

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "D" BENCH, MUMBAI

BEFORE SHRI SHAILENDRA KUMAR YADAV, JUDICIAL  
MEMBER,  
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER.

ITA. No. 3354/Mum/2013  
(Assessment Year:2008-09)

Shri Rajkumar Damani  
Surya Mahal, 1<sup>st</sup> Floor, 5,  
Burjorji Bharucha Marg,  
Mumbai – 400 023

Appellant

Vs.

C.I.T. -2, Mumbai

Respondent

PAN: AGQPD1310C

अपीलार्थी की ओर से /By Appellant : Shri Hiro Rai, A.R.

प्रत्यर्थी की ओर से/By Respondent :Shri Alok Johri, CIT D.R.

सुनवाई की तारीख/Date of Hearing : 28.09.2015

घोषणा की तारीख/Date of  
Pronouncement : 27.10.2015

ORDER

PER SHAILENDRA KUMAR YADAV, J.M:

This appeal has been filed by assessee against the order of  
Commissioner of Income-Tax - 2, Mumbai, dated 28.03.2013  
for A.Y. 2008-09 on following grounds:

- “1. The Hon’ble C.I.T. erred in treating the assessment order passed u/s 143(3) as prejudicial and erroneous to the interest of the revenue and further erred in invoking the provision of section 263.
2. The Hon’ble CIT erred in setting aside the order with the direction to the Ld. I.T.O for reconsidering the issue relating to the disallowance u/s 14A r.w. Rule 8D in respect of the interest expenditure of Rs.57,80,070/-.
3. The Hon’ble C.I.T. erred in holding/directing the Assessing Officer to calculate the amount of disallowance u/s 14A r.w. Rule 8D by taking the entire amount of interest paid including the interest which was having direct nexus with business income and not earning exempt income.”

2. In this case, Assessing Officer completed assessment order u/s.143(3) assessing the total income at Rs.3,48,55,447/-. While computing income, Assessing Officer worked out the disallowance u/s.14A read with Rule 8D at Rs.2,80,272/- as under:-

I	Expenses directly attributable to exempt income		Nil
II	Interest “NOT” directly attributable to exempt income (A X B/C)		N.A.
III	0.5% of average value of investments	0.5% of Rs.5,60,55,329/-	Rs.2,80,277/-
	Total Disallowance u/s.14A r.w.r. 8D		Rs.2,80,277/-

Later on, it was observed that assessee had incurred interest expenditure of Rs.57,80,070/- which was not considered for disallowance u/s.14A. In view of above, disallowance u/s.14A worked out to Rs.16,35,646/- in case, said interest

expenditure incurred taken into consideration. Therefore, assessment passed by Assessing Officer was considered erroneous and prejudicial to the interest of Revenue. In response to notice u/s.263, assessee filed written submissions inter alia submitting that it is an investor as well as trader in shares. During year, assessee purchased and sold shares from share broker, namely, IL&FS Investment Financial Services Ltd. As per terms and conditions, if there was a delay in payment towards the purchase consideration of shares, assessee was required to pay interest for the period of such delay. It was submitted on behalf of assessee that out of interest of Rs.57,80,070/- debited to profit and loss account, the amount of Rs.57,76,041/- was paid to IL&FS. In this regard a copy of interest account appearing in books of assessee was enclosed for ready reference. Since, shares purchased through IL&FS have been treated as stock in trade and profit there from has been duly shown in profit and loss account, the provisions contained in Section u/s 14A would not be applicable to the interest paid in respect of these shares. CIT having considered the submission on behalf of assessee observed that Assessing Officer has not applied his mind on the issue. He has not given any reason either in body of the assessment order or in assessment records as to why the above interest expenditure of Rs.57,80,070/- was not considered for disallowance u/s.14A. CIT was of the view that Assessing Officer has made assessment without making proper inquiry,

so, the order was to be held erroneous in so far as it was prejudicial to the interest of revenue. Accordingly, same was set aside. The matter was restored to Assessing Officer with direction to consider the issue relating to disallowance u/s.14A r.w. Rule 8D of Income Tax Rules in respect of interest expenditure of Rs.57,80,070/-.

3. Before us, learned Authorized Representative submitted that all the details were filed before the Assessing Officer during assessment proceeding and all details of interest were also placed on page 14 of paper book, certified by both authorities including Assessing Officer and he also filed final accounts as placed on page 3 to 13 of the paper book duly certified and relied upon the written submissions made before CIT dated 21.03.2013 and submitted that CIT was not justified in deleting the order of Assessing Officer. The revision of the order passed u/s.143 and setting aside it by CIT with direction to ITO for re-considering the issue related to disallowance u/s.14A r.w. Rule 8D in respect of interest expenditure is bad in law. Similarly, same should be quashed. On the other hand, learned Departmental Representative supported the order of CIT.

4. After going through rival submissions and material on record, we find that assessee is an individual regularly assessed to tax by concerned Income Tax Officer. The return of income for year under consideration was filed on 26.09.2008

for total income of Rs.3,45,10,910/-. Assessment was completed on 30.12.2010 for a total income of Rs.3,48,55,447/- and demand of Rs.4,46,810/- was raised. The difference in total income as per return of income and as per assessment order was due to an addition of Rs.2,80,277/- by disallowing expenditure u/s.14 r.w. Rule 8D . The basis of calculation of disallowance u/s.14A r.w. Rule 8D was stated in the assessment order in para 8. While working out the amount of disallowance u/s.14A r.w. Rule 8D, ITO has looked into the matter thoroughly with regard to disallowance u/s.14A r.w. Rule 8D and he restricted the amount of disallowance up to 0.5% of average value of investment i.e. 0.5% of Rs.5,60,55,329/-. It is not in dispute that assessee has placed all details with regard to interest as appearing on page 14 of the paper book and assessee has reached to the certain conclusion after appreciating the facts on record. We find that Hon'ble Bombay High Court in case of CIT vs. Fine Jewellery (India) Ltd. [2015] 372 ITR 303 (Bom), wherein Assessing Officer during assessment proceedings, sought details in respect of expenditure incurred for building brand. After examining the details holding part alone was in capital nature. In proceedings under provisions of 263 of Act, Assessing Officer's order was not found erroneous and prejudicial to interests of Revenue and revision on ground that entire expenses for building brand capital in nature, revision u/s.263 was held not justified. All details called for were furnished in

assessment stage. Revision is not justified on the ground that Assessing Officer has not properly appreciated the facts before him on account of said no application of mind by Assessing Officer. Assessing Officer has appreciated the facts as per facts before him. Improper appreciation of facts by Assessing Officer cannot be held proper ground for holding the order of Assessing Officer erroneous as well as prejudicial to the interest of revenue under the provisions of Section 263. Provisions of 263 of Act can be invoked. In case of no enquiry on issue by Assessing Officer. The improper or less enquiry cannot be valid basis of invoking provisions 263 of Act. Inquiry on particular issue is subject outlook of concern Assessing Officer. Subject outlook may vary person to person. In view of above discussion, order of CIT cannot be sustained same is quashed.

5. As a result, appeal filed by assessee is allowed.

Pronounced in the open Court on this the 27th day of October, 2015.

Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER  
Mumbai: Dated 27/10/2015

Sd/-  
(SHAIENDRA KUMAR YADAV)  
JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार,  
आयकर अपीलीय अधिकरण, मुंबई ।