

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

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

ITA NO. 3811/MUM/2018 (A.Y: 2013-14)

M/s. SICOM Investments & Finance Limited Solitaire Corporate Park Building No. 4, Ground Floor Guru Hargovindji Road (Andheri Ghatkopar Link Road) Chakala, Andheri (E), Mumbai – 400 093 PAN: AABCS1131L	v.	DCIT – Circle – 3(3)(1) Room No. 609, 6 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020
(Appellant)		(Respondent)

ITA NO. 3346/MUM/2018 (A.Y: 2013-14)

DCIT – Circle – 3(3)(1) Room No. 609, 6 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020	v.	M/s. SICOM Investments & Finance Limited Solitaire Corporate Park Building No. 4, Ground Floor Guru Hargovindji Road (Andheri Ghatkopar Link Road) Chakala, Andheri (E), Mumbai – 400 093 PAN: AABCS1131L
(Appellant)		(Respondent)

Assessee by : None
Department by : Shri Chaudhary Arunkumar Singh

Date of Hearing : 19.08.2019
Date of Pronouncement : 19.08.2019

ORDER**PER C.N. PRASAD (JM)****ITA.No. 3811/Mum/2018 (Assessee Appeal)**

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-8, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 01.03.2018 for the A.Y. 2013-14.

2. Assessee has raised the following grounds in its appeal: -

"General ground

1. erred in confirming the action of the AO in making disallowance of Rs. 9,37,531 to the total income of the appellant;

Disallowance u/s 14A under normal provisions of the Act

2. erred in confirming the action of the AO in making disallowance of Rs 9,37,531 under section 14A r.w. Rule 8D(iii) [i.e. administrative expenses being 0.5% of average value of investments] of the Act made by the AO;

3. failed to appreciate the fact that no dividend income was earned during the year and therefore no disallowance under section 14A should be made;

Levy of interest under section 234B of the Act

4. erred in levy of interest under section 234B of the Act"

3. Ground No.1 is general and needs no adjudication. Ground Nos. 2 &3 are in respect of disallowance made u/s. 14A of the Act while computing the income under normal provisions of the Act.

4. Briefly stated the facts are that, the Assessing Officer while completing the assessment made disallowance u/s. 14A r.w. Rule 8D at ₹.1,22,10,148/-, being interest under Rule 8D(2)(ii) of ₹.1,12,72,617/- and

expenses under Rule 8D(2)(iii) of ₹.9,37,531/-. The Ld.CIT(A) deleted the disallowance made under Rule 8D(2)(ii) and sustained the disallowance made under Rule 8D(2)(iii) of I.T. Rules. Against this order the assessee is in appeal before us.

5. None appeared on behalf of assessee. Since the issue is decided by various courts in favour of the assessee the same is being disposed off on hearing the Ld.DR.

6. Ld. DR vehemently supported the order of the Assessing Officer.

7. We have heard Ld. DR, perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A), it is observed that the Ld.CIT(A) partly allowed the appeal of the assessee observing as under: -

“Decision

3 1.2 This ground pertains to disallowance made u/s 14A r.w. Rule 8D amounting to Rs.1,22,10,148/-. The assessing officer has discussed this issue at para-5 of his order. This issue had also come up Hon'ble ITAT, Mumbai in the appellant's appeal for a.y; 2010-11 & 2011-12. The Hon'ble ITAT Mumbai vide order ITA No. 191/Mum/2015 for A.Y.2011-12 dated 06.12.2017 while following its own decision given vide ITA No.3835/Mum/2014 dated 27.03,2015 decided this issue partly in favour of the appellant The relevant extract of the order of Hon'ble ITAT Mumbai order no. ITA No.3835/Mum/2014 dated 27,03.2015 is reproduced here for ready reference :-

6. We have considered rival contentions, carefully gone through the orders of the authorities below. There is no dispute to the fact that rule 8D is applicable to the instant case insofar as relevant assessment year is 2010-2011 as per verdict of the Hon'ble jurisdictional High Court in the case of Godrej & Boyce Mfg. Ltd, However, in applying rule 8D, the AO is required to record a satisfaction that expenses were actually incurred in earning the exempt income. In the instant case, assessee has given full disclosure of the total expenses incurred as well as expenses attributable to the exempt income. However, no satisfaction has been recorded by the AO, Hon'ble jurisdictional High Court in the case of HDFC Bank Ltd. held that in case the assessee is having interest free funds, it is presumed that investment has been made out of the interest free funds available with the assessee. For this purpose, reliance can be placed on the decision of the jurisdictional High Court in the case of Reliance Utilities and Power Ltd.,

313 ITR 340. Keeping in view the facts and circumstances of the case, we restore the matter back to the file of AO for deciding afresh after verifying the interest free funds available with the assessee for utilization in the investment. The AO is to decide the issue as per the decision of the Hon'ble jurisdictional High Court in the case of Reliance Utilities and Power Ltd, (supra) and HDFC Bank Limited (supra). We direct accordingly.

3.1.3 Since the facts and circumstances are the for this assessment year, except for the amount involved, following the of Hon'ble ITAT Mumbai for A.Y.2010-11 & 2011-12, the disallowance of 14A r.w. rule 8D of the IT Rules is restricted to 0.5 % of the average value of investment on the opening and closing day of the previous year. Remaining disallowance u/s 14A stands deleted. This ground of appeal is therefore partly allowed.”

8. It is an undisputed fact that during this assessment year assessee did not receive any exempt income. When no exempt income is received by the assessee, whether there can be any disallowance u/s. 14A has been considered by the Coordinate Benches of this Tribunal and it has been consistently holding that if there is no exempt income there should not be any disallowance u/s. 14A of the Act.

9. In the case of ACIT v. M/s.Ballarpur Industries Ltd., in ITA.No. 346 to 379/NAG/2014 dated 04.12.2015 the Nagpur Bench of the Tribunal following the decision of the Hon'ble Delhi High Court in the case of Cheminvest v. CIT (supra) held as under: -

“6. We have heard both the sides at some length and carefully perused the orders of the authorities below in the light of the precedence cited. As far as the exemption for the years under consideration were concerned, it was an admitted factual position that the AO has not mentioned any such amount. Meaning thereby, there was no exempt income earned by the assessee for the years under consideration. In reply to one of our questions, the learned AR, Mr. K. P. Dewani has also made a statement at Bar that no dividend was declared, hence, there was no earning of exempted dividend income. He has also clarified that for the purpose of invocation of the provisions of section 14A of the IT Act, the AO has applied the formula only in respect of disallowance of proportionate interest expenditure. There was no allegation of the AO that the exempt income was earned by the assessee. In the light of the undisputed finding on facts, we have perused the decision of the Hon'ble Courts. We may like to mention that a view has been expressed consistently that if there is no

exempted profit then there is no question of invocation of the provisions of section 14A of the IT Act but, we have also carefully perused that very decision of the Tribunal namely Cheminvest Ltd. (supra) was reversed by the Hon'ble Delhi High Court, copy placed in the compilation. The Hon'ble Delhi High Court in ITA No.749/2014 vide order dated 02-09-2015 titled as "Cheminvest Ltd. Vs CIT" has decided the substantial question of law that whether disallowance u/s 14A of the Act can be made in a year in which no exempt income has been earned or received by the assessee. The Final verdict was as under: -

"23. In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression 'does not form part of the total income' in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year."

7. In short, in a situation when that very order of the Tribunal which was the basis for invocation of the provisions of Section 14A of the IT Act got reversed by the Hon'ble Delhi High Court, hence, the very said basis do not survive any more. As a result, we hereby confirm the findings of the learned CIT (A) on this issue. We hereby also hold that in view of the numbers of decisions on this issue in favour of the tax payers, we find no force in this ground of appeal of the Revenue. The same is dismissed."

10. This decision of the Tribunal has been affirmed by the Hon'ble Bombay High Court in the case of Pr.CIT v. M/s. Ballarpur Industries Limited in ITA.No. 51 of 2016 dated 13.10.2016 by rejecting the appeal of the Revenue and held that no substantial question of law arises. While holding so, the Hon'ble High Court observed as under: -

"On hearing the learned Counsel for the Department and on a perusal of the impugned orders, it appears that both the Authorities have recorded a clear finding of fact that there was no exempt income earned by the assessee. While holding so, the Authorities relied on the judgment of the Delhi High Court in Income Tax Appeal No. 749/2014, which holds that the expression "does not form part of the total income" in Section 14A of the Income Tax Act, 1961 envisages that there should be an actual receipt of the income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. The Income Tax Appellate Tribunal held that the provisions of Section 14A of the Income Tax Act, 1961 would not apply to the facts of this case as no exempt income was received or receivable during the relevant previous year. It is not the case of the Assessing Officer that any actual income was received by the assessee and the same was includible in the total income. In the facts of the case, the Authorities held that since the investments made by the assessee in the sister concerns were not the actual income received by the assessee, they could not have been included in the total income.

The findings of facts recorded by both the Authorities do not give rise to any substantial question of law.

Since no substantial question of law arises in this income tax appeal, the income tax appeal is dismissed with no order as to costs."

11. It is not in dispute that the assessee did not earn any exempt income during this Assessment Year. Thus, in the absence of any exempt income there shall not be any disallowance u/s. 14A of the Act. Respectfully following the above decision of the Hon'ble Jurisdictional High Court in the case of Pr.CIT v. M/s. Ballarpur Industries Limited (supra), we direct the Assessing Officer to delete the disallowance made u/s. 14A r.w. Rule 8D of I.T. Rules. Accordingly, Ground Nos. 2 & 3 are allowed.

12. Ground No.4 is in respect to the interest u/s.234B of the Act, as this ground is only consequential in nature, not required any adjudication.

ITA.No. 3346/Mum/2018 (Revenue Appeal)

13. Revenue has raised the following grounds in its appeal: -

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in deleting the addition under Rule 8D(2)(ii) relying on Hon'ble ITAT' decision in A.Y. 2010-11 and 2011-12 when in fact Hon'ble ITAT in respect of A.Y. 2010-11 had set aside the issue for verification by the AO?"

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in taking on record the donation receipts of Rs.1,00,000/- without following Rule 46A and directing the AO to delete the disallowance after verification?"

14. At the time of hearing Ld.DR submitted that the tax effect in Revenue's appeal is less than ₹.50 Lakhs. The CBDT in its recent Circular No. 17/2019 dated 08.08.2019 amended its earlier Circular No. 3 of 2018

dated 11.07.2018 and revised the monetary limits for filing of appeals in income tax cases by the Revenue as under:

<u>S.No.</u>	<u>Appeals/SLPs in Income-tax matters</u>	<u>Monetary Limit (Rs.)</u>
1.	Before Appellate Tribunal	50,00,000
2.	Before High Court	1,00.00.000
3.	Before Supreme Court	2.00.00,000

Since in this case the tax effect in the Revenue's appeal is less than ₹.50 Lakhs the Circular No. 17/2019 dated 08.08.2019 applies and the Revenue's appeal is liable to be withdrawn. Hence this appeal is dismissed.

15. In the result, appeal of the assessee is partly allowed and appeal of the Revenue is dismissed.

Order pronounced in the open court on the 19th August, 2019

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Mumbai / Dated 19/08/2019
Girdhar, 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