

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI

Before Shri Rajesh Kumar, Accountant Member
& Shri Amarjit Singh, Judicial Member

ITA No.7431/Mum/2011
(Assessment Year : 2008-09)

Mafatlal Fabrics P Ltd., Mafatlal House, Backbay Reclamation, Mumbai 400 020 PAN AAACP4133C (Appellant)	Vs.	Dy CIT 1(2), Mumbai (Respondent)
--	-----	--

Appellant By : Ms. Aarti Vissanji
Respondent By : Shri Dropsingh Meena

Date of Hearing : 14.11.2019

Date of Pronouncement : 11.02.2020

ORDER

Per Rajesh Kumar, Accountant Member

The captioned appeal filed by the assessee pertaining to A.Y. 2008-09 is directed against the order passed by the CIT(A)-2, Mumbai, dated 05.09.2011.

2. The issue raised in ground nos.1 to 4 is against the confirmation of disallowance by the CIT(A) u/s. 14A read with Rule 8D amounting to Rs 8,30,162/- (Rs 5,49,912 + Rs 2,80,250/-).

3. The facts in brief are that the AO during the assessment proceedings made disallowance u/s. 14A of the Act read with Rule 8D(2)(ii) of Rs 5,49,912/- and 8D(2)(iii) of Rs 2,80,250/-. The assessee's contention that no expenses were incurred during the year qua earning the exempt income and further no borrowed

funds were utilised for investments in shares which were rejected by the AO, thereby making disallowance u/s. 14A of Rs. 8,30,162/-. In the appellate proceedings, the learned CIT(A) observed that there was no merit in the contentions of the assessee and thus confirmed the disallowance. Aggrieved, the assessee is in appeal before us.

3. We have heard the parties and perused the material available on record. We observe that the assessee's own interest free funds avail for investments were far more than the investments which yielded exempt income during the year. The learned AR took us through the copy of the balance sheet, filed at page 8 of the paper-book, which states that assessee's own funds comprising share capital & reserves and surplus were Rs 11,12,09,464/- and investments were only Rs 6,01,26,270/-. We find merit in the contentions of the assessee that its own funds were more than the investments made in securities which yielded exempt income, then presumption is to be drawn that investments in securities has been made out of own and interest free funds available. The case of the assessee is squarely supported by the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. HDFC Bank Ltd. [2014] 366 ITR 505 (Bom) and CIT vs. Reliance Utilities And Power Ltd. [2009] 313 ITR 340 (Bom), wherein it has been held that no disallowance has to be made towards interest expenditure where assessee's own interest free funds are available for investment in securities. We, therefore, respectfully following the ratio of the decisions laid down by the Hon'ble Bombay High Court, set aside the order of CIT(A) and direct the AO to delete the disallowance of Rs 5,49,912/- made u/s. 14A read with Rule 8D(2)(ii) of the Act.

4. So far as disallowance u/s. 14A read with Rule 8D(2)(iii) amounting to Rs. 2,80,250/- is concerned, we find that the same is computed by the AO by applying 0.5% on the average investments. After hearing both the parties on the issue and perusing the facts on record, we observe that this disallowance has rightly been made by the AO. However, we find merits in the contentions of the learned AR that disallowance of legal and professional charges paid to HDFC Asset Management Co. in connection with investments and portfolio management of the assessee can not be made twice first by computing the disallowance rule 8D(2)(iii) and secondly under the head of legal and professional charges, therefore the disallowance has to be made by the AO only once. Accordingly we hold that the action of the AO has resulted into disallowance twice. In our opinion if disallowance is confirmed under rule 8D(2)(iii) , no disallowance can be made under the head legal and We, therefore, find no reason to interfere with the order of the learned CIT(A) and affirm the disallowance of Rs 2,80,250/- made u/s 14A read with Rule 8D(iii) of the Act.

5. The issue raised in ground nos. 5 & 6 are not pressed and is dismissed as such.

6. The issue raised in ground nos. 7 to 10 pertains to the confirmation of disallowance of Rs 3,42,742/- paid to HDFC Asset Management Company Limited. We have already discussed the issue while deciding the disallowance under section 14A read with Rule 8D(2)(iii), wherein we have held that once the calculation is made in terms of Rule 8D(2)(iii) by applying 0.5% of the average investments then

*ITA 7431/Mum/2011
M/s. Mafatlal Fabrics Pvt Ltd.*

no further disallowance can be made. To this extent we are not in agreement with the order of the CIT(A). Accordingly, we set aside the order of the CIT(A) on the issue and direct the AO to delete the disallowance.

7. Ground nos. 11 to 13 are not pressed and is dismissed as such.
8. Ground no.14 is consequential in nature and needs no adjudication.
9. In the result, the appeal is partly allowed.

Order pronounced in the open court on 11th February, 2020.

**Sd/-
(Amarjit Singh)
JUDICIAL MEMBER**

Mumbai, Dated : February, 2020.

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'D' Bench, ITAT, Mumbai

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai