

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

BEFORE SHRI M.BALAGANESH, AM

**&
SHRI RAM LAL NEGI, JM**

**ITA No.1904/Mum/2018
(Assessment Year :2013-14)**

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| M/s. M. Pallonji & Co. Pvt. Ltd 46-A, Taj Printing Work Cawasji Patel Street Fort, Mumbai – 400 001 | Vs. | The Asst. Commissioner of Income tax, Range 1(2)(2) Room No.535, 5 th Floor Aayakar Bhavan Churchgate, Mumbai – 400 020 |
| PAN/GIR No.AAGCM1345P | | |
| (Appellant) | .. | (Respondent) |

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|------------------------------|--------------------|
| Assessee by | Shri Ryan Saldanha |
| Revenue by | Shri J. Saravanan |
| Date of Hearing | 27/08/2019 |
| Date of Pronouncement | 04/09/2019 |
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आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1904/Mum/2018 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-2, Mumbai in appeal No.CIT(A)-2/IT/74/2016-17 dated 19/01/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 28/03/2016 by the Id. Asst. Commissioner of Income Tax- 1(2)(2), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance u/s.14A of the Act to the extent of Rs.15,39,406/- in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee is engaged in the business of own, Hire, Charter, Lease of ships, Barges, Marine Transport related vessels, equipments of machinery, materials, goods and merchandise, tools etc. In respect of shipping income derived by the assessee, the income is determined under tonnage tax scheme, on which fact there is no dispute. The assessee is also in receipt of business income under non-tonnage activity. For the purpose of tonnage tax, entire income and expenditure relating to shipping activity are ignored and income was calculated on the basis of tonnage capacity.

3.1. The assessee received dividend income of Rs.1,85,63,406/- and claimed the same as exempt. The assessee claimed that since majority expenditure are related to shipping business covered under tonnage tax scheme, the entire income and expenditure are ignored as such no expenditure is allocable against earning of dividend income and hence, no disallowance u/s.14A of the Act was warranted. This reply was not considered satisfactorily by the Id. AO and the Id. AO resorted to make disallowance u/s.14A of the Act read with rule 8D of the rules by applying second limb in the sum of Rs.37,457/- and by applying the third limb in the sum of Rs.15,01,949/- thereon. Accordingly, the total disallowance made u/s.14A of the Act worked out to Rs.16,46,284/-. The Id. CIT(A) upheld the action of the Id. AO, however, rectified the arithmetical mistake committed by the Id. AO and reduced the total disallowance u/s.14A under second and third limb of rule 8D of the Rules to Rs.15,39,406/-.

4. Aggrieved, the assessee is in appeal before us.

5. We have heard rival submissions. We find that assessee is having sufficient own funds in its kitty which is much more than investments made and hence, there is no question of disallowance of interest under second limb of Rule 8D(2) of the Rules. Reliance in this regard is placed on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Reliance Utilities and Power Ltd., reported in 313 ITR 340 and CIT vs. HDFC Bank reported in 366 ITR 505 (Bom).

5.1. We find that assessee is engaged in the business of shipping activity and stevedoring activity (non-shipping activity not covered under tonnage tax scheme). During the year, the assessee earned total income of Rs.75.11 Crores out of which 90% amounting to Rs.67.55 Crore is shipping activity and balance 10% amounting to Rs.7.55 Crores is stevedoring income. The Id. AR before us placed workings for computation of disallowance of administrative expenses under third limb of Rule 8D(2) of the Rules in the light of decision of Special Bench of Delhi Tribunal in the case of ACIT vs. Vireet Investments reported in 165 ITD 27 wherein he fairly agreed that disallowance u/s.14A of the Act read with Rule 8D(2)(iii) of the rules need to be made in respect of non-shipping activity determined under normal provisions of the Act. Since these workings were not filed before the Id. AO and the Id. AO did not have an occasion to examine the same, we deem it fit in the interest of natural justice and fair play to remand this issue to the file of the Id. AO to decide the same in the light of verification of workings provided by the assessee before him and decide as per law. Needless to mention that assessee be given reasonable opportunity of being heard in this regard. The assessee is at liberty to furnish additional evidences, if any, in

support of his contentions and place reliance on additional documents, if any, thereon. Accordingly, the grounds raised by the assessee are partly allowed for statistical purposes.

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

Order pronounced in the open court on this 04/09/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Mumbai; Dated
KARUNA, *sr.ps*

04/09/2019

Sd/-
(M.BALAGANESH)
ACCOUNTANT 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, Mumbai