

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.3502/M/2018
Assessment Year: 2012-13**

Shreyas R. Mehta, C/o RasiklalHiralal & Co., EC 4051-52, Bharat Diamond Bourse, Bandra Kurla Complex, Mumbai - 400 051 PAN: AACPM8602L	Vs.	ACIT 10(3)(1), Room No.212, 2 nd Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ajay C. Gosaila, A.R.
Revenue by : Shri Manish Kumar Singh, D.R.

Date of Hearing : 19.03.2019
Date of Pronouncement : 22.03.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 27.03.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The only issue raised by the assessee is against the order of Ld. CIT(A) upholding the disallowance of Rs.2,35,757/- as made by the AO under section 14A of the Act read with rule 8D.

3. The facts in brief are that during the course of assessment proceedings the AO noticed that assessee has share investments of Rs.4,71,57,448/- as on 31.03.2012 and has also received

exempt dividend income of Rs.88,79,784/-. The AO further observed that the assessee has not made any disallowance of expenditure attributable to earning of exempt income under section 14A of the Act read with rule 8D. The assessee submitted that no disallowance has been made during the year in view of the decision of the co-ordinate bench of the Tribunal in assessee's own case in ITA No.4495/M/2014 A.Y. 2010-11 wherein the Tribunal deleted the disallowance made under section 14A read with rule 8D. The AO did not accept the contentions of the assessee by observing that the decision of the ITAT in respect of deletion of disallowance under section 14A was not accepted on merit but due to low tax effect involved in the said case in terms of circular No.21 of 2015 dated 10.12.2015 and consequently no appeal was filed by the Revenue. Finally, the AO invoked the provisions of section 14A read with rule 8D and calculated the disallowance at Rs.2,35,757/- by applying 0.5% on the average investment under rule 8D(2)(iii).

4. In the appellate proceedings, the Ld. CIT(A) upheld the order of the AO after taking into account the contentions and submissions of the assessee by dismissing the appeal of the assessee.

5. After hearing both the parties and perusing the material on record, we note that the assessee is trading in diamonds, shares and securities and derivatives and maintained separate books of accounts in respect of investments in shares and securities and for trading in diamonds, shares and securities. During the course of hearing, the Ld. A.R. brought before us the copies of

balance sheet and the profit & loss account in respect of trading in diamonds and investments in shares, copies whereof are filed at page No.7A & 7B of the paper book and the investments were shown in the balance sheet whereas for the trading section the copy of balance sheet and profit & loss account and capital account of the proprietor are filed at page No.4, 5 & 6 of the paper book. We observe from page No.6 which is a copy of capital account that assessee has credited the dividend received of Rs.72,42,566/- in the capital account and the expenses in respect of D-mat charges and STT paid and other charges were debited in the capital account. Similarly, the profit from arbitration derivative etc. have been credited in the profit & loss account. According to the Ld. A.R., the assessee has not claimed any expenditure in respect of investments and shares and whatever expenditure incurred were debited in the capital account of the assessee and therefore no disallowance is required to be made under rule 8D. Moreover, the Ld. A.R. submitted that the dividend on investments were credited in the capital account and the corresponding expenses such as D-mat charges and STT paid and other charges were also debited in the capital account.

6. The Ld. D.R., on the other hand, submitted before the Bench that when the books of accounts in respect of trading in shares and securities were maintained separately even then the disallowance under rule 8D2(iii) is required to be made as per provisions of section 14A. The Ld. D.R. drew our attention to the salary paid of Rs.60,000/- as is clear from the income and expenditure account filed at page No.5 and submitted that some disallowance has to be made out of that as some amount of

human efforts are required even in making the investments in shares.

7. After considering the rival submissions we are of the view that some disallowance has to be made under rule 8D(2)(iii). In the present case, the assessee has paid salary of Rs.60,000/- during the year. Accordingly, some disallowance has to be made out of the said amount as we find force in the arguments of the ld DR. Therefore, we consider it fit and reasonable to make it lump sum disallowance of Rs.15,000/- as against Rs.2,35,757/-. Accordingly, the appeal of the assessee is partly allowed. The AO is directed accordingly.

Order pronounced in the open court on 22.03.2019.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

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

Mumbai, Dated: 22.03.2019.

* 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.