

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

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.2919/Mum/2018
(Assessment Year :2014-15)**

M/s. Adhiraj Constructions Pvt. Ltd., 303, Sharda Chambers Sir V.T Marg Mumbai – 400 013	Vs.	Asst. Commissioner of Income Tax, Circle-1(1)(1) Mumbai
PAN/GIR No. AACCA3372Q		
(Appellant)	..	(Respondent)

Assessee by	Shri Gaurav Kabra
Revenue by	Ms. Samatha Mullamudi
Date of Hearing	24/09/2019
Date of Pronouncement	04/10/2019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.2919/Mum/2018 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-2, Mumbai in appeal No.CIT(A)-2/IT/184/2016-17 dated 05/01/2018 (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 23/12/2016 by the Id. Asst. Commissioner of Income Tax – 1(1)(1), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in restricting the disallowance made u/s 14A of the Act in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee had earned exempt income of Rs 18,00,000/- during the year under consideration and had disallowed suo moto a sum of Rs 18,000/- u/s 14A of the Act in the return of income. The Id AO directly resorted to computation mechanism provided in Rule 8D(2) of the Rules and made the following disallowance :-

Under Second Limb towards Interest	- 26,84,729
Under Third Limb towards administrative expenses	- 9,91,961

	36,76,240
Less: Disallowance u/s 14A made by assessee	- 18,000

Disallowance u/s 14A r.w Rule 8D(2) in assessment	- 36,58,240

4. The Id CITA observed that the disallowance u/s 14A of the Act should be restricted the disallowance to the extent of exempt income in the sum of Rs 18,00,000/-. Aggrieved, the assessee is in appeal before us.

5. We have heard the rival submissions and perused the materials available on record. We have gone through the financial statements of the assessee as on 31.3.2014 and 31.3.2013 and we find that the assessee is having sufficient own funds which are much more than the investments made by the assessee which had yielded exempt income and hence by placing reliance on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs HDFC Bank Ltd reported in 366 ITR 505 (Bom), no disallowance of interest under second limb of Rule 8D(2) of the

Rules could be made. Hence we direct the Id AO to straight away delete the disallowance of Rs 26,84,729/- made under Rule 8D(2)(ii) of the Rules.

5.1. With regard to disallowance of administrative expenses made under Rule 8D(2)(iii) of the Rules, we hold that only dividend bearing investments should be considered by the Id AO for disallowance under third limb of Rule 8D(2) in the light of decision of Special Bench of Delhi Tribunal in the case of Vireet Investments reported in 165 ITD 27 (Del)(SB). We find from the Investments Schedule reflected in the balance sheet as on 31.3.2014, the assessee had received dividend only from investments in 9% Non-cumulative redeemable preference shares of Chandan Steel Limited to the tune of Rs 2 crores. Hence 0.5% of such investment would work out to Rs 10,000/- only , whereas the assessee itself had made suo moto disallowance of Rs 18,000/- in the return of income. Hence no disallowance need to be made under Rule 8D(2)(iii) of the Rules.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 04/10/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 04/10/2019
KARUNA, sr.ps

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