

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'G' BENCH MUMBAI**

BEFORE SHRI JUSTICE P P BHATT, PRESIDENT

&

SHRI M. BALAGANESH, AM

**ITA No.4789/Mum/2018
(Assessment Year :2015-16)**

M/s. Shree Naman Securities and Finance Pvt. Ltd., 415, Parekh Market, 39, J.S.S.Road Opera House Mumbai – 400 004	Vs.	DCIT, Central Circle-5(4) Mumbai
PAN/GIR No.AAACN1917G		
(Appellant)	..	(Respondent)

Assessee by	Shri Mahesh O Rajora
Revenue by	Shri V. Vinod Kumar
Date of Hearing	28/09/2020
Date of Pronouncement	21/10/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.4789/Mum/2018 for A.Y.2015-16 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-53, Mumbai in appeal No. CIT(A)-53/IT-427/DCCC-5(4)/2017-18 dated 25/05/2016 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 15/12/2017 by the Id. Dy. Commissioner of Income Tax, Central Circle 5(4), Mumbai (hereinafter referred to as Id. AO).

2. Though the assessee has raised several grounds of appeal, which are quite argumentative in nature, we find that the only effective issue to be decided is with regard to disallowance made u/s.14A of the Act r.w.Rule 8D(2) of the Rules made under normal provisions of the Act.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is engaged in the business of stock brokerage, shares and securities trading. The assessee is a member of Bombay Stock Exchange and National Stock Exchange. During the year under consideration, the assessee received dividend income of Rs.25,07,296/- which was claimed as exempt in the return of income. We find that no disallowance of expenses was made u/s.14A of the Act by the assessee. Accordingly, the Id. AO had computed the disallowance in terms of Rule 8D(2) of the Rules under second and third limb thereon as under:-

• Disallowance of interest under Rule 8D(2)(ii)	-	Rs.1,28,44,205/-
• Disallowance of indirect expenses under Rule 8D(2)(iii)	-	Rs. 8,40,952/-

Total		Rs.1,36,85,157/-
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3.1. This action of the Id. AO was upheld by the Id. CIT(A).

3.2. With regard to disallowance of interest made under second limb of Rule 8D(2) of the Rules, the Id. AR vehemently argued that the assessee company was flooded with own funds to the tune of Rs.9.83 Crores as on 31/03/2014 and Rs.9.45 Crores as on 31/03/2015 which was far in excess of investment made in shares which has ultimately given rise to exempt income and accordingly, he pleaded that investments made by the assessee had to be presumed to have been made out of own funds of the assessee and not out of borrowed funds. We find lot of force in this argument of the Id. AR

and by placing reliance on the decision of the Hon'ble Jurisdictional High Court in the case of HDFC Bank Ltd., vs. CIT in 366 ITR 505 (Bom) and Reliance Utilities and Power Ltd., reported in 313 ITR 340 (Bom), we direct the Id. AO to delete the disallowance made on account of interest under Rule 8D(2)(ii) of the Rules in view of availability of own funds. Since, the entire interest disallowance is directed to be deleted under second limb of Rule 8D(2) of the Rules, the alternative argument made by the Id. AR on without prejudice basis that only net interest is to be considered for the purpose of disallowance, need not be gone into by us.

3.3. With regard to disallowance of indirect expenses under Rule 8D(2)(iii) of the Rules, we direct the Id.AO to consider only those investments which had really yielded exempt income to the assessee and re-compute the disallowance under third limb of Rule 8D(2) of the Rules, subject to the condition that in any case, the disallowance shall not exceed the exempt income.

4. The grounds raised by the assessee are disposed off in the aforesaid manner.

5. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 21/10/2020 by way of proper mentioning in the notice board.

Sd/-
(JUSTICE P P BHATT)
PRESIDENT

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 21/10/2020
KARUNA, sr.ps

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, Mumbai