

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI MAHAVIR SINGH, VICE PRESIDENT
&**

SHRI M.BALAGANESH, ACCOUNTANT MEMBER

**ITA No.1273/Mum/2019
(Assessment Year :2012-13)**

M/s. Acira Consultancy Pvt.Ltd., 511/C, 6 th Floor Sunshine CHSLtd., Off. Chandivli Farm Raheja Vihar, Andheri(E) Mumbai – 400 072	Vs.	Income Tax Officer-5(1)(4) Room No.569, 5 th Floor Aaykar Bhavan M.K.Road, Mumbai Maharashtra-400 020
PAN/GIR No.AAICA9489N		
(Appellant)	..	(Respondent)

Assessee by	Shri Kumar Kale
Revenue by	Shri Brajendra Kumar
Date of Hearing	24/08/2021
Date of Pronouncement	07/09/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.1273/Mum/2019 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-10, Mumbai in appeal No.CIT(A)-10/IT-5(1)(4)/99/2015-16 dated 28/12/2018 (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 21/03/2015 by the Id. Income Tax Officer-5(1)(4), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in confirming the disallowance of interest of Rs 44,16,081/- u/s 14A of the Act read with Rule 8D(2)(ii) of the Income Tax Rules (hereinafter referred to as the Rules) in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. We find that the assessee company is engaged in the business of trading in shares and securities. In respect of shares held as stock in trade, the provisions of section 14A of the Act are applicable as held by the Hon'ble Apex Court in the case of Maxopp Investments reported in 402 ITR 640(SC). We find that the assessee during the year under consideration was in receipt of dividend of RS 45,83,400/- which was claimed as exempt u/s 10(34) of the Act in the return of income. Before the Id AO, the assessee had claimed that it has not incurred any expenditure to earn the said dividend income and therefore no expenditure could be attributed to the said dividend income. The Id AO did not heed to this contention of the assessee and proceeded to determine the disallowance u/s 14A of the Act by applying the computation mechanism provided in Rule 8D(2) of the Rules as under:-

Under Rule 8D(2)(i)	- Rs Nil
Under Rule 8D(2)(ii)	- Rs2,18,30,647 – restricted to Rs 44,16,081 Being 20% of total interest paid during the Year as attributable to exempt income
Under Rule 8D(2)(iii)	- Rs 14,27,204 – restricted to Rs 32,740/- Being the indirect expenses claimed by the Assessee

3.1. We find that the Id CITA on perusal of the financials of the assessee observed that the assessee had negative reserves and surplus as on 31.3.2011 and 31.3.2012 and had also incurred interest expenses of Rs

2,20,80,408/- during the year. The Id CITA also categorically observed that the assessee did not have sufficient interest free funds to invest in shares. Hence disallowance of interest under Rule 8D(2)(ii) of the Rules is to be made as admittedly the borrowed funds were indeed utilised for making investment in shares held as stock in trade. The Id CITA upheld the action of the Id AO. We find that the assessee is in appeal before us only against the disallowance of interest under Rule 8D(2)(ii) of the Rules. We have gone through the financials of the assessee and find that the assessee does not have sufficient interest free funds in its kitty to make investments. Hence the finding given by the Id CITA that the borrowed funds were utilised for making investments does not require any interference. However, for the purpose of disallowance of interest under Rule 8D(2)(ii) of the Rules, we direct the Id AO to consider only those investments which had actually yielded dividend income during the year in the light of decision of Hon'ble Special Bench of Delhi Tribunal in the case of Vireet Investments vs ACIT reported in 165 ITD 27 (Del)(SB). Accordingly, the ground raised by the assessee is partly allowed and Id AO is directed to recompute accordingly.

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

Order pronounced on 07/09/2021 by way of proper mentioning in the notice board.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 07/09/2021
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