

आयकर अपीलीय अधिकरण, "आई" न्यायपीठ, मुंबई  
IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI  
श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष  
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.5419/M/15  
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Yardley Investment & Trading Co. Pvt. Ltd. 01, Pearl Mansion, (N)(91), M. K. Road, Mumbai - 400013	<b>बनाम/</b> Vs.	Income Tax Officer 1(3)(2) Aayakar Bhavan, M.K.Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACY0327M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Department by:	Shri. V. S. Jadhav	

सुनवाई की तारीख / Date of Hearing: 03.02.2016

घोषणा की तारीख /Date of Pronouncement: 29.02.2016

आदेश / ORDER

**PER AMARJIT SINGH, JM:**

This is an appeal against the order dated 30.09.2015 passed by the learned Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the learned "CIT(A)"] relevant to the assessment year 2012-13.

2. The appellant has taken following grounds of appeal:-

*“1. The learned CIT(A) has erred in confirming the disallowance of an amount of Rs.1,79,263/- u/s. 14A of the Income Tax act 1961 and has further erred in applying Rule 8D of Income Tax Rules, 1961 without appreciating the facts of the case in the right perspective.”*

3. The brief facts the case are that the main business of the assessee is of dealing in shares and securities. The assessee earned the dividend income to the tune of Rs.2,97,393/- however, no expenditure to earn the exempt income was mentioned. At the time of assessment the Assessing Officer applied the section 14 A read with rule 8D of the Income Tax Act, 1961 ( in short “the Act”) and disallowed the expenditure to the tune of Rs.1,79,263/-. Assessee was not satisfied therefore, the appeal was filed before the learned CIT(A) who also dismissed the appeal of the assessee therefore, the assessee is before us.

4. We have heard the arguments advanced by the learned representative of department and perused the records carefully. The sole point which has been raised by the assessee is that the assessee received the dividend income to the tune of Rs.2,97,393/- which was being claimed as exempted from income tax. As the assessee invested the said investment from his own fund and the assessee never claimed any interest expenditure or any other expenditure therefore, in

view of the law settled in Reliance Utilities and Power Ltd. (313 ITR 340), Bombay High Court, it is required to be presumed that the assessee has invested into the shares and derived dividend from its own fund but the learned Assessing Officer has wrongly applied the provision of section 14A read with Rule 8D, hence the appeal of the assessee is liable to be allowed in the interest of justice. The learned representative of the assessee also place reliance on law settled in ITO Vs. Pioneer Radio Training Services Pvt. Ltd. (ITA No. 4448/Del/2013)(order dated 19.01.2015), Delhi Income Tax Appellate Tribunal, Reliance Utilities and Power Ltd. (313 ITR 340), Bombay High Court, Income Tax Appellate Tribunal, Chennai in case of EIH Associated Hotels Ltd. Vs. DCIT, Maxopp Investment Ltd. Vs. CIT (Jurisdictional High Court)(347 ITR 272), Wimco Seedlings Ltd. Vs. DCIT (Income Tax Appellate Tribunal, Delhi Third Member)(107 ITD 267), CIT Vs. Hero Cycles (Panjab & Haryana High Court) (323 ITR 518), ACIT Vs. Eicher Ltd. (ITAT Delhi) (101 TTJ 369), Maruti Udyog Vs. DCIT (Income Tax Appellate Tribunal, Delhi) 92 ITD 119 and Hindustan Paper Corporations Ltd. V. DCIT (Income Tax Appellate Tribunal Kolkata Bench Judgement dated 22.08.2012) ITA No. 47/Kol/2012.

4.1 On the other hand learned representative of the Department has refuted the said contention.

4.2 Keeping in view of the arguments advanced by the representative of department and perusing the record, it is observed that it is necessary to mentioned the details of Share Capital, Reserve & Surplus, Investments, Dividends and Interest for last three years of the assessee on record:-

A.Y.	2010-11	2011-12	2012-13
Share Capital	70,30,200	70,30,200	70,30,200
Reserve & Surplus	2,41,83,371	2,47,26,720	2,52,05,047
Quasi Equity	3,51,00,000	3,51,00,000	3,51,00,000
TOTAL	6,63,13,571	6,68,56,920	6,73,35,247
Investments	3,62,41,475	3,62,66,475	3,62,66,475
Dividend Income	4,585	3,51,455	2,97,393
Interest Expense	Nil	Nil	Nil

The above said chart speaks that the investments are less than the available total funds in the nature of Capital, Reserves and Surplus and Quasi Equity. In the year under consideration, the total share capital available to the appellant was to the tune of Rs.6.73 crores whereas the assessee made investments in shares only to the tune of Rs.3.63 crores. In view of the law settled in Reliance Utilities and Power Ltd. (313 ITR 340), Bombay High Court, it is required to be presumed that the assessee has invested into the shares and derived dividend from its own fund. Moreover nothing came into the notice

that the Assessing Officer prove the nexus between the expenditure claimed and invested amount in the shares. In view of the said circumstances we are of the view that the matter is liable to be considered again by the Assessing Officer in the light of observations made above and to reassess the disallowance u/s. 14A in view of the law settled in Reliance Utilities and Power Ltd. (313 ITR 340), Bombay High Court.

6. Accordingly the appeal filed by the assessee is hereby allowed for statistical purpose.

Order pronounced in the open court on 29<sup>th</sup> February, 2016.

Sd/-  
(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-  
(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29<sup>th</sup> February, 2016

*MP*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**