



**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI
BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.6911/Mum/2017
(Assessment Year :2013-14)**

Dy. Commissioner of Income Tax-1(1)(1), Room No.579, Aayakar Bhawan, M.K.Road Mumbai – 400 020	Vs.	M/s. Bennett Property Holding Co. Ltd., 5 th Floor, Times Tower, Kamala Mills Compound, Senapati Bapat Marg Lower Parel (W) Mumbai – 400 013
PAN/GIR No.AAECB3780H		
(Appellant)	..	(Respondent)

Revenue by	Shri Mohammed Rizwan
Assessee by	Shri V. Mohan
Date of Hearing	24/01/2019
Date of Pronouncement	30/01/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This is an appeal filed by Revenue directed against the order of Commissioner of Income Tax (Appeals) (in short CIT(A))-6, Mumbai dated 21/09/2017 for A.Y.2013-14 in the matter of order passed u/s.143(3) r.w.s. 254 of the Income Tax Act, 1961.

2. The only issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in deleting the disallowance made u/s.14A of the Act r.w.r.8D of the Rules in the facts and circumstances of the case.

4. The Ld. AO ignored these workings and recorded a satisfaction having regard to the accounts of the assessee company that expenses are to be disallowed only by applying the computation mechanism provided in rule 8D of the rules. Accordingly, he applied third limb of rule 8D(2) and made disallowance of Rs.2,65,43,000/- after reducing the amount already disallowed in the sum of Rs.1,91,935/- in the assessment.

5. The Ld. CIT(A) deleted the disallowance u/s.14A of the Act in the sum of Rs.2,65,43,000/- by observing as under:-

9. I have carefully considered the facts of the case, the stand taken by the A.O. in the assessment order and the contentions raised by the Ld. AR in the written submissions. The Appellant, pursuant to a Scheme of Arrangements under Section 391 to 394 of the Companies Act, 1956, had acquired the real estate division that included units of mutual funds, with effect from 1st April 2011. Consequently, the Appellant had not borrowed any monies for investment in units. The expenses, other than those which related to the real estate division, aggregating Rs.40,06,392/- were, therefore, attributable also to the earning of the exempt income from units. The Appellant hence allocated the common expenses incurred in the ratio of exempt income to total income and disallowed Rs. 1,91,935/- under Section 14A of the IT. Act, 1961 while filing its return of income. The observations of the Ld. A.O in para 5.2 of his order to invoke Rule 8D clearly show that he has not arrived at any objective satisfaction with regard to the correctness of the claim of the Appellant to disallow the common expenses in the ratio of exempt income to total income under Sec 14A of the IT Act The observations in the decision of the Hon'ble Bombay High Court in Godrej & Boyce Mfg. Co. Ltd. vs. DCIT (328 ITR 81) relied upon by the Ld. AR, clearly lay down that the A.O. has to arrive at an objective satisfaction as to the correctness of the disallowance made by the Appellant before seeking to invoke Rule 8D. A.O. cannot ipso facto invoke Rule 8D straight away without coming to such a satisfaction.

9.1 Under similar facts and on the similar basis CIT(A) in the appellant's own case P has decided the ground in favour of the appellant. Under the circumstances and respectfully following the decision of the jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Ltd. vs. DCIT (328 TTR 81), I am inclined to agree with the submissions of the Ld. AR. The

addition of Fjfs.2,65,43,000/- made by the A.O. by invoking Rule 8D is, therefore, deleted.

6. Aggrieved, Revenue is in appeal before us. We have heard rival submissions. We find that the Ld. AO had not recorded any objective satisfaction having regard to the accounts of the assessee that the claim made by the assessee in disallowing a sum of Rs.1,91,935/- was incorrect before proceeding to computation mechanism provided in rule 8D of the rules. We find that the provisions of Section 14A(2) of the Act r.w.r. 8D(1) of the rules categorically state that the Ld. AO had to record his objective satisfaction before resorting to Rule 8D(2), which in the instant case admittedly has not been done by Ld. AO. In this regard, reliance placed by the Ld. AR on the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs. Reliance Capital Asset Management Ltd., reported in 400 ITR 217 (Bombay) is very well founded and is squarely applicable to the facts of the instant case. Similar decision was also rendered by the decision of Co-ordinate Bench of this Tribunal in assessee's own case for A.Y.2012-13 in ITA No.728/Mum/2016 dated 28/02/2018. Respectfully following the aforesaid judicial precedents, we do not find any infirmity in the order of Ld. CIT(A) deleting the disallowance u/s.14A of the Act in the facts of the instant case, accordingly, the ground raised by the Revenue is dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this 30/01/2019

Sd/-
(Mahavir Singh)
JUDICIAL MEMBER

Sd/-
(M. Balaganesh)
ACCOUNTANT MEMBER

Mumbai; Dated 30/01/2019

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai