

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
ITA No. 3693/MUM/2019 (A.Y.2015-16)

Forbes and Company Limited Ground Floor, Forbes Building Charanjit Rai Marg, Mumbai-400 001 PAN : AAACF1765A	vs	Deputy Commissioner of Income-tax, Circle-1(1)(2), Mumbai
APPELLANT		RESPONDENT

Assessee represented by	Shri Ketan Ved
Department represented by	Shri S.N. Kabra Sr AR

Date of hearing	21/03/2022
Date of pronouncement	29/03/2022

ORDER

Per Amarjit Singh (AM):

This is an appeal filed by the assessee against the order of the Commissioner of Income-tax (Appeals)-2, Mumbai for the assessment year 2015-16.

2. The assessee has raised the following ground of appeal:

"Based on the facts and circumstances of the case, the Appellant objects to the order dated 29 March 2019 received on 31 March 2019, passed by the Commissioner of Income-Tax -(Appeals) 2, Mumbai [learned CIT(A)] on the following among other grounds:

Disallowance under section 14A read with Rule 8D(2)(iii) of the Act

1. The [earned CIT (A) erred in confirming disallowance under section 14A read with Rule 8D.
2. The learned CIT(A) erred in directing the DCIT to re-compute the disallowance made under section 14A read with Rule 8D(2)(iii) by considering the annual averages of the monthly averages, of the opening .and ^closing, balances of such investment which have yielded exempt income during the year under consideration."

3. The facts in brief are assessment under section 143(3) of the Act was finalised on 29/12/2017. During the course of assessment, the Assessing Officer has noticed that assessee claimed exempt income of Rs.46,44,977/-; however, no disallowance was made under section 14A of the Act. The

Assessing Officer has computed disallowance of expenditure incurred towards earning exempt income in accordance with section 14A r.w.r. 8D to the amount of Rs.94,62,164/-.

4. The assessee filed appeal before the Ld.CIT(A). After taking into consideration the submission of the assessee the Ld.CIT(A) held that the disallowance under rule 8D(2)(iii) is to be computed after taking into consideration the investment which have yielded exempt income during the year by considering the annual average of the monthly average of the opening and closing balances of such value of investment.

5. During the course of appellate proceedings before us, the Ld.Counsel contended that in the case of the assessee, the amended provisions of Rule 8D(2) are not applicable since the amended rule as per Finance Act, 2016 is applicable with effect from 02/06/2016. In this regard, the Ld.Counsel has also placed reliance on the decision of Hon'ble Supreme Court in the case of CIT vs Essar Teleholdings Ltd (2018) 90 taxmann.com2 (SC) wherein it is held that Rule 8D is prospective in operation.

6. On the other hand, the Ld.DR relied on the order of Ld.CIT(A).

7. Heard both sides, perused the materials on record. Without reiterating the facts as discussed above in this order, the Ld.CIT(A) has directed the Assessing Officer to re-compute the disallowance under rule 8D(2)(iii) by considering the investment which had yielded exempt income during the year by considering the annual average of the monthly averages of the opening and closing balances of such value of investment. During the course of appellate proceedings before us, the Ld.Counsel has pointed out that the provisions of

amended sub rule (2) of Rule 8D is not applicable in the case of the assessee, as such amended rule is prospective in nature.

8. We have perused the sub rule (2) of Rule 8D amended by Finance Act, 2016 which is applicable with effect from 02/06/2016. The same reads as under:-

“8D. (1) xxxxxxxxxxxxxxxxxxxxxxxxxxxx

(2) *The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:-*

(i) *the amount of expenditure directly relating to income which does not form part of total income; and*

(ii) *an amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income.*

Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.”

9. We have also perused the provisions of sub rule 2 of Rule 8D prior to amendment which read as under:-

“(2) *The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:-*

(i) & (ii) xxxxxxxxxxxxxxxxxxxxxxxxxxxx

(iii) *an amount equal to one half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.”*

10. In view of the above said provisions of Rule 8D, it is very clear that amended sub rule (2) of rule 8D is applicable with effect from 02/06/2016 whereas the case of the assessee is pertaining to the assessment year 2015-16. Therefore, we direct the Assessing Officer to re-compute the disallowance

under rule 8D2)(iii) in accordance with pre-amended Rule as directed by the Ld.CIT(A). Therefore, this appeal of the assessee is allowed for statistical purpose.

11. In the result, appeal of the assessee is allowed, for statistical purpose.

Order pronounced in the open Court on Thursday, the 29th day of March, 2022.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 29/03/2022
Pavanan

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./Asstt. Registrar)
ITAT, Mumbai