

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

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5529/Mum/2018
(Assessment Year :2012-13)**

Dy. Commissioner of Income Tax, Central Circle-5(2) Room No.1908, 19 th Floor, Air India Building, Nariman Point, Mumbai-400 021	Vs.	M/s. Satra Properties (INDIA) Limited Dev Plaza, 2 nd Floor Opp. Andheri Fire Station S.V. Road, Andheri(E) Mumbai – 400 058
PAN/GIR No. AAACE1835C		
(Appellant)	..	(Respondent)

Revenue by	Shri Hoshang B. Irani
Assessee by	None
Date of Hearing	14/02/2022
Date of Pronouncement	22/02/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.5529/Mum/2018 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-53, Mumbai in appeal No.CIT(A)-53/IT-97/DCCC-5(2)/2015-16 dated 16/07/2018 (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 23/03/2015 by the Id. Deputy Commissioner of Income Tax, Central Circle-5(2), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the disallowance made on account of interest u/s.14A of the Act r.w.r 8D(2)(ii) of the Income Tax Rules (hereinafter referred to as Rules).

3. None appeared on behalf of the assessee. We have heard the Id. DR and perused the materials available on record. We find that assessee had made investments amounting to Rs.59,78,10,450/- as on 31/03/2011 and the same remained as such as on 31/03/2012 also. Hence, no fresh investments were made during the year under consideration. The assessee earned dividend income on its investments to the tune of Rs.1,46,03,900/- and claimed the same as exempt u/s.10 of the Act in the return of income. However, no expenditure was disallowed by the assessee u/s.14A of the Act voluntarily in the return of income. Accordingly, the Id. AO invoked the computation mechanism provided in Rule 8D(2) of the Rules and computed the disallowance thereon u/s.14A of the Act as under:-

i) Under Rule 8D(2)(ii)	-	Rs.301,55,675/-
ii) Under Rule 8D(2)(iii)	-	<u>Rs. 29,89,052/-</u>

Total Disallowance **Rs.3,31,44,727/-**

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3.1. We find that the Id. CIT(A) by considering the decision of Hon'ble Supreme Court in the case of Maxopp Investments reported in 402 ITR 640 and after considering the elaborate submissions of the assessee made both on facts as well as by placing reliance on various case laws gave a factual finding that assessee had paid interest on its non-convertible debentures during the year and monies raised through such

debentures were not used by the assessee for making investments and the same had been used only for repaying the term loans. At the outset we find that this factual finding of the Id. CIT(A) was not controverted by the Revenue before us.

3.2. There is no dispute in the instant case with regard to the applicability of Rule 8D(2) of the Rules as is evident from para 5.6 of the order of the Id. CIT(A). We find that the Id. AO himself had duly excluded the interest on specific purpose loans i.e. term loans and vehicle loans while making the disallowance of interest under Rule 8D(2)(ii) of the Rules. The Id. CIT(A) had categorically observed that the fresh loans taken during the year had not been utilized for making any investments. Hence, the interest paid on fresh loans cannot be subject matter of disallowance under Rule 8D(2)(ii) of the Rules. This factual finding of the Id. CIT(A) had not been controverted by the Revenue before us and this is the only dispute before us to be decided in this appeal. We do not find any appeal which is filed by the assessee before us against the order of the Id. CIT(A). Hence, we do not deem it fit to interfere in the order of the Id. CIT(A). Accordingly, the grounds raised by the Revenue are dismissed.

4. In the result, appeal of the Revenue is dismissed.

Order pronounced on 22/ 02/2022 by way of proper mentioning
in the notice board.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 22/02/2022
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