

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

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

ITA NO.5748/MUM/2015 (A.Y: 2010-11)

&

ITA.NO. 4820/MUM/2016 (A.Y: 2010-11)

DCIT – 2(1)(1) Room No. 561, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Bombay Stock Exchange Ltd., 25 th Floor, Phiroze Jeejeebhoy Towers, Dalal Street, Fort, Mumbai – 400 001 PAN: AACCB 6672 L
(Appellant)		(Respondent)

ITA.NO. 152/MUM/2016 (A.Y: 2010-11)

M/s. Bombay Stock Exchange Ltd., {Now known as BSE Ltd.,} 25 th Floor, Phiroze Jeejeebhoy Towers, Dalal Street, Fort, Mumbai – 400 001 PAN: AACCB 6672 L	v.	DCIT – 2(1)(1) Room No. 561, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai-400 020
(Appellant)		(Respondent)

Assessee by : Shri Niraj Sheth

Department by : Shri Ravindra

Date of Hearing : 04.04.2019

Date of Pronouncement : 31.05.2019

ORDER

PER C.N. PRASAD (JM)

1. These three appeals are filed by the Revenue and assessee for the Assessment Year 2010-11 against the order of the Learned Commissioner of Income Tax (Appeals)–4, Mumbai [hereinafter in short “Ld.CIT(A)”] dated 08.09.2015.

2. On a perusal of the appeals filed by the Revenue in ITA.No. 5748/MUM/2015 and ITA.No. 4820/MUM/2016, we find that the Revenue has filed multiple appeals for the A.Y. 2010-11 against the order of the Ld.CIT(A)-4 dated 08.09.2015. One appeal was filed on 22.12.2015 in ITA.No. 5748/MUM/2015 and the other appeal was filed on 19.07.2016 in ITA.No. 4820/MUM/2016 with a delay of 206 days. In both these appeals the Revenue raised the following ground: -

“2. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in directing the AO to allow security and water charges over and above standard deduction of 30% allowed to the assessee as per the provisions of section 24(a), holding that these expenses should be allowed on the ground that he assessee is peculiar assessee and not like a general assessee”.

3. Since the Revenue filed two appeals for the A.Y. 2010-11 against the order of the Ld.CIT(A) dated 08.09.2015, one on 22.12.2015 and the other on 19.07.2016, the appeal filed on 22.12.2015 is taken on record and the appeal filed on 19.07.2016 in ITA.No. 4820/MUM/2016 is dismissed treating the same as multiple appeal.

4. In so far as the assessee appeal is concerned i.e. ITA.No. 152/MUM/2016, assessee raised the following grounds: -

"1) *The Learned Commissioner of Income Tax (Appeals) erred in disallowing ₹.7,97,80,444/- u/s. 14A r.w.r. 8D:*

a) The Learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing officer of disallowance of ₹.7,97,80,444/- u/s.14A r.w.r 8D as against the amount disallowed by the appellant in their return of income of ₹.54,18,960/-. The Learned Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had worked out the disallowance u/s.14A by adopting a rational, objective and scientific method.

b) Without prejudice to the above, it is submitted that the Learned Commissioner of Income Tax (Appeals) has also directed the Assessing officer to verify the total value of Investments not capable of earning exempt income and if the contention of the appellant is found to be correct, the disallowance u/s. 14A r.w.r. 8D shall be restricted to ₹.1,47,57,377/-. The Assessing Officer be directed to restrict the disallowance u/s.14A to Rs. 54,18,960/- as worked out by the appellant and offered to tax in the return of income.

c) Further your appellants submit that the assessing officer has not applied his mind and has summarily rejected the appellants working carried out U/S.14A r.w.r 8D.

2) *a) The Learned Commissioner of Income Tax (Appeals) erred in partly confirming the action of the Assessing Officer in disallowing the expenditure of Building Repairs and Maintenance amounting of ₹.1,99,36,710/- out of total expenditure of ₹.3,22,89,187/- while calculating "the Income from House Property". The Learned Commissioner of Income Tax (Appeals) failed to appreciate that out of total expenditure of ₹.3,22,89,187/- incurred by the appellant under the head "Building Repairs & Maintenance", only ₹.1,30,03,201/- were incurred in relation to the Electrical maintenance Exps ₹.55,66,231/- + Security Exps ₹ 80,30,637/- + Water Charges ₹ 43,21,840/-] and not ₹.1,99,36,710/-.*

3) *The Learned Commissioner of Income Tax (Appeals) erred in directing the assessing officer to recalculate the Interest u/s.234C. Your appellants submit that interest u/s. 234C has to be charged on the basis of returned income. As per the return of income filed by your appellants interest u/s.234C comes to ₹.60,52,602/- , whereas as per the Tax Computation Form, interest u/s.234C is charged at ₹.74,50,677/-. Further your appellants submit that, interest u/s.234C is consequential in nature. Therefore interest u/s.234C is chargeable only to an extent of ₹.60,52,602/- and the excess interest of ₹.13,98,075/- ought to be deleted."*

5. Ground No.1 of the grounds of appeal of the assessee is directed against confirming the disallowance made u/s. 14A of the Act at ₹.7,97,80,444/- and without prejudice it is the contention of the assessee

that disallowance u/s. 14A r.w. Rule 8D of I.T Rules shall be restricted to ₹.1,47,57,377/- or ₹.54,18,960/- as worked out by the assessee.

6. Briefly stated the facts are that, the Assessing Officer while completing the assessment noticed that assessee made investments in long term investments being unquoted shares, bonds, non-convertible debentures, units of growth oriented schemes of mutual funds and the income from which do not form part of total income and is exempt under the provisions of Section 10 of the Act. He also noticed that assessee has debited various expenses in its Profit and Loss Account under various heads for earning both taxable and exempt incomes. He noticed that assessee itself disallowed an amount of ₹.54,18,960/, however the said disallowance is not as per Section 14A r.w. Rule 8D of I.T. Rules. Assessee was required to justify the disallowance. Assessee made submissions and without prejudice assessee also filed suomoto working of disallowance u/s. 14A r.w. Rule 8D at ₹.7,97,80,444/-. After considering the submissions of the assessee and the working submitted in the course of the assessment proceedings the Assessing Officer worked out the disallowance at ₹.7,43,61,484/- based on the working submitted by the assessee and after excluding the disallowance of ₹.54,18,960/- which was already made in the return.

7. On appeal the Ld.CIT(A) considering the submissions of the assessee that the average value of total investments was wrongly adopted at ₹.1531.75 Crores instead of considering average value of investments whose income does not form part of total income is only ₹.295.14 Crores, the disallowable expenditure came to be worked out at ₹.1,47,57,377/-, if these correct figures were taken into consideration the Ld.CIT(A) directed the Assessing Officer to examine the contention of the assessee as the facts required verification and factual analyses of the value of total investments. He finally held that if the contention of the assessee is found to be correct then the disallowance of expenditure u/s. 14A r.w. Rule 8D should be restricted to ₹.1,47,57,377/- and further reduced by the disallowance already shown by the assessee at ₹.54,18,960/- in the return.

8. Before us, Ld. Counsel for the assessee reiterated the submissions made before the lower authorities. He further referring to Page No. 102 of the Paper Book submits that assessee has given details of expenditure which were disallowed in the return of income being costs of employees in treasury section as this section only does the investment business. Referring to the Page Nos. 103 and 114 of the Paper Book it is submitted that the Tribunal for the A.Y. 2007-08 to A.Y. 2009-10, allowed the claim of the assessee observing that Assessing Officer has not pointed any

defect or incorrectness in the claim of the assessee. Ld. Counsel for the assessee submits that the Tribunal observed that there is no satisfaction recorded by the Assessing Officer while applying Rule 8D of I.T. Rules. Reliance was also placed on the decision of assessee's own case for the A.Y. 2013-14 in ITA.No. 6504/MUM/2017 dated 28.01.2019 wherein the Tribunal considered the suomoto disallowance made by the assessee and in the absence of no satisfaction record rejecting the claim of the assessee by the Assessing Officer the disallowance was deleted.

9. Ld. DR vehemently supported the orders of the authorities below.

10. We have heard the rival submissions, perused the orders of the authorities below. In so far as non-recording of satisfaction is concerned, we have observed that the assessee in the course of assessment proceedings vide letter dated 24.12.2012 submitted its suomoto working, though without prejudice claim, computing the disallowance of expenditure at ₹.7,97,80,444/-. The Assessing Officer while completing the assessment considering the submissions of the assessee as well as the suomoto working furnished by the assessee in the course of the assessment proceedings computed the disallowance accepting the suomoto disallowance computed the disallowance u/s. 14A r.w. Rule 8D taking the basis of suomoto disallowance made by the assessee and after

reducing the disallowance which was made in the return arrived at the disallowance of ₹.7,43,61,484/-. In such circumstances we observe that there was no occasion for the Assessing Officer to look into the correctness of the suomoto disallowance made in the return of income. But he has gone by the alternative working furnished by the assessee in the course of the assessment proceedings. Thus, we observe that the Assessing Officer had no occasion to record the satisfaction rejecting the claim of the assessee to accept the suomoto disallowance as made in the return of income. Thus, in the peculiar facts of this case this contention of the assessee that Assessing Officer has not recorded any satisfaction on suomoto disallowance made in the return has no relevance in regard to the facts of the case. Hence this contention is rejected.

11. Coming to the direction given by the Ld.CIT(A), we observe that the Ld.CIT(A) in fact accepted the submissions made in the course of the appellate proceedings that the disallowance shall work out to only ₹.1,47,57,377/- if the average value of total investment whose income does not form part of the total income are considered at ₹.295.14 Crores as against average value of total investments of ₹.1531.75 Crores adopted by the assessee while submitting the suomoto working to Assessing Officer. Considering the submissions of the assessee which were made in the course of the appellate proceedings the Ld.CIT(A)

directed the Assessing Officer to examine the contentions vis-à-vis total investments, since the facts require verification and factual analysis and finally directed to restrict the disallowance to ₹.1,47,57,377/- if the contentions of the assessee are proved to be correct. He also directed to exclude the suomoto disallowance of ₹.54,18,960/- made in the return from ₹.1,47,57,377/- which working was given by the assessee. In the circumstances, we do not find any valid reason to interfere with the findings of the Ld.CIT(A). The ground raised by the assessee stating that Ld.CIT(A) confirmed the disallowance of ₹.7,97,80,444/- is factually wrong as the Ld.CIT(A) had in fact set aside to examine the contention of the assessee and to recompute the disallowance u/s. 14A r.w. Rule 8D of I.T. Rules. Thus, the grounds on this issue are dismissed.

12. Coming to the Ground No.2 of grounds of appeal, the Assessing Officer while completing the assessment noticed that assessee received rent and maintenance charges of ₹.13,51,33,935/- and offered the same under the head "Income from business". Assessee was required to explain as to why the rental income should not be assessed under the head "Income from House Property". The assessee submitted that the premises have been given to members providing infrastructure facilities, the property rented to the Members/Brokers is not for habitation but for carrying out the business activities. The Assessing Officer after analyzing

the lease agreements entered into by the assessee with the tenants and placing reliance on the decision of the Hon'ble Supreme Court in the case of Shambhu Investments Pvt. Ltd., v. CIT [263 ITR 143] held that the monthly rent received by the assessee from letting out of premises with furniture and fixtures is assessable under the head "Income from House Property" and accordingly he computed the income from House property after allowing property taxes paid and 30% towards repairs. The claim of the assessee towards business expenses towards repairs and maintenance, depreciation etc., from such rental and maintenance charges were denied by the Assessing Officer since the income was assessed under the head "Income from House Property".

13. On appeal the Ld.CIT(A) considering the submissions of the assessee and the acceptance of assessee that the rent and maintenance charges are income from house property and not business income, he sustained the action of the Assessing Officer in assessing the said rental income and maintenance charges under the head "Income from house property". However, in so far as various expenses incurred as tabulated in Para No. 4.1 of the Ld.CIT(A) order, the Ld.CIT(A) held that electrical maintenance expenses, security expenses and water charges are incidental to maintain, upkeep and to make workable condition of the building, the same were allowed. However, at the end, he directed the

Assessing Officer to allow ₹.1,23,52,477/- [security expenses + water expenses].

14. Subsequently assessee filed a petition for rectification bringing to the notice of the Ld.CIT(A) that while computing the allowable expenses at ₹.1,23,52,477/- the electrical maintenance expenses of ₹.55,66,231/- was inadvertently omitted to be considered. The Ld.CIT(A) by order dated 17.05.2016 rectified this mistake and recomputed the allowable expenditure at ₹.1,79,18,708/- being the expenses towards electrical maintenance, security expenses and water charges and directed the Assessing Officer to consider these expenses for allowing while computing the income from house property.

15. Ld. Counsel for the assessee, before us, submits that the expenses incurred on repairs and maintenance in respect of Belapur premises of ₹.2,26,728/- are to be allowed as deduction since the premises is not given on rent but was used for business purposes of the assessee. The Ld. Counsel for the assessee referring to the Page No. 141 of the Paper Book submitted that the total expenses incurred towards building repairs and maintenance is ₹.3,22,89,187/- out of which the expenses pertain to the buildings which were given on rent were ₹.1,30,03,201/- and the balance expenditure of ₹.1,92,85,986/- was incurred on the property

which was used for business purposes by the assessee. Therefore, it was submitted that the Assessing Officer be directed to restrict the disallowance to 1,30,03,201/- only. Ld. Counsel for the assessee further submits that the Assessing Officer while completing the assessment for the A.Y. 2012-13 accepted the claims made by the assessee in respect of expenses incurred and claimed for both the properties given on rent and the properties used for business purposes. He referred to the copy of the Assessment Order for the A.Y. 2012-13 passed u/s. 143(3) of the Act which is placed at Page No. 224A to 224E of the Paper Book.

16. Ld. DR vehemently supported the orders of the authorities below.

17. We have heard the rival submissions, perused the orders of the authorities below. The breakup of repairs and maintenance expenses said to have been shown in the Profit and Loss Account for the A.Y. 2010-11 in respect of properties let out and the properties used for business purposes have been shown as under: -

SR. NO.	PARTICULARS	AMOUNT
1	<i>Building Repairs & Maintenance</i>	<i>1,27,45,577</i>
2	<i>Building Repairs & Maintenance (Rotunda)</i>	<i>2,57,624</i>
	<i>Expenses Pertaining to Rental Expenses (a)</i>	<i>1,30,03,201</i>
3	<i>AMC charges for 53 Door Access control System</i>	<i>2,20,800</i>
4	<i>AMC for CCTV system</i>	<i>8,04,846</i>
5	<i>Building Repairs & Maintenance (Delhi office)</i>	<i>18,984</i>
6	<i>Electrical Maintenance Expenses</i>	<i>55,66,231</i>
7	<i>Repairs & Maintenance (Belapur Premises)</i>	<i>2,26,728</i>
8	<i>Security Expenses</i>	<i>80,30,637</i>

SR. NO.	PARTICULARS	AMOUNT
9	Walkie - Talkie Expenses	95,920
10	Water Charges	43,21,840
	Other Repairs and Maintenance Expenses (b)	1,92,85,986
	Total Building Repairs & Maintenance Expenses (a+b)	3,22,89,187
	As per Profit and Loss account	3,22,89,187

18. On a perusal of the above expenses we notice that assessee incurred expenses on the premises given on rent as well as the premises used for the purpose of assessee's business. The expenditure incurred on the premises used for the business purposes have to be allowed in Toto. We are of the view that the Assessing Officer should examine this issue in the light of the submissions and bifurcation of the expenses furnished by the assessee. This aspect of the matter appears to have been not considered by the Ld.CIT(A) though submissions were made by the assessee. Thus we restore this issue to the file of the Assessing Officer who shall examine the contentions of the assessee and decide afresh in accordance with law, after providing adequate opportunity of being heard to the assessee.

19. Coming to the Revenue's appeal the ground raised is with regard to the allowance of expenses from "Income from House Property" over and above the standard deduction computed by the Assessing Officer as per section 24(a) of the Act. As we have set aside the entire issue to the file

of the Assessing Officer for fresh examination, we restore this ground also the file of the Assessing Officer for denovo adjudication.

20. In the result, appeal in ITA.No. 4820/MUM/2016 is dismissed, appeal in ITA.No. 152/Mum/2015 is partly allowed for statistical purposes. and appeal in ITA.No. 5748/Mum/2015 is allowed for statistical purpose.

Order pronounced in the open court on the 31st May, 2019

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai / Dated 31/05/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

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. //True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum