

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"D" BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, HON'BLE JUDICIAL MEMBER AND**

ITA NO. 1609/MUM/2020 (A.Y: 2010-11)

M/s. Delux Bearings Pvt. Ltd., {successor to Luxite Industries Ltd.,} 31A/32, Ideal Industrial Estate 124, N.M. Joshi Marg Lower Parel (W), Mumbai - 400013 PAN: AABCD7164L	v.	CIT(A)-13 Room No. 9, B-Wing Third Floor, Mittal Court Nariman Point, Mumbai – 400021
(Appellant)		(Respondent)

Assessee by	:	Shri Hardik Nirmal
Department by		Shri S.N. Kabra
Date of Hearing	:	28.01.2022
Date of Pronouncement	:	04.02.2022

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)-13, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 04.02.2020 for the A.Y. 2010-11.
2. The issue involved in this appeal is relating to section 14A disallowance and we noticed that Assessing Officer invoked Rule 8D(2)(ii) and 8D(2)(iii) of I.T. Rules to disallow ₹.13,56,421/- against the exempt

income earned by the assessee to the extent of ₹.31,95,634/-. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) sustained addition by the Assessing Officer.

3. Aggrieved assessee preferred an appeal before the ITAT raising following grounds in its appeal: -

"GROUND I - DISALLOWANCE U/s.14A r.w.s. Rule 8D(2)(ii) OF THE INCOMETAX RULES 1962 'the Rules'

On the facts and circumstances of the case and in law, the Id. CIT(A) erred in upholding the action of the Assessing Officer of disallowance w/s.14A r.w.r 8D(2) of the Rules.

The Appellant prays that the impugned direction of the Id. CIT(A) be deleted."

4. At the time of hearing it is brought to our notice that Assessing Officer has not considered the capital and surplus available for investment in line with Hon'ble Jurisdictional High Court in the case of CIT v. HDFC Ltd., (366 ITR 505). It is submitted that in the earlier assessment i.e. A.Y.2009-10 similar issue was remitted back to the file of the Assessing Officer to redo the assessment denovo in ITA.No. 805/Mum/2014.

5. Considered the rival submissions and material placed on record, we observed that Assessing Officer merely carried on with the disallowance u/s. 14A by following Rule 8D of I.T. Rules without considering the own funds available in the business for investment. Therefore, we are inclined

to follow the findings of the Coordinate Bench in earlier A.Y.2009-10 in assessee's own case with the similar direction as given below: -

"5. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that none of the details regarding capital or reserve and surplus fund available for investment and also filed no details before us. In such circumstances, we have no alternative except to remand the matter back to the file of the AO for deciding afresh in the light of recent decision on Hon'ble Bombay High Court in the case of CIT vs. HDFC Ltd. (2014) 366 ITR 505 (Bom). Accordingly, the orders of the lower authorities are set aside and the matter is remanded back to the file of the AO for fresh adjudication. The appeal of assessee is allowed for statistical purposes"

6. Respectfully following the said decision, we remit this issue back to the file of the Assessing Officer to redo the assessment denovo. Grounds raised by the assessee are allowed.

7. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced on 04.02.2022 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai / Dated 04/02/2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

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, Mum