

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

**BEFORE SHRI MAHAVIR SINGH (VICE PRESIDENT) AND
SHRI M. BALAGANESH (ACCOUNTANT MEMBER)**

**ITA No. 4107/MUM/2019
Assessment Year: 2008-09**

DCIT, Corporate Circle-2(1),
Room No. 511, 5th floor,
AayakarBhavan, Wanapathy
Building
Chennai-600034.

Appellant

Vs. M/s IDFC First Bank Ltd. (Previously known
as M/s Capital First Limited)
Tower II, 15th Floor,
India Bulls Finance Centre,
Senapati Bapat Marg, Elphinstone West
Mumbai – 400 013, Maharashtra
PAN No. AACCK 6863 C
Respondent

**C.O. No. 78/MUM/2020
(ITA No. 4107/MUM/2019)
Assessment Year: 2008-09**

M/s IDFC First Bank Ltd. (Previously known
as M/s Capital First Limited)
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Vs. DCIT, Corporate Circle-2(1),
Room No. 511, 5th floor,
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Assessment Year: 2009-10**

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Room No. 511, 5th floor,
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Respondent

Revenue by : Ms. ShreekalaPardeshi, DR
Assessee by : Mr. KetanVed, AR

Date of Hearing : 24/06/2021
Date of pronouncement : 01/07/2021

ORDER

PER M. BALAGANESH, A.M.

These appeals of the Revenue and cross-objections filed by the assessee arise out of the order passed by the Ld. Commissioner of Income Tax (Appeals)-16, Mumbai [hereinafter referred to as 'Ld. CIT(A)'] dated 20.03.2019 for assessment years 2008-09 and 2009-10 against the order of assessment framed by the Ld. Addl. Commissioner of Income Tax (OSD) Range-8(1), Mumbai (hereinafter referred to as 'AO') on 24.12.2010 and 29.09.2011 for assessment years 2008-09 and 2009-10 respectively u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

2. We find that the assessee had explained that in view of Covid-19 Pandemic, these cross-objections could not be filed in time before this Tribunal. Considering the same, we are inclined to condone the delay and

admit the cross-objection of the assessee for both the years for adjudication. The only issue to be decided in these appeals of the Revenue is with regard to disallowance made u/s 14A of the Act r.w.r. 8D(2) of the Rules for the Income Tax Rules (hereinafter referred to as 'Rules').

3. We have heard the rival submissions and perused the relevant materials on record. We find that assessee is a Non-Banking Finance Company (NBFC) incorporated on 18.10.2005 and engaged in investment advisory activities and treasury and wholesale credit activities and retail financial services. With the mutual consent of both the parties, the appeal for assessment year 2008-09 of the Revenue and cross-objections of the assessee thereon is taken up for adjudication and the decision rendered thereon would apply with equal force for assessment year 2009-10 also, in view of identical facts except with variance of figures.

3.1. The return of income for the assessment year 2008-09 was filed by the assessee declaring loss of Rs.3,92,97,426/-, which was duly processed u/s 143(1) of the Act. The original assessment was completed u/s 143(3) of the Act for assessment year 2008-09 on 24.12.2010 determining loss at Rs.1,94,76,340/-. Against the assessment order framed u/s 143(3) of the Act, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 27.01.2011 partly allowed the assessee's appeal. On further appeal by the assessee to this Tribunal, this Tribunal in ITA Nos 2801 and 2137/Mum/2012 dated 18.11.2016 set aside the issue pertaining to the disallowance made u/s 14A of the Act in the sum of Rs.1,99,65,779/- to the file of the Ld. CIT(A).

3.2. We find that assessee had earned exempt income of Rs.12,27,24,681/-. We find that assessee had voluntarily disallowed sum of Rs.1,05,54,142/- u/s 14A of the Act. The assessee also produced the workings together with the basis for voluntary disallowance made by it before the Ld. AO. We find that the Ld. AO observed that the disallowance voluntarily made by the assessee was not in accordance with the computation mechanism provided in Rule 8D(2) of the Rules and accordingly proceeded to make the disallowance as under:

Under Rule 8D(2)(ii)	Rs.43,48,646/-
Under Rule 8D(2)(iii)	<u>Rs.1,56,17,133/-</u>
	Rs.1,99,65,779/-
Less amount voluntarily disallowed by the assessee	<u>Rs.1,05,54,142/-</u>
Disallowance u/s 14A of the Act	Rs.94,11,637/-

3.3. We find that the Ld. CIT(A) had proceeded on the wrong assumption of fact that exempt income derived by the assessee was only Rs.9,46,325/- as against the actual exempt income of Rs.12,27,24,681/-. Accordingly, he directed the Ld. AO to restrict the disallowance only to the extent of exempt income in the sum of Rs.9,46,325/- u/s 14A of the Act. We find that Ld. AR fairly stated that the exempt income derived by the assessee was more than what is incorrectly stated by the Ld. CIT(A) in his order and accordingly, prayed for restoring of this matter to the file of Ld. AO for *de novo* adjudication in accordance with law. We find that the law on this issue u/s 14A of the Act is well settled as on date. We direct the Ld. AO to consider only those investments which had actually yielded exempt income to the assessee while doing the *de*

novo assessment on the issue of disallowance u/s 14A of the Act in accordance with law.

4. In the result, the appeals of the Revenue and both the cross-objections of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 01/07/2021

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Mumbai;

Dated: 01/07/2021

Rahul Sharma, Sr. P.S.

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//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai