

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI

BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER)
AND
SHRI ASHWANI TANEJA (ACCOUNTNT MEMBER)

I.T.A. No.5594/Mum/2011
(Assessment year : 2008-09)

Centrum Capital Ltd 2 nd Floor, Bombay Mutual Bldg Dr. D.N. Road, Fort Mumbai 400 001	vs	Dy.CIT, Cir.2(1) Mumbai
PAN :AACC5099G		
(Appellant)		(Respondent)

Appellant by	Shri J.D. Mistry / Surendra Nijure
Respondent by	Shri Abhishek Sharma

Date of hearing : 03-05-2016
Date of order : 05-05-2016

ORDER

Per ASHWANI TANEJA, AM

This appeal has been filed by assessee raising various facets of disallowance made u/s 14A for assessment year 2008-09.

2. During the course of hearing before us the Id.counsel of the assessee submitted that the issue of disallowance of component of interest stands covered with the order of the Tribunal in assessee's own case for A.Y. 2009-10 wherein the same has been deleted on the ground that own funds of the

assessee are more than the amount of investment made in the tax free securities. With regard to disallowance out of other expenses also it was submitted that the same is also not sustainable in view of various decisions in favour of the assessee.

3. On the other hand, the Id.DR relied upon the order of the lower authorities.

4. With the assistance of the parties it was noticed by us that the Tribunal has decided the issue of disallowance of interest in the context of section 14A vide its order dated 29-01-2016 in ITA No.7708/Mum/2012 with the following observations :-

“6.5.2. We have heard the rival contentions and perused and carefully considered the material on record ; including the judicial pronouncements cited. It is seen from the details placed before us, that the assessee has shown that in the period under consideration it has huge surplus funds i.e. from share capital and reserves and surplus, far in excess of the investments and therefore it can be reasonably presumed that no interest bearing funds have been diverted for making these investments in tax free securities. We find that the Hon’ble jurisdictional High Court in the case of CIT v. HEDFC Bank Ltd in ITA No.330 of 2012 dt. 23.7.2014 at paras 4 and 5 thereof has laid down the proposition that, if the assessee’s capital, profits, reserves and surplus and current account deposits are higher than the investments in tax free securities, then it would be presumed that the investments made by the assessee would be out of interest free funds available with the assessee. This decision of the Hon’ble Bombay High Court (supra) has been followed by a co-ordinate bench of this Tribunal in the case of Centrum Direct Ltd in ITA No.5595/Mum/2011 dt. 15.10.2015. Respectfully following the decision of the Hon’ble Bombay High Court in the case of (supra) and of the co-ordinate bench in the case of Centrum Direct Ltd. in ITA No. 5595/Mum/2011 dt.15.10.2015, we concur with the contention of the assessee that no disallowance of interest can be made u/ 14A r.w.Rule 8D of the Act.”

5. With regard to disallowance out of expenses u/r 8D(2)(iii) it was further submitted that no disallowance could have been made on account of investment made in subsidiaries for strategic reasons. It was further submitted that the amount of disallowance u/s 14A cannot exceed exempt income.

6. We find force in the arguments of the Id.counsel and send the issue of disallowance u/s 14A back to the file o Assessing Officer with following directions:-

- a. In case own funds are more than tax free investments, then, no disallowance on account of interest should be made u/s 14A.
- b. The amount of disallowance u/s 14A cannot exceed exempt income received by the assessee during the year under consideration.
- c. Amount of investment made in subsidiary companies for strategic reasons should be excluded from the amount of investment to be considered for making disallowance out of expenses u/r 8D(2)(iii).

7. The assessee shall submit requisite details and evidences before the Assessing Officer in support of its claim for which the Assessing Officer shall give adequate opportunity o hearing to the assessee and shall consider entire material placed before him by the assessee before deciding this issue afresh. The assessee is free to raise all legal and factual issues before the Assessing Officer.

8. With these directions, the grounds raised before us are sent back to the file of the Assessing Officer and may be treated as allowed for statistical purpose.

9. As a result, this appeal is treated as allowed for statistical purpose.

Order pronounced in the open court at the conclusion of the hearing.

Sd/-	sd/-
(JOGINDER SINGH)	(ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 05th May, 2016

Pk/-

Copy to :

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, "C", Bench

(True copy)

By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES