



N THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.2285/Mum./2018
(Assessment Year : 2013-14)

Income Tax Officer
Ward-11(2)(3), Mumbai

..... Appellant

v/s

Sprint Advisory Services Pvt. Ltd.
Shyam Nagar, Off Jogeshwari
Vikhroli Link Road, Jogeshwari (E)
Mumbai 400 060
PAN - AAJCS0579E

..... Respondent

Revenue by : Shri Chaudhary Arunkumar Singh
Assessee by : Ms. Dinkle Hariya

Date of Hearing - 31.07.2019

Date of Order - 09.08.2019

ORDER

PER SAKTIJIT DEY. J.M.

Captioned appeal by the Revenue is against the order dated 12th January 2018, passed by the learned Commissioner of Income Tax (Appeals)-18, Mumbai, for the assessment year 2013-14.

2. The dispute in the present appeal is confined to deletion of disallowance made under section 14A r/w rule 8D.

3. Brief facts are, for the assessment year under consideration, the assessee company filed its return of income on 26th September 2013, declaring nil income after set-off of brought forward business loss. In course of assessment proceedings, the Assessing Officer noticing that the assessee has made investment in equity shares of Future General India Life Insurance Co. Ltd., worth ₹ 711.48 crore, which would yield exempt income called upon the assessee to explain why disallowance should not be made. Though, the assessee objected to the proposed disallowance rejecting the submissions of the assessee, the Assessing Officer disallowed an amount of ₹ 3,40,38,875, by applying rule 8D. The assessee challenged the aforesaid disallowance before the first appellate authority.

4. The learned Commissioner (Appeals) having found that during the year the assessee had not earned any exempt income and also taking note that in similar facts and circumstances his predecessor-in-office deleted the disallowance made under section 14A r/w rule 8D in assessment year 2012-13 as well as the ratio laid down in the judicial precedents cited before him deleted the disallowance made by the Assessing Officer.

5. We have considered rival submissions and perused the material on record. From the facts emerging from record, it is evident, both the

Assessing Officer and learned Commissioner (Appeals) have stated that during the relevant previous year the assessee has not earned any exempt income. The aforesaid finding of fact by the Departmental Authorities remains uncontroverted. Therefore, the issue which needs to be decided is, whether in absence of any exempt income earned during the year, disallowance under section 14A r/w rule 8D can be made? In our view, the answer to the aforesaid question is "no". The Hon'ble Delhi High Court in *Cheminvest Ltd. v/s ITO*, [2009] 378 ITR 33 (Del.), has held that in absence of any exempt income earned in a particular assessment year, no disallowance under section 14A r/w rule 8D can be made. The same view has been expressed by the Hon'ble Jurisdictional High Court in *PCIT v/s Ballarpur Industries Ltd.*, ITA no.51/2016, judgment dated 13th October 2016. Other High Courts as well as different Benches of the Tribunal have also expressed identical view. Thus, as per the ratio laid down in the judicial precedents referred to above, in absence of any exempt income earned during the year, no disallowance under section 14A r/w rule 8D can be made. In view of the aforesaid, we do not find any infirmity in the decision of learned Commissioner (Appeals) on the issue. Grounds raised are dismissed.

6. In the result, Revenue's appeal is dismissed.
Order pronounced in the open Court on 09.08.2019

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 09.08.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai