

THE INCOME TAX APPELLATE TRIBUNAL
“A” Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 1160/Mum/2022 (A.Y. 2011-12)

Axis Capital Limited 1 st Floor, Axis House Wadia International Centre Bombay Dyeing Mill Compound, Pandurang Budhkar Marg, Worli Mumbai-400 025. PAN : AAACU8367M (Appellant)	Vs.	DCIT, Circle 3(1)(1) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
---	-----	---

Assessee by	Shri Rajnikant V. Chaniyari
Department by	Shri Manoj Sinha
Date of Hearing	22.09.2022
Date of Pronouncement	30.09.2022

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 26.3.2022 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2011-12. The only issue urged by the assessee relates to disallowance made by the Assessing Officer under section 14A of the I.T. Act.

2. The facts relating to the assessee are stated in brief. The assessee-company is engaged in the business of marketing of financial products of its holding company M/s. Axis Bank Ltd., marketing of life insurance products, online share broking etc. During the year under consideration, the assessee filed its original return of income declaring net loss of Rs. 9.75 crores. The assessee was a party to a scheme of arrangement under the Companies Act, 1956 entered between the assessee company, M/s Enam Securities P Ltd and M/s Axis Bank Ltd. The Scheme of arrangement of was approved by

Hon'ble Bombay High Court by its order on 20.10.2012 and the effective date of arrangement was 1st April, 2010. The Ld A.R stated that the company named M/s. Enam Securities Pvt. Ltd. was merged with the assessee company with effect from 1st April, 2010. Accordingly the financial accounts of the assessee company and M/s Enam Securities P Ltd was merged and in pursuance thereto, the assessee filed revised return of income on the basis of combined income and expenditure account. The same resulted in declaring total income of Rs. 107.97 crores in the revised return of income.

3. The issue under consideration relates to disallowance made under section 14A of the Act. The assessee had earned dividend income of Rs. 1.70 crores during the year under consideration and claimed the same as exempt under section 10 of the Act. In the revised return of income, the assessee disallowed a sum of Rs. 10,99,726 under section 14A of the Act, which consisted of interest disallowance of Rs. 1,53,367/- and expenditure disallowance of Rs. 9,46,359/-. Before the Assessing Officer the assessee furnished the details of computation relating to disallowance made by the assessee. It was also submitted that the dividend income consisted of dividend received from the companies amounting to Rs. 75,100/- and dividend received from the mutual funds amounting to Rs. 1,69,26,054/-. It was submitted that the dividend income has been received from the companies out of devolved shares on account of merger. The Assessing Officer took the view that the disallowance should be computed as per Rule 8D of the I.T. Rules. Accordingly he computed the disallowance at Rs.61,79,403/-, which consisted of interest disallowance of Rs. 9,12,921/- and expenditure disallowance of Rs. 52,66,482/-. After setting off of disallowance computed by the assessee, the Assessing Officer added the difference amount of Rs.50,79,677/- to the total income of the assessee. The learned CIT(A) also confirmed the same.

4. We have heard the parties and perused the record. From the order passed by the learned CIT(A), we noticed that the learned CIT(A) has confirmed the disallowance only on the reasoning that the disallowance computed by the Assessing Officer is less than the dividend income received by the assessee. In our view, the said view of Ld CIT(A) does not appear to be correct view. We notice that the Ld CIT(A) has referred to the decisions rendered in the cases of PCIT vs. State Bank of Patiala (2018)(99 taxmann.com 286)(SC) and PCIT vs. Caraf Builders & Constructions (P) Ltd (2019)(112 taxmann.com 322)(SC). The Ld CIT(A) has stated that, in the above said cases, it has been held that the disallowance u/s 14A cannot exceed dividend income. Accordingly, the Ld CIT(A) has taken the view that the disallowance can be restricted only if the dividend income is lesser than the amount of disallowance computed u/r 8D of I T Rules and conversely, if the dividend income is more than the disallowance, the same is required to be sustained. In our view, the Ld CIT(A) has misdirected himself.

5. We notice that the assessee has raised many contentions before learned CIT(A), but none of those contentions has been addressed by Ld CIT(A). In effect, the AO has not examined sufficiency or otherwise of the disallowance made by the assessee, the applicability of Rule 8D to the facts and circumstances of the case and various other contentions raised by the assessee. In effect, we are of the view that the Ld CIT(A) has not passed any reasoned order.

6. Accordingly, we are of the view that the learned CIT(A) should address all the contentions raised by the assessee with regard to the disallowance computed by the Assessing Officer. Accordingly, we set aside the order passed by the learned CIT(A) on this issue and restore the same to this file for examining the issue afresh in accordance with the law by duly addressing all the contentions raised by the assessee opposing the disallowance made by the Assessing Officer. After affording opportunity of adequate opportunity of

being heard to the assessee, the learned CIT(A) may take appropriate decision in accordance with the law.

7. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 30.09.2022.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

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

Mumbai; Dated : 30/09/2022

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//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS