

आयकर अपीलिय अधिकरण "D" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VP AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 5760/Mum/2019
(निर्धारण वर्ष / Assessment Year 2015-16)

Rupa Equities Pvt. Ltd. 2 nd Floor Bajaj Bhaan, Jamnalal Marg, 226, Nariman Point, Mumbai-400 021	Vs.	The Dy. Commissioner of Income Tax, Circle 3(3)(1), Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAACS7520E		

अपीलार्थी की ओर से / Appellant by	:	Shri Mahendra Gohel, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Bharat Andhle, DR

सुनवाई की तारीख / Date of hearing:	11.08.2021
घोषणा की तारीख / Date of pronouncement :	31.08.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /
PER MAHAVIR SINGH, VP:

This appeal filed the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-8, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-8/IT-38/2017-18 vide order dated 10.07.2019. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle 3(3)(1), Mumbai (in short 'DCIT/ AO') for the A.Y. 2015-16 vide order dated 13.06.2017 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the Assessing Officer in making disallowance of expenses relatable to exempt income by invoking the provisions of section 14A read with Rule 8D of the Income tax Rules, 1962 (hereinafter referred to as 'Rules'). For this, assessee has raised the following effective grounds: -

"1. DISALLOWANCE UNDER SECTION 14A READ WITH RULE 8D OF RS.6,35,031/-.

1.1 On the facts and in the circumstances of the case and in law, the Ld. [Commissioner of Income Tax (Appeals) [CIT(A)] erred in confirming disallowance made by the Learned Assessing Officer under Section 14A of the read with Rule 8D of the Income-tax Rules, 1962 at Rs. 26,35,031/-.

1.2 It is submitted that no part of interest expenditure is to be disallowed as it has direct nexus with interest income. It is submitted that the disallowance under Section 14A of the Act computed by the Learned Assessing Officer and confirmed by the CJT(A) is excessive, unreasonable and unwarranted.

1.3 It is submitted that the Learned CIT(A) and learned Assessing Officer erred in disallowing legitimate business / establishment expenditure and proportionate interest as expenditure directly relating to Dividend Income."



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3. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has earned exempt income in the form of dividend on mutual fund at ₹1,88,15,081/- under section 10(34) of the Act. The Assessing Officer made disallowance by invoking the provisions of section 14A of the Act read with Rule 8D of the Rules and thereby, disallowed interest expenses under Rule 8D(2)(ii) of the Rules at ₹20,47,215/- and administrative expenses being 0.5% of average value of investment under Rule 8D(2)(iii) of the Rules at ₹ 5,95,854/-. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) confirmed the action of the Assessing Officer.

Aggrieved, assessee came in appeal before Tribunal.

4. We noted from the details filed by the assessee and the audited accounts of the assessee that the assessee has sufficient own funds in the form of share capital and reserves and surplus amounting to ₹16,02,67,705/- as on 31.03.2015 as against the investment of ₹15,96,06,706/- in the shares of mutual funds. The assessee has filed complete details as under:-

Particulars	As at 31.03.2015 rupees	As at 31.03.2014 rupees
Share capital	20,00,000	20,00,000
Reserves & Surplus	15,82,67,705	13,27,32,251
Total	16,02,67,705	13,47,32,251
Borrowings/ Loan Funds	Nil	11,40,00,000
Non-Current Investments	15,81,70,960	7,74,49,496
Current Investments	14,35,746	8,18,303
Long term Loans & Advances	1,00,523	16,57,75,449

5. On the above facts the learned Counsel for the assessee stated that issue is squarely covered by the decision of Hon'ble



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Bombay High Court in the case of CIT vs. HDFC Bank (2014) 366 ITR 505 (Bom). The learned DR could not controvert the above facts. Hence, we are of the view that once the assessee has own funds more than the investment, no disallowance under Rule 8D(2)(ii) of the Rules can be made unless and until the Assessing Officer has able to prove the direct nexus. Hence, we delete the disallowance and reverse the orders of the lower authorities on this issue.

6. Coming to the second disallowance of administrative expenses made by Assessing Officer and confirmed by CIT(A) amounting to ₹ 5,95,854/- under Rule 8D(2)(iii), the learned counsel for the assessee stated that the total expenditure claimed in the profit and loss account is only 87,596/- and disallowance at the most can be restricted to this amount only. When this was pointed out to the learned Sr. DR, he could not controvert the same. Hence, we direct the Assessing Officer to restrict the disallowance under Rule 8D(2)(iii) of the Rules at ₹87,596/-. This issue of assessee's appeal is partly allowed.

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

Order pronounced in the open court on 31.08.2021.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 31.08.2021.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह / MAHAVIR SINGH)
(उपाध्यक्ष / VICE PRESIDENT)



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai