



आयकर अपीलीय अधिकरण "एफ़" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI**

श्री अमित शुक्ला, न्यायिक सदस्य एवं

श्री अशवनी तनेजा, लेखा सदस्य के समक्ष।

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

**ITA No. : 5199/Mum/2014**

(Assessment year: 2010-11)

फेडेक्स सेक्यूरिटीस लिमिटेड M/s Fedex Securities Ltd, Jay Chambers, 3 <sup>rd</sup> Floor, Service Road, Vile Parle, Mumbai -400 057 PAN: <b>AAACF 0959 N</b>	<b>Vs</b>	Dy. Commissioner of Income Tax -(OSD)-Circle 3(1), Aayakar Bhavan, M K Marg, Mumbai -400 020
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	श्री किरिट शेठ Shri Kirit Sheth
Respondent by	:	श्री असघर जैन Shri Asghar Jain

सुनवाई की तारीख /Date of Hearing : 25-07-2016

घोषणा की तारीख /Date of Pronouncement : 25-07-2016

**आदेश  
ORDER**

**श्री अमित शुक्ला, न्या सः  
PER AMIT SHUKLA, JM:**

The aforesaid appeal has been filed by the assessee against impugned order dated 25.05.2014, passed by CIT(Appeals )-6, Mumbai for the quantum of assessment passed under section 143(3) for the assessment year 2010-11, on the following grounds:-

- "1 The Ld. CIT(A) has erred in rejecting your appellant's pleas that while quantifying the disallowance of income u/s 14A r.w.r. 8D(i) no part of interest should be disallowed if the owned funds are more than total amounts invested in assets generating tax free income and (ii) the disallowance should be computed with reference to the net interest paid / claimed by your

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*appellant i.e. after reducing interest income from the interest expenditure incurred.*

*Your appellant respectfully submits that while quantifying the disallowance of interest u/s 14A r.w.r. 8D(i) no part of interest should be disallowed if the owned funds are more than total amounts invested in assets generating tax free income and (ii) the disallowance should be computed with reference to the net interest paid / claimed by your appellant i.e. after reducing interest income from the interest expenditure incurred.*

2. *The Ld. CIT(A) has erred in upholding the AO's action of adding disallowance computed u/s 14A r.w.r. 8D to arrive at Book Profit for computing Minimum Alternative Tax under section 114JB".*

2. Thus, only issue challenged by the assessee is disallowance of interest made under section 14A r.w.r. 8D (2)(ii).

3. The facts in brief are that, the assessee is a Merchant Banker registered with SEBI. Apart from activity of Merchant Banking, the assessee is also making investments in shares; Loan syndication for corporate clients with banks and financial institutions. The assessee has received exempt income by way of dividend and long-term-capital-gain. The AO noted that, assessee had not made any disallowance under section 14A on the following exempt income:-

Dividend income from shares	-Rs.12,34,795/-
Dividend from mutual funds	-Rs. 1,53,372/-
Long-term-capital-gain on Sale of shares	-Rs.71,28,002/-

In response to the show cause notice before the AO, the assessee submitted that tax free income has been generated

from the investments which were made from own/ surplus funds of the company, therefore, the company has not incurred any expenses in deriving the exempt income and no expenses can be said to be attributed for the earning of such income. The Ld. AO after detailed discussions computed the disallowance at rs.14,38,739/- which included disallowance of interest under Rule 8D(2)(ii) at Rs.9,92,836/-.

4. The Ld. CIT(A) upheld the disallowance, however, gave direction to the AO to exclude the investment for those shares and securities, the income from which is taxable.

5. Before us, the Ld. Counsel submitted that, the assessee's interest free / surplus funds were far more than the investments made, which is evident from the fact that, reserves and surplus itself was approximately Rs.27.99 crores whereas, the investments made were Rs.19.69 crores. That apart, he submitted that, the assessee has huge interest income at Rs.1,46,60,540/- as against the interest expenditure of Rs.45,19,162/-. Thus, the interest expenditure directly attributable to the earning of interest income. Not only that, in assessee's own case for the assessment year 2009-10, the Tribunal has deleted the interest disallowance on the same ground vide order dated 08.01.2016 in ITA No.1067/Mum/2013 and ITA No.1073/Mum/2013. Thus, no disallowance of interest should be made.

6. On the other hand, Ld. DR strongly relied upon the order of the CIT(A).

7. After considering the submission made by the parties and on perusal of relevant finding given in the impugned orders as well as material placed before us, we find that the limited dispute of disallowance under section 14A is with regard to disallowance of interest under Rule 8D(2)(ii). Admittedly, here in this case, the assessee had own surplus funds, which far exceeded the investment made by the assessee. Once that is so, then presumption is that, such investments have been made with interest-free funds/excess funds available with the assessee. This proposition now stands settled by the Hon'ble Bombay High Court in the case of CIT vs HDFC Bank Ltd, reported in 366 ITR 505 wherein, the Hon'ble Court has reiterated the ratio and principle laid down in CIT vs Reliance Utilities and Power Ltd, reported in 313 ITR 340. Apart from above, from the perusal of the audited accounts and profit and loss account, it is seen that, assessee has earned huge interest income of Rs.1,46,60,540/- as against the interest expenditure of Rs.45.19 lakhs. In such a fact and circumstance, as held by the Tribunal in the assessee's own case in the earlier years, no disallowance of interest should be made, because the interest income far exceeds the interest expenditure and are linked to each other. Accordingly, we hold that no interest expenditure should be disallowed under Rule 8D(2)(ii) in the present case, because assessee's own funds are more than total amounts invested in investments generating tax free income and interest income far exceeds the interest expenditure. Accordingly, grounds raised by the assessee are allowed.

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8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 25<sup>th</sup> July, 2016.

**Sd/-**

(अशवनी तनेजा)

लेखा सदस्य

**(ASHWANI TANEJA)**

**ACCOUNTANT MEMBER**

**Sd/-**

(अमित शुक्ला)

न्याईक सदस्य

**(AMIT SHUKLA)**

**JUDICIAL MEMBER**

**Mumbai, Date: 25<sup>th</sup> July, 2016**

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
  - 2) प्रत्यर्थी /The Respondent.
  - 3) The CIT -6, Mumbai.
  - 4) The CIT -III, Mumbai
  - 5) विभागीय प्रतिनिधि "एफ़", आयकर अपीलीय अधिकरण, मुंबई/  
The D.R. "F" Bench, Mumbai.
  - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

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उप/सहायक पंजीकार

आयकर अपीलीय अधिकरण, मुंबई

Dy./Asstt. Registrar

I.T.A.T., Mumbai

\*चव्हाण व.नि.स

\*Chavan, Sr.PS