

आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 826/Mum/2018

(निर्धारण वर्ष / Assessment Year 2013-14)

M/s Rextone Finance Ltd. (now known as M/s Rextone Digital Limited) 16, Yashodham Centre, Film City Road, Goregaon, Mumbai-400 063	Vs.	The Dy. Commissioner of Income Tax-13(3)(1), Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAACR4648C		

अपीलार्थी की ओर से / Appellant by	:	Shri Alok Saksena, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Abirama Karthikeyan, DR

सुनवाई की तारीख / Date of hearing:	19.03.2019
घोषणा की तारीख / Date of pronouncement :	19.03.2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

This appeal filed by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-21, Mumbai [in short CIT(A)], Appeal No. CIT(A)-21/DCIT-13(3)(1)/IT-62/2016-17 vide order dated 30.10.2017. The Assessment was framed by the Dy. Commissioner of



Income Tax, Circle-13(3)(1) Mumbai (in short 'ACIT/ITO/ AO') for the A.Y. 2013-14 vide order dated 24.02.2016 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing the expenses relatable to exempt income by invoking the provisions of section 14A of the Act read with section 8D of the Rules (hereinafter the 'Rules'). For this assessee has raised the following three grounds: -

"1. The teamed CIT (Appeals) has erred in law, facts & circumstances of the case while confirming the disallowance of Rs. 9,30,749/- u/s sec 14A r.w.r 8D of the income Fax Act, 1961.

2. The learned CIT (Appeals) Officer has erred in law, facts & circumstances of the case while confirming the disallowance of interest amounting to Rs. 9,30,749/- u/s sec 14A r.w.r 8D of the Income Fax Act. 1961 to the total income of the assessee in view of the fact that on Funds (Share Capital Reserves) are in excess of investment in Tax Free Securities.

3. The Learned CIT(A) has erred in law, facts & circumstances of the case white confirming the disallowance of interest amounting to Rs. 9,30,749/- uls sec 14A r.w.r 8D of the Income Act, 1961 to the total income of the assessee ignoring the fact that the same



issue has been allowed in the Assessee's own case in A.Y. 2012-13 and further erred by ignoring the rule of consistency which requires the revenue to consistently follow the stand taken in earlier years."

3. At the outset, the learned Counsel for the assessee took us through the disallowance of expenses relatable to exempt income computed by the AO in para 5.2 of his order. According to the learned Counsel, the AO disallowed the interest under Rule 8D(2)(ii) at ₹ 7,93,768/- and administrative expenses under Rule 8D(2)(iii) of the rules, being an amount equal to 1 and ½ % of the average value of investment amounting to ₹ 1,36,981/- thereby the total disallowance made under section 14A of the Act read with Rule 8D of the Rules of ₹ 9,30,749/-. The CIT(A) simply confirm the action of the Assessing Officer. Aggrieved, assessee came in appeal before Tribunal.

4. Before us, the learned Counsel for the assessee stated that the assessee has no issue as regards to the disallowance of administrative expenses at ₹ 1,36,981/- but only requested that the disallowance of interest expenses should be deleted. He stated that neither the AO nor CIT(A) has considered the issue of availability of funds i.e. tax free funds available with the assessee being share capital and reserve and tax free investments made by assessee as under: -

Tax free investment

01.04.2012	₹ 2,75,32,314/-
31.03.2013	₹ 2,72,59,970/-
Average value	₹ 2,73,96,142/-



Share capital & Reserves

31.03.2012	₹ 3,53,92,973 (₹ 3,28,77,000/- + ₹ 25,15,973/-)
31.03.2013	₹ 3,63,59,909/- (₹ 2,83,11,000/- + ₹ 80,48,909/-)
<i>Average</i>	₹ 3,58,76,441/-

5. The learned Counsel for the assessee in view of the above stated that these needs examination at the level of AO and in case these facts are correct, the AO will delete the disallowance in view of the decision of Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom). We are in agreement with the arguments of the learned Counsel for the assessee and when these facts were confronted to the learned Sr. Departmental Representative, he fairly agreed that the issue can be remitted back to the file of the AO for verification of facts. In case this share capital and share reserve i.e. assessee's own fund are more than the tax free investments, the AO will delete the addition. The AO will verify these facts and will decide accordingly. The appeal of assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 19-03-2019.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 19-03-2019.

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

**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