

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI M. BALAGANESH, HON'BLE ACCOUNTANT MEMBER**

**ITA NOs. 4560 & 4562/MUM/2018
(A.Ys: 2010-11 & 2013-14)**

M/s. Oasis Securities Ltd., 2 nd Floor, Building No. 5 Raja Bahadur Compound 43 Tamarind Land, Fort Mumbai – 400 001 PAN: AAACO0091J	v.	DCIT – CC-33(2) 6 th Floor, Aayakar Bhavan M.K. Road Mumbai – 400 020
(Appellant)		(Respondent)

Assessee by	:	Shri Prakash K. Jothwani
Department by	:	Shri Kumar Padmapani Bora
Date of Hearing	:	03.02.2020
Date of Pronouncement	:	30.09.2020

ORDER

PER C.N. PRASAD (JM)

1. These two appeals are filed by the assessee against different orders of the Learned Commissioner of Income Tax (Appeals)–51, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 08.06.2018 for A.Y. 2010-11 and A.Y. 2013-14.

2. Assessee has raised following common grounds in its appeals except for figures: -

"1. *The learned CIT(A) erred in confirming re-assessment made u/s 147, despite the fact e AO did not make an addition/ disallowance on the grounds that the assessment was reopened but the disallowance was made on issue not at all connected with the issue on which reasons were recorded.*

2. A) *Learned CIT(A) erred in confirming disallowance U/S 14A r.w. Rule 8D (iii) Of ₹.65,027/-*

B) *The learned CIT(A) failed to consider that the dividend received & subject to tax was a sum of Rs. 11,225/- & not treated as tax exempt.*

C) *The learned CIT(A) erred in confirming disallowance under Rule 8D (iii) On investments and stock in trade & if only investment was considered, then the disallowance would not exceed a sum of Rs. 1,125/*

3. *The Appellant craves leave to add, alter or amend the grounds of appeal at or before the hearing of the appellant."*

3. Ld. Counsel for the assessee, at the outset submits that the reopening of assessment is bad in law for the reason that Assessing Officer did not make addition/disallowance on the ground that the assessment was reopened and the disallowance was made on the issue not at all connected with the issue on which the reasons were recorded. Reliance was placed on the decision of the Hon'ble Jurisdictional High Court in the case of Jet Airways Ltd., [331 ITR 236]. Alternatively, Ld. Counsel for the assessee submits that in the earlier assessment years the disallowance was restricted to dividend income. However, during

these assessment years the assessee has offered dividend income to tax. Therefore, no disallowance is warranted.

4. Ld. DR vehemently supported the orders of the authorities below.

5. We have heard the rival submissions, perused the orders of the authorities below. We have perused the reasons for reopening the assessment for both these Assessment Years which is placed at Page No.1 of the Paper Books for the respective years and found that reasons given for reopening the assessment was in respect of a loan advanced to Shri Vivek Mehrotra and such loan was said to be not for the business consideration and therefore the Assessing Officer was of the view that income had escaped assessment. In the reasons given by the Assessing Officer for reopening of assessment in both these Assessment Years there is not even whisper about the disallowance in respect of section 14A of the Act and escapement of income on that reason.

6. We also found that similar issue had cropped up in assessee's own case for the A.Y. 2012-13 in ITA.No. 4561/Mum/2018 dated 29.07.2019 wherein on identical facts Tribunal had affirmed the order of the Ld.CIT(A) in deleting the disallowance u/s. 14A on the ground that assessment was reopened for the addition/disallowance made in the reassessment were

not the reasons for reopening the assessment and the disallowance was made which was not mentioned in the reasons recorded for reopening of assessment. The Tribunal observed as under: -

"4. *Brief facts of the case are that the assessee is engaged in the business of NBFC activities, which includes share trading and investment and funds lending. Present appeal relates to reopening of assessment u/s. 147 of the Act. Reopening of the case was done on the reasoning that the assessee has taken loan of Rs. 102.02 crores and the same was actually an accommodation entry. However, in course of assessment pursuant to reopening, no addition was made on this issue. However, the Assessing Officer proceeded to make disallowance on account of invocation of provisions of section 14A.*

5. *Before learned CIT(A), assessee, inter alia contended that the Assessing Officer cannot make addition u/s. 14A since the issue on which reopening was done, no disallowance was made therein. In this connection, the assessee also referred to Hon'ble Bombay High Court decision in the case of Jet Airways Ltd. (331 ITR 236) and in the case of ICICI Bank Ltd. (349 ITR 482). Considering the aforesaid case laws, learned CIT(A) concluded as under :-*

In the instant case, it is observed that the assessment in the case of the assessee was reopened on the ground that the loan advanced by the assessee to Shri Vivek Mehrotra of Rs. 102.02 crores is of the nature of an accommodation entry. The AO while completing the re-assessment did not make any addition on the said ground for which the assessment was reopened. Therefore, in view of the decision of the jurisdictional High Court in the case of Jet Airways (supra), the AO could not have completed the re-assessment after making any further addition/ disallowance on a fresh issue. However, in the instant case, the AO has proceeded to make a disallowance u/s. 14A in the re-assessment proceedings, though, no addition was made by him on the ground for which the assessment was re-opened. Therefore, in view of the decision of the jurisdictional High Court in the case of Jet

Airways (supra), the action of the Assessing Officer of making the disallowance u/s. 14A is found to be not as per law.

6. *Despite holding so learned CIT(A) proceeded to partly upholding the disallowance u/s. 14A of the Act.*

7. *Against this order, the assessee is in appeal before the ITAT. I have heard both the counsel and perused the records.*

8. *Learned Counsel of the assessee submitted that learned CIT(A) has clearly held that no disallowance u/s. 14A as permissible when the issue on which reopening was done was not a subject matter of any disallowance in the reassessment order. Learned counsel submitted that having so held learned CIT(A) has erred in partly upholding disallowance u/s. 14A. Learned counsel submitted that proposition that when the assessment is reopened, in the reopened assessment other allowances are permissible only if disallowance is also done on the issue on which assessment is reopened. Learned counsel submitted that this is duly supported by Hon'ble Jurisdictional High Court decisions referred above.*

9. *Per contra, learned Departmental Representative relied upon the orders of the authorities below.*

10. *Upon careful consideration, I find that learned CIT(A) has clearly held that no disallowance is permissible in this case u/s. 14A on the touchstone of Hon'ble Jurisdictional High Court decision in the case of Jet Airways Ltd. (supra) in as much as no disallowance has been done on the issue on which reopening has been done. As a matter of fact, the Revenue is not in appeal against this order of learned CIT(A). Thus, I hold that learned CIT(A) has erred in upholding part of the disallowance u/s. 14A, when he held at the threshold that no disallowance u/s. 14A is permissible in as much as no disallowance was done on the issue on which reopening was made. Accordingly, I set aside the order of learned CIT(A) and delete the disallowance."*

7. On a perusal of the reasons in the appeals under consideration, we find that the reasons as recorded by Assessing Officer for reopening of assessment for the A.Y. 2012-13 was also identical for both these Assessment Years in which there was no mention about escapement of income on account of disallowance u/s. 14A of the Act. Facts being identical applying the ratio of the decision of the Hon'ble Jurisdictional High Court in the case of Jet Airways Ltd., (supra) we hold that the reopening of assessments for both these assessment is bad in law. Thus, Ground No.1 is allowed.

8. Since, we have allowed Ground No.1 of the grounds of appeal holding that the reopening of assessment is bad in law, we are not inclined to go into other grounds raised by the assessee in these appeals.

9. In the result, appeals of the assessee are partly allowed.

10. Before parting, we noticed that these appeals were heard on 03.02.2020 and the pronouncement is delayed due to lockdown in view of COVID-19 pandemic. The pronouncement is as per Rule 34(5) of Income Tax Appellate Tribunal Rules, 1963 and Hon'ble Bombay High Court decision vide orders dated 15.04.2020 and 15.06.2020 extending the time bound periods specified by Hon'ble High Court by removing the

period under lockdown. This aspect was also dealt with in detail by the Mumbai Bench of the Tribunal in case of DCIT v. JSW Steel Vide order dated 14.05.2020 in ITA.No. 6264/Mum/2018.

Order pronounced on 30.09.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER
Mumbai / Dated 30/09/2020
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum