

आयकर अपीलिय अधीकरण, न्यायपीठ – “B(SMC)” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B(SMC)” BENCH: KOLKATA
 (समक्ष) Before श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri A. T. Varkey, JM]

I.T.A. No. 1610/Kol/2018
Assessment Year: 2013-14

Udaipuria Commercial Pvt. Ltd. (PAN: AAACU3162E)	Vs.	Income-tax Officer, Wd-6(4), Kolkata
Appellant		Respondent
Date of Hearing	19.12.2018	
Date of Pronouncement	.12.2018	
For the Appellant	Shri Yash Baid, FCA	
For the Respondent	Shri Baijnath Singh, Addl. CIT	

ORDER

This appeal preferred by the assessee is against the order of the Ld. CIT(A)-2, Kolkata dated 08.06.2018 for AY 2013-14.

2. The only grievance of the assessee is against the action of the Ld. CIT(A) in confirming the sec. 14A disallowance made by the AO.
3. We note that assessee was in receipt of dividend income. The AO taking note that the assessee had only suo motu disallowed Rs.4130/- applied Rule 8D of the I. T. Rules, 1962 (hereinafter referred to as the “Rules”) and made an addition of Rs.1,78,076/-. On appeal, the Ld. CIT(A) confirmed the order of AO. Aggrieved, assessee is before us.
4. We have heard rival submissions and gone through the facts and circumstances of the case. The facts given above are not reiterated for the sake of brevity. We note that the AO has made disallowance applying Rule 8D(2)(ii) and 8D(2)(iii) of the Rules. According to Ld. AR, the assessee had enough own funds since the investment was less than the own funds so Rule 8D(2)(ii) disallowance should not be computed. For that, he drew our attention to the Balance Sheet at page 30 of the paper book from where we note that assessee has its own fund comprising of share capital and reserve and surplus of more than Rs. 15 cr. and the investment is only to the tune of Rs.81 lacs. Since the assessee is in

possession of mixed funds which includes its own fund with sufficient quantity a presumption that its own fund were utilized for the investment is to be drawn. For that, we rely on the decision of the Hon'ble Bombay High Court in Reliance Utility & Power Ltd. Vs. CIT 313 ITR 340 (Bom.) and, therefore, no disallowance under Rule 8D(2)(ii) was warranted and, therefore, disallowance computed applying Rule 8D(2)(ii) is deleted.

5. Coming to the disallowance made by the AO under Rule 8D(2)(iii) of the Rules, this Tribunal has consistently held by applying the ratio of the decision of REI Agro Ltd. 144 ITD 141 in which the Tribunal held that only investment which has given rise to the exempt income should be taken into consideration while computing disallowance under Rule 8D(2)(iii) of the Rules. Therefore, we direct the AO to consider only investment which yielded exempt income and exclude those investment which have not yielded any exempt income during this year while computing disallowance under Rule 8D(2)(iii) of the Rules. With the aforesaid observation, we set aside the order of Ld. CIT(A) and remit the matter back to the file of AO for giving effect to the aforesaid direction.

6. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order is pronounced in the open court on 19th December, 2018.

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 19th December, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – Udaipuria Commercial Pvt. Ltd., Eastern Building, 2nd floor, Room No. 211, 19, R. N. Mukherjee Road, Kolkata-700 001.
- 2 Respondent – ITO, Ward-6(4), Kolkata.
- 3 CIT(A)-2, Kolkata. (sent through e-mail)
- 4 CIT , Kolkata
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Assistant Registrar