

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER &
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

I.T.A. Nos. 6341/Mum/2018
Assessment Years : 2012-13

DCIT Central Circle 7(3) R.No. 655, 6 th Floor, Aayakar Bhavan, M.K Road, Mumbai.	बनाम/ Vs.	Roselab Finance Ltd 412,71-G, Vardhman Chamber, CP Road, Horniman Circle, For, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACR9134M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Smt. Jothilakshmi Nayak
प्रत्यर्थी की ओर से/Respondent by :	Shri Yogesh A. Thar

सुनवाई की तारीख / Date of Hearing	09.01.2020
घोषणा की तारीख/Date of Pronouncement	22.01.2020

आदेश / ORDER

PER SHRI SAKTIJIT DEY - JM:

This is an appeal by the Revenue against order dated 17.08.2018 of learned Commissioner of Income Tax (Appeals) – 49, Mumbai, pertaining to Assessment Year 2012-13.

2. The issue in dispute in present appeal is in relation to part deletion of disallowance made u/s 14A r.w.r 8D(2) of Income Tax Rules.

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3. Briefly the facts are, the assessee is a resident company and is engaged in the business of security trading and finance Services. For the year under dispute assessee filed its return of income on 30.09.2012, declaring loss of Rs. 98,87,895/-. During the assessment proceeding, the Assessing Officer while verifying the return of income and other material on record noticed that during the year under consideration the assessee has earned exempt income by way of dividend amounting to Rs. 13,34,625/-. Whereas, the assessee has not disallowed any expenditure u/s 14A of the Act. Noticing the above, the Assessing Officer called upon the assessee to explain why disallowance u/s 14A r.w.r. 8D(2) of Income Tax Rules should not be made. In reply, it was submitted by the assessee, since, it has not incurred any expense for earning the exempt income, no disallowance should be made. The Assessing Officer, however, was not convinced with the submission of the assessee and proceeded to compute disallowance of expenditure u/s 14A of the Act by applying Rule 8D. Ultimately, the Assessing Officer

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worked out the disallowance at Rs. 1,57,09,274/- comprising of interest expenditure under Rule 8D(2)(ii) amounting to Rs. 1,50,72,449/- and administrative expenditure under rule 8D(2)(iii) amounting to Rs. 6,36,825/-. Contesting the above said disallowance assessee preferred appeal before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and materials available on record as well as judicial precedents cited before him, the learned Commissioner (Appeals) restricted the disallowance to the exempt income earned during the year i.e Rs. 13,34,625/-.

4. Learned Departmental Representative submitted, assessee has not filed any evidence to demonstrate that borrowed funds were not utilized towards investment in shares / securities from which the assessee earned the exempt income. Therefore, she submitted, interest expenditure attributable to such investment has to be disallowed under Rule 8D(2)(ii). She submitted, learned Commissioner (Appeals) while restricting the disallowance to dividend income has

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completely overlook the aforesaid aspect. Thus, she submitted, the decision of learned Commissioner (Appeals) has to be modified.

5. The learned Authorized Representative, on the other hand, strongly relying upon the order of the learned Commissioner (Appeals) submitted, the Assessing Officer has not brought any material on record to show that the investments in shares and securities have direct nexus with the borrowed funds. He submitted, in absence of any such finding based on cogent material no disallowance of interest expenditure can be made. He submitted, it is fairly well settled disallowance u/s 14A of the Act cannot exceed the exempt income earned during the year. Therefore, he submitted, learned Commissioner (Appeals) was justified in restricting disallowance u/s 14A of the Act to the exempt income earned during the year. In support of such contention learned Authorized Representative relied upon the following decisions:

1. *PCIT Vs. State Bank of Patiala (99 taxmann.com 286) (SC).*

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2. *PCIT Vs. HSBC Invest Direct (Ind) Ltd., (ITA No. 1672 of 2016).*

3. *M/s. Nirved Traders Pvt. Ltd., Vs. DCIT (ITA No. 149 of 2017) (Bom HC)*

4. *PCIT Vs. Caraf Builders & Constructions (P.) Ltd., (414 ITR 122) (Del HC).*

5. *Maharashtra Agro Industries Development Corp. Ltd., Vs. ACIT (ITA No. 6566/Mum/2013)*

6. *Aditya Medisales Ltd., Vs. DCIT (176 ITD 783) (Ahm T)*

6. We have considered rival submissions and perused the material on record. We have also carefully examined the decisions cited before us. As regards contention of learned Departmental Representative that there being nexus between the borrowed funds and investments disallowance of interest expenditure has to be made, we find the aforesaid submission to be out of context as in the grounds of appeal taken in the memorandum of appeal the Revenue has only contested disallowance made under Rule 8D(2)(iii) of the Income Tax Rules. Be that as it may, it is the contention of the learned

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Departmental Representative that there is a direct nexus between the borrowed funds and investment made. However, on perusal of the assessment order, we do not find any such observation by the Assessing Officer. He has not brought any material, to show that borrowed fund has been utilized for making investments in exempt income yielding assets. Absolutely, there is no observation of Assessing Officer in this regard. Whether, it is evident, the Assessing Officer has not found any material to show that there is any direct nexus between borrowed funds and the investments made, as, we were not made any disallowance under Rule 8D(2)(i). That being the case, we are unable to accept the submissions of the learned Departmental Representative that there is nexus between the borrowed funds and investment made. Even, otherwise also the decision of learned Commissioner (Appeals) in restricting the disallowance u/s 14A of the Act to the quantum of exempt income earned during the year is unassailable. Now, it is fairly well settled that the disallowance u/s 14A of the Act in a

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particular assessment year cannot exceed the exempt income earned in that year. The decisions cited by the learned Authorized Representative, as referred to above clearly support this view. In view of the aforesaid, we have no hesitation in confirming the order of learned Commissioner (Appeals) on the disputed issue. Ground raised is dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

This Order is pronounced in Open Court on 22.01.2020

Sd/-

(RAJESH KUMAR)

ACCOUNTANT MEMBER

Mumbai, Dated 22.01.2020

KRK, PS

Sd/-

(SAKTIJIT DEY)

JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai