

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

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 3445/MUM/2018
Assessment Year: 2011-2012**

The D.C.I.T, Circle – 11(3)(1), Room No. 204, Aayakar Bhavan, 2 nd Floor, M.K. Marg, Mumbai - 400020	Vs.	M/s Tops Security Ltd., 5, Royal Palm Golf Country Club, Survey # 169, Aarey Milk Colony , Goregaon (East), Mumbai - 400065 PAN: AAAC0160F
(Appellant)		(Respondent)

**CO No. 136/MUM/2019
(Arising out of ITA No. 3445/MUM/2018)
Assessment Year: 2011-2012**

M/s Topsgroup Service (I) Ltd., (Formerly known as Tops Security Ltd.), 5, Royal Palm Golf Country Club, Survey 169, Aarey Milk Colony, Goregaon (East), Mumbai - 400065 PAN: AAAC0160F	Vs.	The D.C.I.T, Circle – 11(3)(1), 2 nd Floor, Room No. 204, Aaykar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**ITA No. 3446/MUM/2018
Assessment Year: 2012-2013**

The D.C.I.T, Circle – 11(3)(1), Room No. 204, Aayakar Bhavan, 2 nd Floor, M.K. Marg, Mumbai - 400020	Vs.	M/s Tops Security Ltd., 5, Royal Palm Golf Country Club, Survey 169, Aarey Milk Colony, Goregaon (East), Mumbai - 400065 PAN: AAAC0160F
(Appellant)		(Respondent)

CO No. 137/MUM/2019
(Arising out of ITA No. 3446/MUM/2018)
Assessment Year: 2012-2013

M/s Topsgroup Service (I) Ltd., (Formerly known as Tops Security Ltd.), 5, Royal Palm Golf Country Club, Survey 169, Aarey Milk Colony, Goregaon (East), Mumbai - 400065 PAN: AAAC0160F	Vs.	The D.C.I.T, Circle – 11(3)(1), 2 nd Floor, Room No. 204, Aaykar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

ITA No. 3447/MUM/2018
Assessment Year: 2013-2014

The D.C.I.T, Circle – 11(3)(1), Room No. 204, Aayakar Bhavan, 2 nd Floor, M.K. Marg, Mumbai - 400020	Vs.	M/s Tops Security Ltd., 5, Royal Palm Golf Country Club, Survey #169, Aarey Milk Colony, Goregaon (East), Mumbai - 400065 PAN: AAAC0160F
(Appellant)		(Respondent)

CO No. 138/MUM/2019
(Arising out of ITA No. 3447/MUM/2018)
Assessment Year: 2013-2014

M/s Topsgroup Service (I) Ltd., (Formerly known as Tops Security Ltd.), 5, Royal Palm Golf Country Club, Survey 169, Aarey Milk Colony, Goregaon (East), Mumbai - 400065 PAN: AAAC0160F	Vs.	The D.C.I.T, Circle – 11(3)(1), 2 nd Floor, Room No. 204, Aaykar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

ITA No. 3448/MUM/2018
Assessment Year: 2014-2015

The D.C.I.T, Circle – 11(3)(1), Room No. 204, Aayakar Bhavan, 2 nd Floor, M.K. Marg, Mumbai - 400020	Vs.	M/s Tops Security Ltd., 5, Royal Palm Golf Country Club, Survey #169, Aarey Milk Colony, Goregaon (East), Mumbai - 400065 PAN: AA ACT0160F
(Appellant)		(Respondent)

CO No. 139/MUM/2019
(Arising out of ITA No. 3448/MUM/2018)
Assessment Year: 2014-2015

M/s Topsgroup Service (I) Ltd., (Formerly known as Tops Security Ltd.), 5, Royal Palm Golf Country Club, Survey 169, Aarey Milk Colony, Goregaon (East), Mumbai - 400065 PAN: AA ACT0160F	Vs.	The D.C.I.T, Circle – 11(3)(1), 2 nd Floor, Room No. 204, Aaykar Bhavan, M.K. Road, Mumbai - 400020
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Revenue by : Shri Amit Pratap Singh (DR)

Assessee by : Shri Jigar Mehta (AR)

Date of Hearing: 23/01/2020
 Date of Pronouncement: 31/01/2020

ORDER

PER RAM LAL NEGI, JM

These are the appeals and cross objections filed by the revenue and the assessee respectively against four orders dated 28.02.2018 passed by the Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-18, Mumbai, for the assessment years 2011-12, 2012-13, 2013-14 and 2014-15 respectively, whereby the Ld. CIT (A) has partly allowed the appeals filed by the assessee

against assessment orders passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act'). Since all the appeals pertain to the same assessee and the issues raised by the parties in all the appeals are common, these appeals were clubbed, heard together and are being disposed of by this common order for the sake of convenience. We therefore, take the facts of the appeal pertaining to the Assessment Year (AY) 2011-12 as a lead case.

ITA No. 3445/MUM/2018 (Assessment Year: 2011-2012)
CO No. 136/MUM/2019 (Assessment Year: 2011-2012)

The assessee company engaged in the business of providing detective, security and other related services, filed its return of income of for the assessment year under consideration declaring the total income of Rs. 2,25,96,240/-. The return was processed and the case was selected for scrutiny. In response to the notices, u/s 143 (2) and 142 (1) of the Act, the authorized representative (AR) of the assessee presented the assessee's case before the AO and submitted the details as asked by the AO. It was noticed from the details that the assessee had made investment of Rs. 1,59,94,51,200/- as on 31.03.2011 and earned dividend amounting to Rs. 7,00,000/-. Further, the assessee had made *suo moto* disallowance of Rs. 5,00,000/- u/s 14A. The AO asked the AR to furnish detailed working of the disallowance computed by the assessee. The AR submitted that the provision of section 14A r.w.r. 8D are not applicable in assessee's case, however, having regard to quantum of investment the assessee has made an *ad-hoc* disallowance of Rs. 5,00,000/- u/s 14A on estimation basis. The AO rejecting the contention of the assessee computed the total amount of disallowance at Rs. 3,74,41,262/- and after deducting the *suo moto* disallowance of Rs. 5,00,000/-, made addition of Rs. 3,69,41,262/- to the income of the assessee.

2. The revenue has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

"1. *Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in granting relief to the assessee on the issue of disallowance u/s 14A r.w.r. 8D without appreciating the fact that the share*

investments are in the nature of strategic investments to acquire the controlling interest in the appellant's business division sold to its wholly owned subsidiary companies in the year under reference.

2. *"Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in ignoring the decision of Hon'ble Bombay High Court in ITXA No. 626/2010 & Writ Petition No. 758/2010 dated 12/08/2010 in the case of Godrej & Boyce Manufacturing Co. Limited, Mumbai vs. Dy. CIT-10(2), Mumbai in which the decision is in favour of the Revenue.*

3. *Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in granting relief to the assessee on the issue of disallowance u/s 36(1)(va) r.w.s. 2(24)(x) of the Act without appreciating the fact that the provisions of Sec 36(1)(va) clearly stipulate that the payment has to be made within the due date mentioned in the relevant Act. As per the provisions of the said Act, the assessee was required to make payment of employees contribution to provident fund and ESIC of any particular month by the 15th and 20th day respectively of the following month. However, the assessee had failed to make the payments within the stipulated dates."*

4. *Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in giving relief to the assessee on issue of disallowance of Rs. 7,81,586/- as notional interest out of interest paid during the year without appreciating the fact that the money borrowed were utilized for business of the subsidiary company and not for the business of the assessee as such."*

3. The assessee has filed the cross objection against the impugned order on the following effective ground:

" 1 (a) The Ld. CIT (A) failed to consider the fact that the ld. Assessing Officer invoked sub-section (2) of section 14A of the Act for applying Rule 8D, merely on general observations; without recording any fact specific dissatisfaction regarding the claim made by the respondent, having regard to the accounts of the assessee.

(b) The ld. CIT (A) erred in facts and in law in not considering only investments from which exempt income has been earned during the year under consideration, while computing disallowance u/s 14A on application of Rule 8D (2)(ii) and Rule 8D(2)(iii).

