

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA

BEFORE SHRI S.S.GODARA, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.135/Kol/2019

(निर्धारणवर्ष / Assessment Year: 2014-15)

Udaipuria Commercial Pvt. Ltd.	Vs.	ITO, Ward-6(4), Kolkata
Eastern Building, 19, R.N. Mukherjee Road, Room No. 211, 2nd Floor, Kolkata		
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACU 3162 E		
(Appellant)	..	(Respondent)

Appellant by : None

Respondent by : Smt. Ranu Biswas, Adtl. CIT

सुनवाईकीतारीख/ Date of Hearing : 31/10/2019

घोषणाकीतारीख/Date of Pronouncement : 31/12/2019

आदेश / ORDER

Per Bench:

The captioned appeal filed by the assessee , pertaining to assessment year 2014-15, is directed against the order passed by the Commissioner of Income Tax (Appeal)-2, Kolkata in appeal no. 10011/CIT(A)-2/2017-18, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the "Act") dated 27/12/2016.

2. At the time of hearing none appeared on behalf of assessee in spite of issuance of notice for hearing more than one occasion and Ld. Departmental Representative(DR), was present for the appellant Revenue. In the absence of any appearance by the assessee, the appeal is being disposed of *ex parte qua* the

assessee, after hearing Ld. DR for the Revenue on merits in terms of Rule 24 of the Income Tax Appellate, Tribunal, Rules, 1963.

3. The grounds of appeal raised by the assessee are as follows:

1. The ex-parte order u/s 250 of the I.Tax Act, 1961 is bad in law as there was no failure on the part of the appellant to make due compliance & disclosures to the ld. CIT(A).

2. The ld. Assessing Officer erred in disallowing Rs. 35,053/- u/s 14A of Act on erroneous application of Rule 8D of Income Tax Rules without contesting our calculation made of Rs. 5,708/-.

3. The appellant craves leave to add, alter, amend, delete, substitute any of the grounds and/or take additional ground/s before or at any time of hearing of this appeal.

4. At the outset itself we note that the assessee suo-moto made the disallowance under Rule 8D(2)(iii) read with section 14A of the Act to the tune of Rs. 5,708/-. The Assessing Officer vide his assessment order dated 27.12.2016 computed the disallowance under Rule 8D(2)(iii) at Rs. 40,761/-. Therefore, the balance amount of Rs. 35,035/- (Rs. 40,761/- - Rs. 5,708) has been added by the Assessing Officer.

5. On appeal the ld. CIT(A) confirmed the order passed by the Assessing Officer.

6. Aggrieved by the order of the ld. CIT(A), the assessee is in appeal before us.

7. We have heard ld. D.R for the revenue and perused the material available on record. We note that the issue raised by the assessee in its grounds of appeal is no longer *res integra*. We note that the Co-ordinate Bench of ITAT Kolkata in the case of REI Agro Ltd. vs. DCIT reported in 144 ITD 141 (Kol-Trib) has held that it is only the investment which yields dividend during the previous year that has to be considered while adopting the average value of investment for the purpose of Rule 8D(2)(ii) and Rule 8D(2)(iii) of the Income Tax Rules. The aforesaid view of the Tribunal has since been confirmed as correct by the Hon'ble Calcutta High Court in GA No. 3581 of 2013 in the appeal against the order of the Tribunal in

the case of REI Agro Ltd (supra). We note that the Assessing Officer has considered 0.5% of average investment for making the disallowance under Rule 8D(2)(iii) of the Rules which in our opinion is not correct. Therefore, in the light of the above noted judicial precedent we direct the Assessing Officer to compute the disallowance under Rule 8D(2)(iii) only taking into account dividend bearing securities. Therefore, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the Court on 31.12.2019

Sd/-
(S.S.GODARA)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

दिनांक/ Date: 31/12/2019
(SB, Sr.PS)

Copy of the order forwarded to:

1. Udaipuria Commercial Pvt. Ltd.
2. ITO, Ward-6(4), Kolkata
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches