

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

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.4999/M/2013
Assessment Year: 2009-10**

M/s. ATC Tires Pvt. Ltd., Block No.53 & 27C, 2 nd Floor, Empire Complex, 414 Senapati Bapat Marg, Lower Parel, Mumbai - 400 013 PAN: AACCN5573A	Vs.	Assistant Commissioner of Income Tax, Range-6(1), Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Aarti Sathe, A.R.
Revenue by : Shri Anoop Hiwase, D.R.

Date of Hearing : 23.08.2018
Date of Pronouncement : 28.08.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 17.01.2012 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The only issue raised by the assessee is against the part confirmation of disallowance under section 14A read with rule 8D without recording the satisfaction by the AO.

3. The facts in brief are that the AO during the course of assessment proceedings noticed that the assessee earned dividend of Rs.5,07,04,281/- which was claimed as exempt while no disallowance of expenses attributable to earning of such exempt income was made by the assessee. Accordingly, assessee was called upon to file a working of disallowance under section 14A of the Act r.w. Rule 8D which was filed by the assessee on 25.08.2011 in which the assessee has worked out the disallowance under rule 8D2(iii) @ 5% of average value of investments at Rs.37,76,642/-. The AO after perusing the said working observed that interest portion on the loan to the tune of Rs.12,60,074/- has not been considered in the said calculation and reworked the disallowance under section 14A read with rule 8D at Rs.53,86,363/- comprising interest expenses of Rs.12,60,074/- under rule 8D2(ii) and other indirect expenses Rs. 37,76,642/- under rule 8D(2)(iii). The assessee has investments as on 01.04.2009 of Rs.74.09 crore vis-à-vis Rs.76.98 crore at the year end, thus during the year the assessee has made incremental investments of Rs.2.89 crore.

4. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal of the assessee by directing the AO to make the disallowance under rule 8D2(ii) to only in respect of the incremental investments made during the year of Rs.2.89 crore whereas sustained the 0.5% of the investments under rule 8D2(iii).

5. The Ld. A.R. vehemently argued before us that the Ld. CIT(A) has totally erred in part confirming the disallowance by ignoring the fact that the assessee's own funds were far more than the investments made and the no expenses were incurred to earn the exempt income as all the expenses incurred in connection with tires manufacturing facility were capitalized along with the interest charges. It was also contended that the expenses incurred were in connection with the management consultancy and market support services or suo motto added back in the computation of income. The Ld. A.R. took us through the audited annual accounts to corroborate the her arguments and submitted that no disallowance is required under rule 8D2(ii) as well as 8D(2)(iii). Alternatively, the Ld. A.R. while referring to the assessment order pointed out that while making the disallowance, the AO has not recorded any satisfaction as to how the claim of the assessee is wrong with reference to the books of accounts of the assessee and therefore the disallowance is in clear violation of the ratio laid down in the case of "Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT [(2010) 328 ITR 81 (Bom)]". Finally, the Ld. A.R. submitted that the order of Ld. CIT(A) should be set aside as not being tenable and the AO should be directed to delete the disallowance.

6. On the other hand, the Ld. D.R., relied on the order of authorities below.

7. After hearing both the parties and perusing the material on record, we find from the order of AO that no satisfaction has been recorded as provided under section 14A(2) of the Act with reference to the books of accounts maintained by the AO. In our opinion, the AO has to record satisfaction as to why the claim of the assessee is not acceptable by pointing out the specific deficiencies in the same by referring to the books of accounts maintained by the assessee whereas in the present case no such satisfaction was recorded. So on this count alone, the order of AO can not be sustained. In the case of "Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT" (supra) it has been held by the Hon'ble Bombay High Court that recording of satisfaction is mandatory without which no disallowance could be made under section 14A read with rule 8D. Even on merit we find that no disallowance is warranted under rule 8D(2)(ii) in view of the fact that the assessee has not charged any interest to the profit and loss account as the same was capitalized. Same is the case with regards to the expenses, which were also capitalized. So far as the expenses, which are charged to the profit and loss account by the assessee are concerned the same, were either related to rendering management consultancy services and market support services or added back suo motto in the computation of income. In view of these facts even no disallowance is called for under rule 8D(2)(ii) and (iii). Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to delete the disallowance.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 28.08.2018.

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

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 28.08.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.