

आयकर अपीलिय अधिकरण  
मुंबई पीठ "ई" मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य, एवं  
श्री एम बालगणेश, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E" BENCH  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI M BALAGANESH, ACCOUNTANT MEMBER  
आ.आ.सं. २२३८/मुंबई/२०२२ (नि.वं. २०१६-१७)  
ITA No.2238/MUM/2022 (A.Y.2016-17)

M/s Tolani Shipping Co. Ltd.  
10-A, Bhaktawar,  
R. P. Goenka Marg, Nariman Point  
Mumbai-400 021  
PAN No. AAAC4127C

..... अपीलार्थी/ Appellant

बनाम Vs.

Asst. Commissioner of Income Tax Circle 5 (3) (2),  
573, Aayakar Bhavan, M.K. Road,  
Mumbai-400 020

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Satyaprakash Singh  
प्रतिवादी द्वारा/ Respondent by : Ms. Richa Gulati, Sr. AR

सुनवाई की तिथि/ Date of hearing : 09/02/2023  
घोषणा की तिथि/ Date of pronouncement : 29/03/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi (hereinafter referred to as the "CIT(A)") dated 17/08/2022 for, assessment year 2016-17.



2. The assessee has filed multiple set of grounds of appeal. From perusal of grounds of appeal, the only issue that emanates for adjudication is; disallowance made u/s 14A r.w.r. 8D(2) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”). The Assessing Office (AO) has made disallowance of Rs.6,35,854/- under Rule 8D(2)(ii) and disallowance of Rs.2,71,550/- under Rule 8D(2)(iii) of the Income Tax Rules, 1963 (hereinafter referred to as “the Rules”).

3. Shri Satyaprakash Singh appearing on behalf of the assessee submitted that so far as disallowance of interest expenditure under Rule 8D(2)(ii) of the Rules by the AO, the assessee has sufficient own interest free funds for making the investments. The assessee has borrowed capital for purchase/operation of ships or repayment of loans. The assessee can show one to one co-relation between loans taken and utilised for shipping business of the assessee. No loans were taken for the purpose of investment in shares or mutual funds. Hence, no disallowance under Rule 8D(2)(ii) of the Rule is warranted. The Id. AR in support of his submissions placed reliance on the decision in the case of Reliance Utilities and Power Ltd 178 Taxman 135 (Bombay) and CIT vs. HDFC Bank Ltd. 49 Taxman 335 (Bombay). The Id. Authorised Representative (AR) further submitted that similar disallowance was made u/s 14A r.w.r. 8D in assessment years 2008-09, 2011-12 to 2014-15. The CIT(A) vide order for the respective assessment years has held that the assessee company had sufficient own funds for investments and deleted the disallowance u/s 14A r.w.r. 8D of the Act.

3.1 In respect of disallowance under Rule 8D(2)(iii), the Ld. AR submits that the assessee has made investment in growth funds amounting to Rs.5,75,48,033/-. The said funds did not generate tax free income and hence, no disallowance u/s 14A r.w.r. 8D(2)(iii) of the Act, can be made in respect of such investments. The Ld. AR further pointed that it is a settled legal position now that for the purpose of disallowance under Rule 8D(2)(iii) only dividend yielding investments should be considered. In



support of his contentions, he placed reliance on the decision in the case of *ACB India Ltd. vs. ACIT*, 62 taxmann.com 71 (Delhi).

4. Per contra, Ms. Richa Gulati representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. It is an undisputed fact that the assessee during the period relevant to assessment year under appeal has earned dividend income of Rs.23,26,663/-, exempt from tax. No suo-moto disallowance of expenses is made by the assessee for earning exempt income. The assessee is engaged in the business of operation of ships and ship management. Ostensibly, the assessee has taken loans for its shipping business. The contention of the assessee is that no investments have been made by the assessee from borrowed funds. The loans have been availed for the purpose of acquisition of ships, running and repair of the ships, staff salary etc. The assessee has filed balance sheet as on 31/03/2016 at page 51 of the Paper Book. A perusal of the same shows that the assessee has sufficient own interest free funds comprising of share capital, reserves and surplus to cover the investments. The Hon'ble Bombay High Court in the case of *Reliance Utilities and Power Ltd (supra)* has held that where the assessee has mixed bag of borrowed and own funds, it shall be deemed that the investments are made from own interest free funds. Thus, in the facts of the case, no disallowance under Rule 8D(2)(ii) is warranted. The AO is directed to delete the disallowance made under Rule 8D(2)(ii) of the Rules.

6. As regards disallowance under Rule 8D(2)(iii), the contention of the assessee is that investments are made only in growth funds and the assessee has not earned any dividend income. It is now a settled legal position that for the purpose of disallowance under Rule 8D(2)(iii), only dividend yielding investments should be considered. In principle, we are in agreement with the submissions of the assessee. However, for the



limited purpose of verification of the nature of investments, we deem it appropriate to restore this issue back to the file of AO.

7. In the result, appeal of the assessee is allowed, in terms aforesaid.

Order pronounced in the open court on Wednesday the 29<sup>th</sup> day of March 2023.

**Sd/-**

(M BALAGANESH)

**लेखाकार सदस्य/ACCOUNTANT MEMBER**

**Sd/-**

(VIKAS AWASTHY)

**न्यायिक सदस्य/JUDICIAL MEMBER**

मुंबई/Mumbai,

दिनांक/Dated: 29/03/2023

Mahesh R. Sonavane

**प्रतिलिपी अग्रेषित of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/The Respondent.
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधी, आय. अपी. अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाईल/Guard file.

BY ORDER,

//True Copy//

(Dy. /Asst. Registrar)/  
Sr. Private Secretary  
ITAT, Mumbai