2. Without prejudice to above, the disallowance u/s 14A of the Act ought to have been restricted to the extent of the exempt income of Rs. 7,00,000/- earned during the year under consideration.”

4. Vide Ground No. 1 and 2, the revenue has challenged the action of the Ld. CIT (A) in holding that the *suo moto* disallowance of Rs. 5,00,000/- made by the assessee is reasonable. On the other hand, the assessee has challenged the action of the Ld.CIT (A) on the ground that the Ld CIT(A) has failed to consider that the AO has invoked sub-section(2) of section 14A without recording any dissatisfaction regarding claim of the assessee having regard to the accounts and further the Ld. CIT(A) has failed to consider only those investments which yielded exempt income during the relevant year while computing disallowance u/s 14 A r.w.r. 8D of the Income Tax Rules (for short the Rules). The Ld. Departmental Representative (DR) submitted before us that the Ld.CIT (A) erred in granting relief to the assessee on the issue of disallowance u/s 14A r.w.r. 8D without taking into consideration the fact that the share investments are in the nature of strategic investment to acquire the controlling interest in the assessee's business division sold to its wholly owned subsidiary companies. The Ld. DR further submitted that since the AO has computed the disallowance u/s 14A r.w.r. 8D of the Income Tax Rules, in accordance with the judgment of the Hon'ble Bombay High Court in the case of *Godrej & Boyce Manufacturing Company Ltd. vs. DCIT*, the Ld. CIT (A) ought to have confirmed the addition made by the AO. The Ld. DR further pointed out that as per the ratio laid down by the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. vs. CIT*, [2018] 91.taxmann.com154(SC), the dominant purpose for which investment into shares made by the assessee is not relevant as the section 14A applies irrespective of whether shares are held to gain controlled or as stock- in- trade. The Ld. DR accordingly submitted that the

findings of the Ld. CIT (A) are not in accordance with the settled principle of law, therefore the same is liable to be set aside.

5. On the other hand, the Ld. counsel for the assessee submitted that since the AO had made disallowance merely on general observations without recording any dissatisfaction, after having regard to the accounts of the assessee as required under sub section 2 of section 14A and the Ld. CIT (A) has rightly held that the *suo moto* disallowance made by the assessee is reasonable and no further disallowance u/s 14A r.w.r. 8D is not warranted. The Ld. counsel further submitted that the Ld. CIT (A) has erred in not considering only investment which generated exempt income during the previous year while computing disallowance u/s 14A r.w.r. 8D(2) (ii) and 8D(2) (iii). The Ld. counsel without prejudice submitted that the disallowance u/s 14A r.w.r. 8D (2) cannot exceed the exempt income earned by the assessee in the light of the ratio laid down by the Hon'ble Delhi High Court in the case of Joint Investments Pvt. Ltd. vs. CIT, 372 ITR 694 (Delhi).

6. We have heard the rival submissions and perused the material on record including the cases relied upon by the revenue and the Ld. counsel for the assessee. We notice that the Ld. CIT (A) has justified the *suo moto* disallowance of Rs. 5,00,000/- made by the assessee *inter alia* on the ground that if strategic investments are excluded disallowance u/s 8D(ii) would come down to Rs. 2,17,950/- and further 0.5% of average investments would worked out to Rs. 59,190/- under rule 8D(2) (iii). As pointed out by the Ld. DR, the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT (supra) has held that the dominant purpose for which investment into shares made by the assessee is not relevant as section 14A applies irrespective of whether shares are held to gain control or as stock in trade. Where shares are held as stock in trade the main purposes to trade in shares and earned profit and in this process certain dividend is also earned which is exempt u/s 10(34) of the Act. Therefore, the expenditure attributable to exempt income will have to be apportioned and disallow u/s 14A of the Act.

7. On the other hand, the Ld. counsel for the assessee has rightly pointed out that the Hon'ble Delhi High Court in the case of *Joint Investment Pvt. Ltd. vs. CIT* (supra) has held that disallowance u/s 14A cannot exceed the dividend income. In the present case, the assessee earned exempt income of Rs. 7,00,000/- during the previous year and it has made *suo moto* disallowance of Rs. 5,00,000/- u/s 14A of the Act. In the light of the ratio laid down by the Hon'ble Delhi High Court, the disallowance cannot exceed the exempt income of Rs. 7,00,000/-. Hence, in our considered view, the findings of the Ld. CIT (A) is erroneous to the extent that the Ld. CIT (A) has justified the *suo moto* disallowance on the ground that the AO has not excluded the strategic investments made by the assessee during the previous year. We therefore, following the ratio laid down by the Hon'ble Delhi High Court in the case discussed above, partly allow this grounds of appeal of the revenue and modify the impugned order and direct the AO to restrict the disallowance to Rs. 7,00,000/-. Since, we have partly allowed the appeal of the revenue and directed the AO to restrict the addition to the exempt income earned by the assessee, we partly allow the cross objection filed by the assessee.

8. Vide Ground No. 3, the revenue has challenged the action of the Ld. CIT (A) in granting relief to the assessee on the issue of disallowance u/s 36(1) (va) r.w.s. 2(24) (x) of the Act. The Ld. DR submitted that since it was noticed during the assessment proceedings that the assessee had deposited Rs. 3,09,07,284/- being employees contribution towards Provident Fund and Rs. 1,49,74,234/- being ESIC after the due date prescribed under the relevant Act, the AO issued notice and asked the assessee to show cause as to why this amount should not be disallowed in view of the provisions of section 36(1) (va) of the Act. In response to the said notice, the assessee submitted that it has deposited the contributions before the due date of filing return of income and as per the legal position no disallowance can be made u/s 43B in respect of the employers or employees share to PF/ ESIC etc. The AO rejected the contention of the assessee and made disallowance of Rs. 3,09,07,284/- and Rs. 1,49,74,234/-. In the first appeal, the Ld.CIT (A) set aside the findings of the

AO and deleted the addition made on account of the disallowance aforesaid. The Ld. DR relying on the assessment order submitted that since the AO had made the disallowance in accordance with the provisions of the Act, the Ld. CIT (A) ought to have confirmed the action of the AO. Therefore, the findings of the Ld. CIT (A) are liable to be set aside.

9. On the other hand, the Ld. counsel for the assessee submitted that the Ld. CIT (A) has rightly deleted the addition made on account of the aforesaid disallowance as the action of the Ld. CIT (A) is in accordance with the judgment of the Hon'ble Bombay High Court in the case of *CIT vs. Hindustan Organics Chemicals Ltd.* (48 taxman. Com 421) and *CIT vs. Ghatge Patil Transport Ltd.* (368 ITR 749). The Ld. counsel further submitted that since the issue is covered in favour of the assessee by the judgments of the Hon'ble jurisdictional High Court, there is no merit in the appeal of the revenue.

10. We have heard the rival submissions and perused the material on record including the cases relied upon by the Ld. counsel for the assessee. The Ld. CIT (A) has decided this issue in favour of the assessee holding as under:-

“6.3 Decision: I have carefully gone through the assessment order and the written submission filed by the appellant. The Assessing Officer has disallowed a sum of Rs. 4,58,81,518/- out of employees contribution to Provided Fund u/s 36(1)(va) r.w.s. 2(24)(x) by holding that they are not eligible for deduction since there is a delay in depositing the same on or before the due date under the respective Act. On the other hand, the appellant relied upon various case laws and urged that disallowance u/s 36(1)(va) r.w.s. 2(24)(x) cannot be made as payments were made before the due date of filing the return of income.

*6.3 I have carefully considered the facts of the case and find that the case of the appellant is covered by the ratio of judgment of the Hon'ble Bombay High Court in the case of *CIT vs. Hindustan Organics Chemicals Ltd.* (48 Taxmann.com 421) and *CIT vs. Ghatge Patil Transports Ltd.* (368 ITR 749).; It is observed that the appellant has deposited the EPF and ESIC contributions before the due date of filing of Income tax Return. Therefore, respectfully relying on the decisions of the*

Hon'ble Bombay High Court stated above, the disallowance of Rs. 4,58,81,518/- is hereby deleted. In the result Ground No. 2 is allowed."

11. We notice that this issue is squarely covered by the judgments of the Hon'ble jurisdictional High Court and since the findings of the Ld. CIT(A) are in accordance with the ratio laid down by the Hon'ble High Court, there is no infirmity in the findings of the Ld. CIT(A) to interfere with. Hence, we dismiss this ground of appeal of the revenue and uphold the findings of the Ld. CIT(A).

11(a). Vide Ground No. 4 the revenue has challenged the action of the Ld. CIT (A) in deleting the disallowance amounting to Rs. 7,81,586/- made by the AO as notional interest out of the interest paid during the previous year. The Ld. DR submitted before us that the assessee had advanced interest free loans amounting to Rs. 65,13,214/- during the previous year and appellant had paid interest of Rs. 6,99,73,000/- on its borrowings. Since, the assessee failed to offer explanation to the satisfaction of the AO, the AO rightly worked out the interest @ 12% on the said advances and added back the same to the income of the assessee. Since, the AO had made the disallowance in accordance with the provisions of law, the Ld. CIT (A) has wrongly deleted the addition made by the AO.

12. On the other hand, the Ld. counsel for the assessee submitted before us that the borrowed funds were used for business which is evident from Note 10 of Schedule 16 of the balance sheet. Further, all the interest free loans were brought forward from earlier years wherein the own funds were more than the investments and the loan advance. The Ld. counsel further submitted that since the findings of the Ld. CIT (A) are based on the ratio laid down by the Hon'ble Bombay High Court in the case of *CIT vs. Reliance Utilities, 313 ITR 340*, there is no merit in the appeal of the revenue.

13. We have heard the rival submissions and also perused the material on record including the case law relied upon by the assessee. The Ld. CIT (A) has deleted the addition aforesaid holding as under:-

“3.4 I find that the contentions of the appellant are acceptable. All the loans have been advanced in the earlier years and there is no fresh out flow of funds during the relevant year. In fact, there is reduction in the loans from the said parties compared to immediately preceding year as is clear from the information tabulated below:

S. No.	Name of the Subsidiary	Balance outstanding as on 31.03.2020	Amount (returned)/paid	Balance outstanding as on 31.03.2020
1	Guardwell Detective and Security Pvt. Ltd.	60.53 lacs	(17.62 lacs)	42.91 lacs
2	Tops International Security Academy Pvt. Ltd.	26.19 lacs	(9.20 lacs)	16.99 lacs
3	Tops Secure Gate Consultancy Pvt. Ltd.	3.23 lacs	2 lacs	5.23 lacs
	Total	89.95		65.13

7.3.5 It is clear from the above table that payments have been received to the tune of Rs. 26.82 lakhs and additional loan of Rs. 2 lakhs was advanced. Net result is reduction of Rs. 24.82 lakhs and no fresh outflow of funds is there during the year under consideration.

7.3.6 The appellant has demonstrated that it had surplus funds when loans were advanced. In this regard it may be noted that the same loans are brought forward from A.Y. 2010-11 to A.Y. 2011-12. Therefore, the fund position for A.Y. 2010-11 is important which is depicted below:-

(i) Own Funds	Rs. 19936.43 Lakhs
(ii) Less: Investments	Rs. 15999.51 Lakhs
(iii) Less: Loans	Rs. 89.95 Lakhs
Surplus	Rs. 3846.97 Lakhs

7.3.7 Since the own funds are more than investments and loans the presumption is that loans have been advanced by using the own funds only as held by Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities, 313 ITR 340.

7.3.8 *It is also pertinent to note that the working capital loan and vehicle loans have been used only for business as is evident from Note 10 of Schedule 16 to balance sheet.*

7.3.9 *Besides, all the loans were advanced to subsidiary companies only out of commercial expediency. Therefore, the advancing of loans is for business purpose as held by the Hon'ble Supreme Court in the case of SA Builders Ltd. vs. CIT, 158 Taxmann 74.*

7.3.10 *In the light of the foregoing, disallowance of proportionate interest on loans advanced to subsidiary companies is not warranted.*

7.3.11 *Therefore, interest disallowance of Rs. 7,81,586/- is hereby deleted."*

14. We notice that the Ld. CIT (A) has deleted the addition made on account of disallowance of notional interest out of the interest paid during the relevant year on the ground that the assessee had surplus funds with it while the loans in question were advanced. As per the computation by the Ld. CIT (A) the assessee had surplus fund of Rs. 3846.97 lakhs which was more than the investments made and the loans advanced. Hence, the Ld. CIT (A) has rightly deleted the addition by following the ratio laid down by the Hon'ble Bombay High Court in the case of *CIT vs. Reliance Utilities* (supra) wherein the Hon'ble Court has held that if the assessee is having sufficient interest free funds available with it to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were made from the interest free funds available with the assessee. Hence, we do not find any infirmity in the findings of the Ld. CIT (A) to interfere with. Accordingly, we dismiss this ground of appeal of the revenue and uphold the findings of the Ld.CIT (A).

ITA No. 3446/MUM/2018 (Assessment Year: 2012-2013)
CO No. 137/MUM/2019 (Assessment Year: 2012-2013)

The facts of the present case are almost identical to the facts of the case of the assessee pertaining to the AY 2011-12 aforesaid except the amount of

exempt income earned by the assessee and the disallowance made by the AO u/s 14 A read with Rule 8D.

2. The revenue has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

“1. Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in granting relief to the assessee on the issue of disallowance u/s 14A r.w.r. 8D without appreciating the fact that the share investments are in the nature of strategic investments to acquire the controlling interest in the appellant’s business division sold to its wholly owned subsidiary companies in the year under reference.

2. Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in ignoring the decision of Hon’ble Bombay High Court in ITXA No. 626/2010 & Writ Petition No. 758/2010 dated 12/08/2010 in the case of Godrej & Boyce Manufacturing Co. Limited, Mumbai vs. Dy. CIT-10(2), Mumbai in which the decision is in favour of the Revenue.

3. Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in giving relief to the assessee on issue of disallowance of Rs. 7,81,586/- as notional interest out of interest paid during the year without appreciating the fact that the money borrowed were utilized for business of the subsidiary company and not for the business of the assessee as such.”

3. The assessee has filed the cross objection against the impugned order on the following effective ground:

“ 1 (a) The Ld. CIT (A) failed to consider the fact that the ld. Assessing Officer invoked sub-section (2) of section 14A of the Act for applying Rule 8D, merely on general observations; without recording any fact specific dissatisfaction regarding the claim made by the respondent, having regard to the accounts of the assessee.

(b) The ld. CIT (A) erred in facts and in law in not considering only investments from which exempt income has been earned during the year under consideration, while

computing disallowance u/s 14A on application of Rule 8D (2)(ii) and Rule 8D(2)(iii).

2. Without prejudice to above, the disallowance u/s 14A of the Act ought to have been restricted to the extent of the exempt income of Rs. 17,50,000/- earned during the year under consideration.”

4. Vide Ground No. 1 and 2 the revenue has challenged the action of the Ld.CIT (A) in restricting the addition made on account of disallowance u/s 14A r.w.r. 8D(2) to the suo moto disallowance of Rs. 5,00,000/- made by the assessee. On the other hand, the assessee has challenged the order passed by the Ld. CIT (A) on the ground that the Ld. CIT (A) has failed to consider the fact that the AO invoked sub-section 2 of section 14A for applying Rule 8D merely on general observations without recording any dissatisfaction regarding the claim made by the assessee having regard to the accounts of the assessee.

5. We have decided the identical issue in revenue's appeal and assessee's cross objection pertaining to the AY 2011-12 and restricted the addition u/s 14A r.w.r. 8D to the exempt income earned by the assessee during the previous year and since there is no change of material facts in the present case, consistent with our findings in the assessee's own case for the AY 2011-12, we modify the order passed by the Ld. CIT (A) and restrict the disallowance to the exempt income earned by the assessee during the year relevant to the assessment year under consideration.

6. Ground No 3 of the present appeal is identical to ground No. 3 of the revenues appeal pertaining to the assessment year 2011-12 decided above. Since we have dismissed the identical ground in appeal pertaining to the AY 2011-12, consistent with our findings, we dismiss this ground of appeal in the present case for the same reasons.

7. Since, we have partly allowed the appeal of the revenue and restricted the disallowance to the exempt income earned by the assessee during the relevant year, we partly allow the cross objection filed by the assessee.

ITA No. 3447/MUM/2018 (Assessment Year: 2013-2014)
CO No. 138/MUM/2019 (Assessment Year: 2013-2014)

The facts of the present case are similar to the facts of the case of the assessee pertaining to the AY 2011-12 and 2012-13 except the amount of exempt income earned by the assessee during the previous year and the disallowance made by the AO u/s 14A r.w.r. 8D of the Rules.

2. The revenue has challenged the impugned order passed by the Ld. CIT

(A) on the following effective grounds:-

“1. Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in granting relief to the assessee on the issue of disallowance u/s 14A r.w.r. 8D without appreciating the fact that the share investments are in the nature of strategic investments to acquire the controlling interest in the appellant’s business division sold to its wholly owned subsidiary companies in the year under reference.

2. “Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in ignoring the decision of Hon’ble Bombay High Court in ITXA No. 626/2010 & Writ Petition No. 758/2010 dated 12/08/2010 in the case of Godrej & Boyce Manufacturing Co. Limited, Mumbai vs. Dy. CIT-10(2), Mumbai in which the decision is in favour of the Revenue.

3. Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in giving relief to the assessee on issue of disallowance of Rs. 36,34,489/- as interest attributable to interest free advances without appreciating the fact that the money borrowed were utilized for business of the subsidiary company and not for the business of the assessee as such.”

3. On the other hand, the assessee has filed the cross objection against the impugned order on the following effective ground:

“ 1 (a) The Ld. CIT (A) failed to consider the fact that the ld. Assessing Officer invoked sub-section (2) of section 14A of the Act for applying Rule 8D, merely on general observations; without recording any fact specific

dissatisfaction regarding the claim made by the respondent, having regard to the accounts of the assessee.

(b) The ld. CIT (A) erred in facts and in law in not considering only investments from which exempt income has been earned during the year under consideration, while computing disallowance u/s 14A on application of Rule 8D (2)(ii) and Rule 8D(2)(iii).

2. Without prejudice to above, the disallowance u/s 14A of the Act ought to have been restricted to the extent of the exempt income of Rs. 17,50,000/- earned during the year under consideration.”

4. Vide Ground No. 1 and 2 the revenue has challenged the action of the Ld.CIT (A) in restricting the addition made on account of disallowance u/s 14A r.w.r. 8D(2) to the *suo moto* disallowance of Rs. 8,18,000/- made by the assessee. On the other hand, the assessee has challenged the order passed by the Ld. CIT (A) on the ground that the Ld. CIT (A) has failed to consider the fact that the AO invoked sub-section 2 of section 14A for applying Rule 8D merely on general observations without recording any dissatisfaction regarding the claim made by the assessee having regard to the accounts of the assessee.

5. We have decided the identical issue in revenue's appeal and assessee's cross objection pertaining to the AY 2011-12 and 2012-13 and restricted the addition u/s 14A r.w.r. 8D to the exempt income earned by the assessee during the previous year. Since there is no change of material facts in the present case, consistent with our findings in the assessee's own case for the AY 2011-12 and 2012-13, we modify the order passed by the Ld. CIT (A) and restrict the disallowance to the exempt income earned by the assessee during the year relevant to the assessment year under consideration.

6. Ground No 3 of the present appeal is identical to ground No. 3 of the revenues appeal pertaining to the assessment year 2011-12 and 2012-13 decided above. Since we have dismissed the identical ground in appeal pertaining to the AY 2011-12 and 2012-13, consistent with our findings, we dismiss this ground of appeal in the present case for the same reasons.

7. Since, we have partly allowed the appeal of the revenue and restricted the disallowance to the exempt income earned by the assessee during the relevant year, we dismiss the cross objection filed by the assessee.

ITA No. 3448/MUM/2018 (Assessment Year: 2014-2015)
CO No. 139/MUM/2019 (Assessment Year: 2014-2015)

The facts of the present case are similar to the facts of the case of the assessee pertaining to the AY 2011-12, 2012-13 and 2013-14 except the amount of exempt income earned by the assessee during the previous year and the disallowance made by the AO u/s 14A r.w.r. 8D of the Rules.

2. The revenue has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

“1. Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in granting relief to the assessee on the issue of disallowance u/s 14A r.w.r. 8D without appreciating the fact that the share investments are in the nature of strategic investments to acquire the controlling interest in the appellant’s business division sold to its wholly owned subsidiary companies in the year under reference.

2. “Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in ignoring the decision of Hon’ble Bombay High Court in ITXA No. 626/2010 & Writ Petition No. 758/2010 dated 12/08/2010 in the case of Godrej & Boyce Manufacturing Co. Limited, Mumbai vs. Dy. CIT-10(2), Mumbai in which the decision is in favour of the Revenue.

3. Whether on the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in giving relief to the assessee on issue of disallowance of Rs. 27,55,294/- as interest attributable to interest free advances without appreciating the fact that the money borrowed were utilized for business of the subsidiary company and not for the business of the assessee as such.”

3. The assessee has filed the cross objection against the impugned order on the following effective ground:

“ 1 (a) The Ld. CIT (A) failed to consider the fact that the ld. Assessing Officer invoked sub-section (2) of section 14A of the Act for applying Rule 8D, merely on general observations; without recording any fact specific dissatisfaction regarding the claim made by the respondent, having regard to the accounts of the assessee.

(b) The ld. CIT (A) erred in facts and in law in not considering only investments from which exempt income has been earned during the year under consideration, while computing disallowance u/s 14A on application of Rule 8D (2)(ii) and Rule 8D(2)(iii).

2. Without prejudice to above, the disallowance u/s 14A of the Act ought to have been restricted to the extent of the exempt income of Rs. 38,75,000/- earned during the year under consideration.”

4. Vide Ground No. 1 and 2 the revenue has challenged the action of the Ld.CIT (A) in restricting the addition made on account of disallowance u/s 14A r.w.r. 8D(2) to the *suo moto* disallowance of Rs. 5,00,000/- made by the assessee. On the other hand, the assessee has challenged the order passed by the Ld. CIT (A) on the ground that the Ld. CIT (A) has failed to consider the fact that the AO invoked sub-section 2 of section 14A for applying Rule 8D merely on general observations without recording any dissatisfaction regarding the claim made by the assessee having regard to the accounts of the assessee.

5. We have decided the identical issue in revenue's appeal and assessee's cross objection pertaining to the AY 2011-12, 2012-13 and 2013-14 and restricted the addition u/s 14A r.w.r. 8D to the exempt income earned by the assessee during the previous year. There is no change of material facts in the present case. Hence, onsistent with our findings in the assessee's own case for the AY 2011-12, 2012-13 and 2013-14, we modify the order passed by the Ld. CIT (A) and restrict the disallowance to the exempt income earned by the assessee during the year relevant to the assessment year under consideration.

6. Ground No 3 of the present appeal is identical to ground No. 3 of the revenues appeal pertaining to the assessment year 2011-12, 2012-13 and

2013-14 decided above. Since we have dismissed the identical ground in appeal pertaining to the AY 2011-12, 2012-13 and 2013-14, consistent with our findings, we dismiss this ground of appeal of the revenue in the present case for the same reasons.

7. Since, we have partly allowed the appeal of the revenue and restricted the disallowance to the exempt income earned by the assessee during the relevant year, we dismiss the cross objection filed by the assessee.

In the result, appeals filed by the revenue and the Cross Objections filed by the assessee are partly allowed.

Order pronounced in the open court on 31st January, 2020.

Sd/-

(RAJESH KUMAR)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 31/01/2020

Sd-

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai