

IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI

BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND

SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 3779/Mum/2018 (Assessment Year 2013-14)

ITA No. 3780/Mum/2018 (Assessment Year 2014-15)

Chanakya International Pvt. Ltd. 101, Raheja Zion, Dr. Babasaheb Ambedkar Road, Byculla (E), Mumbai-400027. <b>PAN: AAACC4592Q</b>	Vs.	DCIT-5(1)(2) Aayakar Bhawan, M. K. Road, Mumbai-400020.
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Appellant

Respondent

Appellant by : Shri Paresh Shaparia (AR)

Respondent by : Shri Chaudhary Arun Kumar Singh  
(DR)

Date of Hearing : 27.08.2019

Date of Pronouncement : 04.11.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. These two appeals by assessee are directed against the common order of Id. Commissioner of Income-tax (Appeals)-10 ('Id CIT (A), Mumbai dated 22.11.2017 for Assessment Year 2013-14 & 2014-15. The facts for both the years are identical, the assessee has raised identical grounds of appeal for both the Assessment Years, except variations of figure of disallowances under section 14A and computation of books profit under section 115JB. Thus, both the appeal were hears together and are decided by a consolidated order for the sake of convenience. For appreciation of fact, the facts in appeal for Assessment Year 2013-14 is

treated as lead case. The assessee has raised the following grounds of appeal:

1. the Id. CIT(A) erred in confirming disallowance of Rs. 6,27,047/- u/s 14A rw Rule 8D over and above disallowance already made by the appellant of Rs. 11,63,100/-.
  2. The Id CIT(A) ought not to have confirmed additional disallowance of Rs. 6,27,047/- after applying section 14A.
  3. The disallowance of Rs. 6,27,047/- u/s 14A rw Rule 8D requires to be deleted.
2. Brief facts of the case are that during the assessment, the Assessing Officer noted that the assessee has shown the exempt income of Rs. 49,88,980/-. The assessee has made *suo-moto* disallowance under section 14A of Rs. 11,63,096/-. During the assessment, the assessee was asked to substantiate the *suo-moto* disallowance under section 14A. The assessee submits that the assessee-company is in garments business and most of the expenses were incurred for the business of garments, no further disallowance was required as the *suo-moto* disallowance made by the assessee is more than reasonable. The contention of assessee was not accepted by the Assessing Officer. The Assessing Officer invoked the provision of Rule 8D and made a disallowance of Rs. 17,90,415/-. The Assessing Officer made a disallowance under Rule 8D(2)(i) of Rs. 2,83,977/- and under Rule 8D(2)(iii) of Rs. 15,06,169/-. The assessee has already disallowed Rs. 11,63,100/-. Therefore, the Assessing Officer after making set off of *suo moto* disallowance made addition of Rs.

6,27,047/- (Rs. 17,90,147 – Rs. 11,63,200). The assessing officer also added the disallowance of section 14A to the computation of book profit under section 115JB. On appeal before the Id. CIT(A), the action of Assessing Officer was confirmed. Thus, further aggrieved, the assessee has filed the present appeal before us.

3. We have heard the submission of Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the revenue and perused the material available on record. At the outset of hearing, the Id. AR of the assessee submits that the grounds of appeal with read to disallowances under section 14A, raised by assessee is covered in favour of assessee by the decision of Tribunal in assessee's own case for Assessment Year 2008-09 to 2012-13. The Id. AR of the assessee furnished the copy of order of Tribunal for all Assessment Years.
4. The Id. AR of the assessee further submits that the Id. CIT(A) decided the appeal for Assessment Year 2012-13 to 2014-15, the assessee challenged the order of Id. CIT(A) by filing separate appeal before the Tribunal. However, the appeal for Assessment Year 2012-13 was decided by SMC Bench of this Tribunal vide order dated 15.04.2019 in ITA No. 3778/Mum/2018, wherein the appeal of the assessee on identical ground was allowed.

5. On the other hand, the ld. DR for the revenue after going through the order of Tribunal for Assessment Year 2008-09 to 2012-13 relied upon the order of lower authorities.
6. We have considered the submission of both the parties and find that on identical grounds of appeal, the appeal for Assessment Year 2012-13 in ITA No.3778/Mum/2018 dated 15.04.2019, the SMC Bench of this Tribunal, on identical set of fact passed the following order:

“8. I have heard rival submissions and perused material on record. Undisputedly, in the relevant previous year, the assessee has earned dividend income of Rs. 1,52,94,700, which was claimed to be exempt. It is also a fact that the assessee has voluntarily disallowed an amount of Rs.15,09,846 under section 14A r/w rule 8D. The assessee has also made submissions before the Assessing Officer justifying the computation of disallowance under section 14A of the Act. On a perusal of the impugned assessment order, it appears, the Assessing Officer has not shown any valid reason why the disallowance computed by the assessee under section 14A r/w rule 8D is not correct having regard to the books of account maintained by him. Without demonstrating that the disallowance computed by the assessee having regard to the books of account is incorrect, the disallowance made by the Assessing Officer mechanically under rule 8D(2) is unsustainable. The ratio laid down in various judicial precedents including the decision of the Hon'ble Jurisdictional High Court in Godrej & Boyce Mfg. Co. Ltd. v/s DCIT, [2010] 328 ITR 81 (Bom.), also support this view. In fact, in assessee's own case for the assessment year 2008-09, 2009-10 and 2011-12, the Tribunal has struck down the disallowance made by the Assessing Officer under section 14A of the Act r/w rule 8D for the aforesaid reason. Though, a contrary view was taken by the Tribunal in assessment year 2010-11, however, it was on the basis of facts involved in that assessment year. In view of the aforesaid, I hold that the additional

disallowance made by the Assessing Officer under section 14A of the Act deserves to be deleted. Accordingly, I do so. Ground is allowed.”

7. Considering the aforesaid order of Tribunal, wherein no variation of fact is brought to our notice. Therefore, respectfully following the order of Tribunal, we direct the assessing officer to delete the additional disallowance of Rs.6,27,047/- under section 14A the grounds of appeal raised by assessee are allowed.
8. In the result, appeal of the assessee is allowed.

**ITA No. 3780/Mum/2018 for A.Y. 2014-15**

9. The assessee has raised identical grounds of appeal as raised in appeal for AY 2013-14, which we have allowed by following the decision of tribunal for AY 2012-13, therefore, following the principal of consistency the appeal for this year (AY 2014-15) is also allowed with similar directions. To make it more clear the assessing officer is directed to delete the additional disallowances under section 14A of Rs. 7,80,726/- .
10. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 04/11/2019.

**Sd/-**  
**R.C. SHARMA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 04.11.2019

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**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)

4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

**BY ORDER,**

**Dy./Asst. Registrar  
ITAT, Mumbai**