

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM)

I.T.A. No. 1483/Mum/2022 (A.Y. 2013-14)

Chatwani and Shah Pvt.Ltd. 1, Telli Galli, Andhri East Mumbai-400 069. PAN : AAACC3378A (Appellant)	Vs.	ACIT, CC(1)(2) 906, Pratishta Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Satish Modi
Department by	Shri Vivek Upadhyay
Date of Hearing	17.08.2022
Date of Pronouncement	18.08.2022

O R D E R

The assessee has filed this appeal challenging the order dated 05.4.2022 passed by learned CIT(A)-47, Mumbai and it relates to A.Y. 2013-14.

2. The assessee is aggrieved by the decision of learned CIT(A) in confirming the disallowance of Rs. 5,67,238/- made under section 14A of the I.T. Act.

3. The facts relating to the issue are stated in brief. During the year under consideration the assessee has earned exempt dividend income of Rs.1,53,347/-, but did not make any disallowance under section 14A of the Act. The assessee claimed before the AO that it did not incur any expense to earn exempt income. The Assessing Officer did not agree with the contentions of the assessee. He observed that the assessee would have incurred some portion of expenses out of administrative cost, manpower cost, finance cost, postage etc., in earning exempt income. Accordingly he proceeded to compute disallowance under section 14A read with rule 8D of the I.T. Rules. The Assessing Officer computed disallowance at Rs. 5,67,238/-, which consisted of interest disallowance of Rs. 4,14,653/-under rule 8D(2)(ii) and administrative

expenses disallowance of Rs. 1,52,585/- under rule 8D(2)(iii). The Learned CIT(A) also confirmed the same.

4. The Learned AR submitted that the own funds available with the assessee is in far excess of value of investment made in shares and mutual funds. Inviting my attention to the Balance sheet as on 31.3.2013, the learned AR submitted that the own funds available with the assessee was Rs.13.99 crores and the value of investment made in shares and mutual funds was only Rs.62.00 lakhs. Accordingly, by placing reliance on the decision rendered by Hon'ble Bombay High Court in the case of HDFC Bank Ltd vs. DCIT (2016) 383 ITR 529, the Learned AR submitted that no disallowance out of interest expenditure under rule 8D(2)(ii) of the Rules is called for.

5. The Learned AR further submitted that investments of Rs.62.00 lakhs consisted of two components, viz., investment in mutual funds to the tune of Rs.55.00 lakhs and investment in shares of subsidiary company and a Private Limited Company to the tune of Rs.7.00 lakhs. He submitted that the assessee has not made any new investment during the year under consideration, i.e., all the above said investments have been made in the earlier years and were brought forward from the earlier years. He submitted that the only activity relating to the investment was the receipt of dividend income of Rs. 1,53,347/-, for which the assessee has not incurred any major expenses. Accordingly he submitted that the facts and circumstances of the case do not warrant application of Rule 8D and hence the Assessing Officer was not justified in applying provisions of rule 8D for making disallowance u/r 8D(2)(iii) of IT Rules.

6. The Learned DR, on the contrary, supported the order passed by learned CIT(A).

7. I have heard the rival contentions and perused the record. Since own funds available with the assessee is in far excess of the value of investment made in shares and mutual funds, interest disallowance made by the

Assessing Officer under rule 8D(2)(ii) is liable to be deleted as per the decision rendered by Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (supra). Accordingly I direct deletion of interest disallowance made under rule 8D(2)(ii).

8. With regard to disallowance made out of administrative expenses under rule 8D(2)(iii) of I T Rules, I agree with the contentions of learned AR that the facts and circumstances of the case do not warrant invocation of 8D(2)(iii). The objective of the provisions of sec.14A is to identify the expenses relatable to the exempt income and to disallow the same, if the assessee has claimed it as deduction against his other income. For that purpose, it is required to have regard to the accounts of the assessee. In the instant case, I notice that, all investments have been brought forward from the earlier years i.e. no fresh investment or sale of existing investments has taken place during the year under consideration. The only activity relating to the investments is the receipt of dividend income, which will not involve much of expenditure. At the same time, it cannot be said that the assessee did not incur expenses at all. A portion of administrative expenses should be apportioned towards the exempt income also. Accordingly, in the facts and circumstance of the case, I am of the view an adhoc disallowance @ 10% of the exempt income may be made and the same would meet requirement of section 14A of the Act. Accordingly, I set aside the order passed by learned CIT(A) on this issue and direct the Assessing Officer to restrict the disallowance under section 14A of the Act to 10% of the exempt income.

9. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 18.08.2022.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 18/08/2022

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//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai