

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

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

**ITA No.5776/Mum/2018
(Assessment Year :2014-15)**

Assistant Commissioner of Income Tax CIR 6(2)(1) Mumbai Room No.504, 5 th Floor Aayakar Bhavan M.K.Road, Mumbai – 400 020	Vs.	M/s. Esjay International Pvt. Ltd., Gala No.48, 4 th Floor Laxmi Industrial Estate Hanuman Gally, Lower Parel Mumbai – 400 013
PAN/GIR No. AAACE1066B		
(Appellant)	..	(Respondent)

Assessee by	Shri Amit Pratap Singh
Revenue by	Shri Hiten Chande
Date of Hearing	05/11/2019
Date of Pronouncement	06/11/2019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.5776/Mum/2018 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-12, Mumbai in appeal No.CIT(A)-12/DCIT-6(2)(2)/C-144/17-18 dated 03/07/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 144C(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 25/12/2017 by the Id. Asst.CIT – 6(2)(2), Mumbai (hereinafter referred to as Id. AO).

2. The only issue raised by the revenue in this appeal is with regard to deletion of disallowance made by the Id. CIT(A) u/s.14A of the Act.

3. We have heard rival submissions. We find that assessee had earned dividend income of Rs.64,34,281/- and claimed the same as exempt in the return of income. We find that the assessee had made suo moto disallowance of Rs.13,38,207/- u/s.14A of the Act r.w.rule 8D or the Rules in the return of income by considering only those investments which had yielded dividend income in terms of Rule 8D(2)(iii) of the Rules. The Id. AO however proceeded to disallow u/s.14A of the Act by applying the second and third limbs of Rule 8D(2) of the rules in the sums of Rs.1,40,49,002/- and Rs.28,47,647/- respectively. We find that the Id. CIT(A) had categorically observed that assessee is having sufficient own funds for making investments which had yielded exempt income and by placing reliance on the decisions of the Hon'ble High Courts in the case of Reliance Utilities and Power Ltd., reported in 313 ITR 340 and HDFC Bank Ltd. reported in 366 ITR 505, had directed the Id. AO to delete the disallowance of interest under second limb of Rule 8D(2) of the Rules. This factual finding of the Id. CIT(A) of availability of own funds with the assessee for making investments had not been controverted by the revenue before us. Hence, we do not deem it fit to interfere in the order of the Id. CIT(A) in this regard.

3.1. With regard to disallowance of indirect expenses under third limb of Rule 8D(2) of the rules, we find that the Id. CIT(A) had considered the decision of Special Bench of Delhi Tribunal in the case of Vireet Investment (P) Ltd reported in 165 ITD 27 wherein it was held that only those investments which had yielded dividend income should be considered for the purpose of disallowance under Rule 8D. The Id. CIT(A)

observed that if such ratio is applied, the disallowance would work out only to Rs.7,83,598/- whereas the assessee itself had made suo moto disallowance of Rs.13,38,207/-. Accordingly, the Id. CIT(A) had held that no further disallowance is warranted as per Rule 8D(2)(iii) of the Rules. We do not find any infirmity in the said order of the Id. CIT(A) as the same has been passed in accordance with binding judicial precedents stated supra. Accordingly, the grounds raised by the revenue are dismissed.

4. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this 06/11/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 06/11/2019
KARUNA, *sr.ps*

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