in computation))} is disallowed under section 14A of the Income-tax Act, 1961 read with Rule 8D of the Income tax Rules, 1962.”

Aggrieved, assessee preferred the appeal before CIT(A).

4. The CIT(A) restricted the disallowance at ₹ 31,47,480/- to the extent of dividend income earned from Mutual Funds only. Aggrieved, now Revenue is in appeal before us.

5. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the assessee company has claimed exempt income in the nature of the dividend at ₹ 1,02,18,363/-. Admittedly, the assessee has made investment in Piramal Glass Limited (PGL) and incurred proportionate interest expenses to the tune of ₹ 55,35,601/-. We find from the facts of the case that the AO has disallowed the expenses relatable to exempt income under rule 8D(2)(ii) and under rule 8D(2)(iii) as under:-

Sr. No.	Particulars	Page No. reference	Amount
1.	Rule 8D(2)(ii) in respect of investments in shares of Piramal Glass Ltd. (PGL)	Page 5 of AO order	1,19,25,502
2.	Rule 8D(2)(iii) in respect of	Page 5 of AO order	65,002



	investments in shares PGL		
3.	Interest disallowance once again* in respect of investments in mutual funds ("MF")	Page 5 of AO order	50,00,685
4.	Interest disallowance once again* in respect of investments in MF	Page 6 of AO order	31,43,480
Total			2,01,34,669

6. Now the Department is in appeal regarding deletion of disallowance of interest pertaining to investment in PGL deleted by the CIT(A) on the ground that section 14A does not apply in respect of strategic investment. We find that the CIT(A) excluded the strategic investment made by assessee in PGL to the extent of ₹ 5.16 crores and expenses relating to this investment i.e. interest under Rule 8D(2)(ii). But now, the learned Counsel for the assessee agreed that the relief granted by the CIT(A) as regards to the disallowance pertaining to investment in PGL shall be reversed in the light of the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT (2018) 402 ITR 640 (SC). Accordingly, we allow the ground raised by the Revenue i.e. ground No. 2 in term of the investment made by the assessee in PGL to the extent of ₹ 5.16 crores. Accordingly, the interest expenses incurred by the assessee are to be disallowed. AO will recompute the disallowance accordingly.

7. The next disallowance pertaining to investment in Mutual Funds i.e. relating to ground No. 1 and ground No. 3 of the Revenue's appeal. The CIT(A) has restricted the disallowance to the extent of the exempt income earned by the assessee to the extent of dividend income earned from mutual fund amounting to ₹ 31,43,480/-. We find that this issue is squarely covered in favour of the assessee by the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs. CIT (2012) 347 ITR 272 (Del), wherein it is held as under:-



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“23. In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression „does not form part of the total income“ in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

24. Consequently, the impugned order of the ITAT is set aside and the appeal is allowed in the above terms. This Court should not be understood to have expressed any opinion on the issue of whether for the AY in question the interest expenditure incurred by the Assessee would be allowable as business expenditure under Section 36 (1)(iii) of the Act.”

8. In view of the above, we are of the view that the CIT(A) has rightly decided the issue that the disallowance under section 14A read with Rule 8D of the Rules cannot exceed the amount of exempt income and respectfully following the Hon'ble Delhi High Court, we affirm the order of CIT(A) on this issue.

9. The Department has also raised the issue regarding deletion of disallowance of interest expense of ₹ 50,00,685/-. We find that the AO has computed the disallowance as is clear from the above chart, which clearly shows that this is double disallowance of interest for the reason that once the entire interest expense is disallowed in respect of investment in PGL, the AO cannot disallowed the part of the same



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interest in respect of dividend earned on mutual funds. It is settled law that for the purpose of disallowance of interest expense under Rule 8D(2)(ii) of the Rules, the interest expenses is to be taken as net interest and not gross interest. This issue has been considered by the Hon'ble Gujarat High Court in the case of PCIT vs. Nirma Credit & Capital Pvt. Ltd. (2017) 85 Taxmann.com 72 (Guj.) and Hon'ble Bombay High Court in the case of CIT vs. Jubliant Enterprises Pvt. Ltd. in ITA No. 1512 of 2014 vide order dated 28.02.2017 wherein the following substantial question of law was framed by Hon'ble High Court:-

“(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the disallowance made under Section 14A read with Rule 8D on the basis of the netting of interest relying upon the decision of its Coordinate benches in Paresh K. Shah (ITA No.8214/M/2011) and M/s. Trade Apartments Ltd.?”

10. Hon'ble Bombay High Court has answered this question by stating that the disallowance of interest can be on net basis and for this it is held as under:-

“3. Regarding question (i):(a) The impugned order of the Tribunal dismissed the Revenue's appeal holding that the disallowance of interest under Section 14A of the Act should be made with reference to net interest loan. This was by following the decision of its Coordinate bench at Mumbai in case of Paresh K. Shah (ITA no.8214/M/2011) and the decision of its Calcutta Bench in Trade Apartments Ltd. (ITA no.1277/Kol/2011). Mr. Kotangale, the learned counsel appearing for the



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Revenue is unable to point out whether the decision of the Tribunal in Paresh K. Shah (supra) has been challenged in appeal. This in view of absence of any instructions from the officers of the Revenue. In the above view, one has to proceed on the basis that the decision of the Mumbai Bench of the Tribunal in Paresh K. Shah (supra) has been accepted by the Revenue. In any case, no distinguishing features in facts or law has been pointed to us from those in the case of Paresh K. Shah (supra) which would justify the disallowance on the gross interest paid and not on net interest.

(b) In the above view, question no.(i) as proposed does not give rise to any substantial question of law. Thus not entertained.”

11. In view of the above facts and circumstances, we direct the AO to restrict the disallowance to the extent of net interest only. The AO recompute the disallowance accordingly.

12. **In the result, the appeal Revenue is partly allowed.**

Order pronounced in the open court on 31-08-2018.

Sd/-

(एन. के. प्रधान /N.K. PRADHAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 31-08-2018

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS



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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 (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai