

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एस एम सी"  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 7209/मुं/2018 (नि.व.2015-16)  
ITA NO. 7209/MUM/2018 (A.Y.2015-16)

Podar Advisory and Consulting Enterprise Pvt. Ltd.  
4<sup>th</sup> Floor, Podar Chambers,  
109, SA Brelvi Road Fort,  
Mumbai 400 001  
PAN:AAACP3336K

: अपीलार्थी/ **Appellant**

**बनाम/** Vs.

The Income Tax Officer, Ward 2(2)(4),  
Aaykar Bhavan, M.K.Road,  
Mumbai 400 020

: प्रत्यर्थी/ Respondent

**Assessee by** : None  
**Revenue by** : Shri Ajay Pratap Singh

सुनवाई की तारीख/ : 12/10/2020  
**Date of Hearing**  
घोषणा की तारीख / : 17/12/2020  
**Date of Pronouncement**

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-5, Mumbai ( in short 'the CIT(A)') dated 21/08/2018 for the assessment year 2015-16.

2. The primary issued raised in the present appeal by assessee is against disallowance of Rs.4,93,929/- made under section 14A r.w.r 8D(2)(ii) of the Income Tax Act, 1961 ( in short 'the Act').

3. The brief facts of the case as emanating from records are : The assessee company is engaged in consultancy and advisory business. During the period relevant to assessment year under appeal, the assessee made certain investments and made suo-motu disallowance of Rs.83,009/- under section 14A of the Act. The said disallowance was computed by the assessee by taking 0.5% of the average value of investment being overhead expenses relatable to the exempt income earned. The Assessing Officer in assessment proceedings not satisfied with the computation of disallowance by assessee, made further disallowance of Rs.4,93,929/- u/r 8D(2)(ii) on account of interest expenditure on investments made. Aggrieved by the assessment order dated 30/06/2017 passed under section 143(3) of the Act, the assessee filed appeal before the CIT(A). Before the First Appellate Authority, the assessee contended that own funds of the assessee were sufficient to cover the investment made. Reliance was placed on the decision of Hon'ble Bombay High Court in the case of HDFC Bank Ltd. vs. DCIT, 366 ITR 505 and the decision rendered in the case of CIT vs. Reliance Utilities & Power Ltd., 313 ITR 340(Bom). The CIT(A) remain unimpressed with the contentions raised by the assessee and dismissed the appeal. Against the findings of CIT(A), the assessee is in appeal before the Tribunal.

4. Shri Ajay Pratap Singh, representing the Department vehemently defended the findings of CIT(A) and prayed for dismissing the appeal of assessee.

5. The submissions made by Id. Departmental Representative heard, orders of authorities below examined. The assessee has raised seven grounds in appeal. The ground No. 1 to 5 of the appeal are against the disallowance of

Rs.4,23,929/- made under section 14A r.w.r. 8D(2)(ii) of the Act i.e. interest expenditure attributable to earning of exempt income. The contention of the assessee is that own interest free funds comprising of Share Capital and Reserves and Surplus aggregating to Rs.5,67,64,599/- are sufficient to cover the investment of Rs.1,66,01,808/-. Where both interest free funds and borrowed funds are available, the presumption is that the investments are made from own interest free funds. In support of this contention reliance has been placed on the following decisions:

- (1) CIT vs. Reliance Utilities and Power Limited, 313 ITR 340(Bom)
- (2) CIT v. HDFC Bank Limited, 366 ITR 505(Bom)
- (3) PCIT v. Sintex Industries Ltd. 93 taxmann.com 24(SC)

The assessee has also raised a contention that disallowance under section 14A r.w.r. 8D cannot exceed the exempt income earned. To buttress this contention reliance has been placed on the decision of Hon'ble Delhi High Court in the case of Joint Investment Pvt. Ltd. vs. ACIT, reported as [TS-92-HC-2015(DEL)-O]

6. It is no more res-integra that where the assessee is having own funds as well as interest bearing funds, the presumption is that the investments are made from own funds. If own interest free funds are sufficient to cover the investments no disallowance in respect of interest expenditure under Rule 8D(2)(ii) is warranted. However, it is observed that relevant Balance Sheet and Profit and Loss Account of the assessee have not been placed on record to substantiate the fact that assessee has sufficient own interest free funds to cover the investments made.

7. It is also a well settled proposition that disallowance under Rule 8D cannot exceed exempt income earned. However, from the perusal of assessment order and the order of CIT(A) the exempt income earned by the assessee is not emanating. The CIT(A) dismissed the appeal of assessee disregarding the decisions rendered by Hon'ble Jurisdictional High Court in favour of the assessee in respect of factors to be considered for making disallowance under Rule 8D(2)(ii).

8. In the light of above findings, the impugned order is set-aside and the issue is restored back to the file of Assessing Officer for denovo computation of disallowance under section 14A r.w.r 8D, in accordance with law expounded in various judicial decisions. The ground No.1 to 5 of the appeal by assessee are allowed for statistical purpose, in the terms aforesaid.

9. In ground No.6 of the appeal the assessee has assailed charging of interest under section 234B and 234C of the Act. This ground is connected to primary grounds of appeal ( i.e. 1 to 5). Since, we have restored ground No.1 to 5 of the appeal to the Assessing Officer, we deem it appropriate to restore this issue as well to the file of Assessing Officer. The ground of appeal No.6 is allowed for statistical purpose.

10. Ground No.7 of the appeal is general in nature, hence, require no adjudication.

11. In the result, appeal by the assessee is allowed for statistical purpose in the terms aforesaid.

Order pronounced in the open court on Thursday the 17<sup>th</sup> day of December, 2020.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 17/12/2020

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषित**Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**