

THE INCOME TAX APPELLATE TRIBUNAL
“C” Bench, Mumbai
Before Shri A.D. Jain (VP) & Shri Shamim Yahya (AM)

I.T.A. No. 1697/Mum/2019 (Assessment Year 2013-14)
I.T.A. No. 1698/Mum/2019 (Assessment Year 2014-15)

India Infoline Finance Limited IIFL Tech Center, 6 th Floor Ackruti Centre Point, MIDC Andheri, Mumbai-400 093. PAN : AABCI2915C	Vs.	ACIT 12(2)(2) Aayakar Bhavan M.K. Road Mumbai-400 020.
(Appellant)		(Respondent)

Assessee by	Shri Pritesh Mehata
Department by	Shri L.K.S. Dehiya
Date of Hearing	12.03.2020
Date of Pronouncement	17/07/2020

ORDER

Per Bench :-

These are appeals by the assessee against respective order of learned CIT(appeals) pertaining to assessment years as above.

2. The common grounds of appeal read as under :-

1. On the facts and in the circumstances of the case and in law , the learned CIT(A) failed to appreciate that the working of disallowance of Rs. 15 Lacs made by the Appellant in its Income Tax Return towards disallowance u/s 14A w.r. Rule 8D is fair and reasonable considering the facts and circumstances of the case.
2. On the facts and in the circumstances of the case and in law, the assessing officer failed to record satisfaction or otherwise, with cogent reasons, for rejecting the IIFL claim that Rs. 15,00,000 lacs has been incurred in relation to income which does not form part of the total taxable income as per the provisions of the Income-tax Act, 1961.
3. On the facts and in the circumstances of the case and in law, the assessing officer failed to appreciate that the disallowance u/s 14A r.w.r.80 cannot be automatic without considering the working of disallowance made by the Appellant in the course of assessment proceedings.

4. On the facts and in the circumstances of the case and in law, the learned CIT(A) failed to appreciate that the assessee has minimal activities relating to exempt income and the expenses of the subsidiary companies are being borne by the subsidiary companies themselves and no substantial expenditure is required to be incurred by the assessee for making and maintaining these investments.
5. On the facts and in the circumstances of the case and in law, the learned CIT(A) failed to appreciate that the assessee has made investments in the subsidiary companies to retain management control of the said subsidiaries and not to earn income.
6. The Learned CIT (A) failed to appreciate that the assessee has invested short term surplus funds in liquid schemes of mutual funds. Since the investments in mutual funds were made on short term basis in liquid mutual funds, no expense has been incurred for making such investments.
7. On the facts and in the circumstances of the case and in law, the learned CIT(A) failed to appreciate that the disallowance on ad hoc basis of 0.5 % of average investments is uncalled for and unreasonable.
8. On the facts and in the circumstances of the case and in law, the learned CIT(A) failed to appreciate that Hon'ble ITAT in the case of Garware Ropes, has held that it was incumbent on the Assessing Officer to find out that as to whether the assessee has incurred an expenditure for earning dividend income. The onus of proving that expenses has been incurred is on the Assessing Officer.

3. Brief facts of the case are that assessee in this case has made the suomoto disallowance of Rs. 15 lakhs on account of expenditure incurred in relationship to income exempt under section 14A of the Act. The assessing officer has noted that assessee has not submitted any basis whatsoever as to how the said Rs. 15 lakhs disallowance was arrived at. He rejected the assessee submission that assessee has sufficient interest free funds and that not much expenditure was incurred for earning the exempt income. He applied rule 8D and made the disallowance as under :-

A.Y. 2013-14	8D(ii) Rs. 12,40,52,147	8D(iii) Rs. 1,21,50,871
A.Y. 2014-15	8D(ii) Rs. 14,77,26,828	8D(iii) Rs. 1,61,28,000

4. Upon assessee's appeal learned CIT(A) deleted the addition with respect to rule 8D(2) on the finding that assessee has sufficient own funds to make the

investment in instruments yield exempt income. However he upheld the disallowance under rule 8D(3).

5. Against this order assessee is in appeal before us.

6. We have heard both the Counsel and perused the records. Learned counsel of the assessee submitted that the issue is squarely covered in favour of the assessee by the earlier decision of ITAT in assessee's own case where the issue has been remitted to the file of assessing officer.

7. Upon careful consideration we find that the learned counsel of the assessee is not fully correct that identical issue was remitted by the ITAT in earlier year. We note that in the earlier years while remitting ITAT has also noted the assessee's contention that assessee has sufficient interest free funds and hence the ITAT found cogency in assessee's submission and has remitted the matter. In the present years we note that the issue of assessee having interest free funds has already been considered by the learned CIT(A) and the learned CIT(A) had already deleted the addition which was made on this account by applying rule 8D(2). Now the issue which remains for the present assessment years is disallowance under rule 8D(3). In this regard one of the assessee's contention has been that assessee has made the investments to retain management control in subsidiaries and not to earn income. We find that this limb of assessee's contention is no more sustainable on the touchstone of honourable Supreme Court decision in the case of Maxopp Investment Ltd. vs CIT, New Delhi the Hon. Supreme Court in Civil Appeal 104-109 of 2015 dated 12.02.2018.

8. Other limb of assessee's contention is that assessing officer has not given the finding on the satisfaction that assessee has incurred expenditure for earning the exempt income. In this regard we note that assessing officer has stated that assessee has made suo moto disallowance of 15 lakhs. However despite request the assessee did not produce the basis for arriving at this amount. Thereafter the assessing officer has duly rejected the assessee's

contentions and applied Rule 8D(3) and made the disallowance which has been sustained by learned CIT(appeals). However we are of the considered opinion that the issue may be considered by the assessing officer once more by taking into account the following which are also the contentions of the assessee in earlier year.

- (i) The disallowance under 14A cannot exceed the actual expenditure incurred in this regard.
- (ii) The disallowance has to be considered only with respect to the investments which have yielded exempt income.
- (iii) The disallowance cannot exceed the exempt income earned.

9. Accordingly, with these observation we remit the issue to the file of the Assessing Officer to reconsider the disallowance under Rule 8D(iii) afresh. Needless, the assessee should be provided adequate opportunity of being heard.

10. In the result, appeals of the assessee stand allowed for statistical purposes.

Order has been pronounced under rule 34(4) of ITAT rules on 17.07.2020.

Sd/-

(A.D. JAIN)
VICE PRESIDENT

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 17/07/2020
Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai