



ITA.No.1238/Mum/2016
Robust Marketing Services Private Limited
Assessment Year-2011-12

आयकर अपीलिय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.1238/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

Robust Marketing Services Private Limited Flat No.502, 5 th Floor Sterling Heritage, Plot No.388 Sankara Mattam Road Matunga (CR)Mumbai-400 019	बनाम/ Vs.	Assistant Commissioner of Income Tax Range-7(2) Room No. 624, 6 th Floor Aaykar Bhavan M.K.Road,Mumbai-400 020
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AABCR-7635-J		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Sanjeev Joshi, Ld. AR
Revenue by	:	Ram Tiwari, Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	25/07/2018
घोषणा की तारीख / Date of Pronouncement	:	12/09/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2011-12 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-14 [CIT(A)], Mumbai, *Appeal No.CIT(A)-14/IT-341/13-14* dated 31/12/2015 *qua* confirmation of disallowance u/s 14A. The assessment for impugned AY was framed by *Ld. Deputy Commissioner of Income Tax-7(2)*,



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Mumbai [AO] u/s 143(3) of the Income Tax Act, 1961 on 24/01/2014 wherein the loss of Rs.281.91 Lacs as declared by the assessee in return of income *e-filed* on 30/09/2011 has been assessed at Rs.106.67 Lacs. The assessee has been saddled with sole disallowance u/s 14A for Rs.175.24 Lacs which is the sole subject matter of this appeal. During impugned AY, the assessee, being *resident corporate assessee*, was stated to be engaged in the business of *market development of fertilizers, agro products and advisory services in investment activities*.

2. During assessment proceedings, it was noted that the assessee earned exempt dividend income of Rs.60.87 Lacs, which called for disallowance u/s 14A. The assessee had made *suo-moto* disallowance against the same for Rs.90,094/- in the return of income. The assessee defended the same vide submissions dated 12/09/2013 by submitting that the shares were held as stock-in-trade and therefore, no disallowance u/s 14A could be made in such a case. However, not convinced, Ld. AO, applying Rule 8D worked out aggregate impugned disallowance of Rs.175.24 Lacs which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.164.44 Lacs and expense disallowance u/r 8D(2)(iii) for Rs.10.80 Lacs.

3. Aggrieved, the assessee contested the same without any success before Ld. CIT(A) vide impugned order dated 31/12/2015 wherein the assessee reiterated the contentions. However, Ld. CIT(A), relying on the decision of its predecessor in assessee's own case for AY 2009-10 came to a conclusion that the assessee had made investments only as investor and not as dealer and therefore, the disallowance was justified. Aggrieved, the assessee is in further appeal before us.



4. The Ld. Authorized Representative for Assessee [AR], *Shri. Sanjeev Joshi*, submitted that the shares were held as stock-in-trade and therefore, the disallowance was not called for. Reliance has been placed on *CBDT Circular No. 06/2016 dated 29/02/2016*. The same has been controverted by Ld. Departmental Representative [DR], *Shri Ram Tiwari*, who submitted that there was direct nexus of the expenditure vis-à-vis investments made by the assessee and moreover it was accepted position that the assessee was holding the investments as investor only.

5. We have carefully considered the rival contentions and perused relevant material on record. At the outset, we are of the considered opinion that for the purpose of computing disallowance u/s 14A, now it is immaterial whether the investments were held as investor or as stock-in-trade in the wake of recent decision of Hon'ble Apex Court rendered in *Maxopp Investment Ltd. Vs. CIT [91 Taxmann.com 154]* wherein the Hon'ble Court has upheld the above proposition. Therefore, the reliance on the aforesaid *CBDT* circular, in our opinion, could not help the assessee in any manner.

6. Proceeding further, upon perusal of financial statements as placed before us, we find that at year-end, the assessee's *Share Capital* was mere Rs.1 Lacs as against aggregate investments of Rs.34.76 Crores made by the assessee in *Shares & Mutual Funds*. The loans funds stood at Rs.56.25 crores whereas *Accumulated Profit & Loss account* was a negative figure of Rs.3.67 Crores. The above facts lead us to conclude that all investment were funded out of the loan funds and therefore, disallowance u/s 14A was rightly applied to the case of the assessee.



We have no hesitation in confirming the stand of lower authorities, in this regard.

7. So far as the assessment for AY 2009-10, as relied upon by Ld. CIT(A), is concerned, we find that the assessee contested the same before this Tribunal vide *ITA No.2641/Mum/2014 dated 24/11/2015* without any success wherein the matter was concluded against the assessee by the Tribunal in the following manner:-

10. The next issue urged by the assessee before us relates to the disallowance made u/s 14A of the Act. The assessee had earned dividend income of Rs.1,33,720/-, which was claimed as exempt. The above said dividend income was earned out of mutual fund investments. The assessee made a disallowance of Rs.86,915/- out of interest expenditure relating to mutual fund investments and Rs.40,94,203/- as the interest relating to investments made in purchase of Shares of M/s Deepak Fertilisers and Chemicals Ltd. However, during the course of assessment proceedings, the assessee requested the AO to allow the interest expenditure of RS.40,94,203/- referred above on the grounds that the shares of Deepak Fertilizers have been purchased as stock in trade. Since the assessing officer has held that the shares of Deepak Fertilizers have been purchased only to hold it as investments, the AO rejected the claim of the assessee and it was also confirmed by Ld CIT(A).

11. Since we have upheld the view taken by the tax authorities and since the shares of Deepak Fertilizers & Petrochemicals Ltd has been purchased to hold them as investments, we are of the view that the Ld CIT(A) was justified in holding that the provisions of sec. 14A read with Rule 8D shall apply. Before us, the assessee placed reliance on certain case laws to contend that the disallowance u/s 14A should not exceed the dividend income. The Ld A.R further submitted that the assessee had received dividend income only from mutual funds and it did not receive any dividend from Deepak Fertilizers and Petrochemicals Ltd. Accordingly, it was contended that no disallowance is called for in the absence of dividend income.

12. However, we notice that the assessee itself has admitted that the shares of Deepak Fertilizers & Petrochemicals Ltd were purchased out of loan of Rs.20.75 crores taken from M/s Nova Synthetics Ltd and the assessee itself has computed the interest of Rs.40.94 lakhs as pertaining to the investment made in the shares of Deepak Fertilizers. Hence the interest expenditure of Rs.40.94 lakhs cannot be taken as expenditure relating to the business carried on by the assessee, but it is related to the investment made in the shares. Hence, the interest expenditure is otherwise not allowable under the normal provisions of the Act. Accordingly, we confirm the disallowance of Rs.40.94 lakhs made by the AO.



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Viewed from any angle, all the grounds urged before in the appeal stand dismissed.

8. Resultantly, the assessee's appeal stand dismissed.

Order pronounced in the open court on 12th September, 2018.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 12.09.2018
Sr.PS:-Thirumalesh

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