

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

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

ITA. No. 5570/Mum/2012
(Assessment Year:2009-10)

Alchemie Financial Services Limited,
2nd Floor, Udyog Kshetra, Mulund
Goregaon Link Road, Off. L.B.S. Road,
Mulund (West), Mumbai 400080

Appellant

Vs.

Additional Commissioner of Income Tax,
Range – 10 (3), Mumbai

Respondent

PAN: AAACA0948C

अपीलार्थी की ओर से /By Appellant : Shri Bhavin M. Dedhia,
A.R.

प्रत्यर्थी की ओर से/By Respondent : Shri A. Ramachandran,
CIT(A) D.R.

सुनवाई की तारीख/Date of Hearing :19.11.2015

घोषणा की तारीख/Date of
Pronouncement :04.12.2015

ORDER

PER RAJESH KUMAR, A.M:

This appeal has been filed by assessee against the order of
Commissioner of Income-Tax (Appeals)-22, Mumbai, dated
29.06.2012 for A.Y. 2009-10 on following grounds:

“1. Re: Disallowance u/s14A read with rule 8D amounting to Rs.7,69,552/-.

- 1.1 *On the facts and in the circumstances of the case and in law, the learned Commissioner of IncomeTax(Appeals) [hereinafter referred to as ‘the learned CIT(A)] erred in upholding disallowance u/s 14A read with rule 8D, as expenditure incurred for earning exempt income.*
- 1.2 *The learned CIT(A) grossly erred in not considering the factual matrix produced by the Appellant and also erred in not considering that the Appellant is in business of lending money and monies borrowed have been utilized for purpose of lending.*
- 1.3 **Without prejudice to the above**, *the learned CIT(A) grossly erred in not rectifying the errors in calculating amount of disallowance u/s 14A as per Rule 8D.*
- 1.4 **Without prejudice to the above**, *the disallowance u/s 14A should be substantially reduced.”*
2. *Further, the Ld CIT(A) has erred in law as well on the fact by ignoring the fact that the assessee is only involved in the trading business wherein the profit should not be more than 2% of the total turnover as compared with the other assessee engaged in the same line of business having the profit ratio ranging 1% to 4%.”*

2. The common issue raised in all the grounds of appeal is against the confirmation of addition of Rs.7,69,552/- u/s.14A r.w. Rule 8D.

3. The facts of the case are that the assessee company filed its return of income on 30.09.2009 declaring an income of Rs.2,49,42,320/-. The assessee was engaged in the business of leasing, financing and manufacturing activity. During the year, the sales of the assessee were Rs.13,06,68,895/- income from interest at Rs.2,58,10,467/- other income at Rs.5,67,234/- and net profit was 2,44,54,488/-. The assessee had also income by way of dividend on shares of Rs.2,98,077/- which was claimed exempt u/s.10 of the Act.

3.1 The ld. A.O. during course of scrutiny proceedings found that investment on 31.03.2008 stood at Rs.2,17,65,620/- which increased to Rs.2,56,65,891/- on 31.03.2009 and the assessee by filing the return did not disallow the expenses pertaining to exempt income u/s.14A of the Act. Thus, the A.O. after issuing show cause notice and rejecting the submission of the assessee in reply to the said show cause framed the assessment u/s.143(3) of the Act by making a disallowance of Rs.7,69,552/- u/s.14A r.w. Rule 8D.

4. The ld. CIT(A) confirmed the disallowance by holding that an identical issue had arisen in the assessee's own case for A.Y. 2008-09 wherein vide order No. CIT(A) -22/ACIT 10(3)/IT-219/2010-11 dated 26.06.2011, the issue was decided against the assessee. The facts of the case of the present case being similar to that and therefore, by following my order for A.Y. 2008-09, it was held that the A.O. was justified in making disallowance u/s.14A r.w.Rule 8D.

5. Ld. A.R. submitted before us that the issue in appeal before this Hon'ble Bench was covered in favour of the assessee by its own case in ITA No.6349/Mum/2011, A.Y. 2008-09 vide order dated 10.08.2012 and therefore ld. CIT(A) grossly erred in sustaining the order of A.O. Thus, ld. Counsel submitted before us that the assessee's own funds as on 31.03.2009 were Rs.22,77,84,338/- vis-à-vis the investment in shares of Rs.2,56,65,891/-. The ld. Counsel further submitted that these substantial investments were made in the subsidiary companies for the purpose of extension of business and not for earning

exempt income and thus these investments fall in the category of strategic investment and therefore, disallowance u/s.14A r.w.Rule 8D was uncalled for. The ld. D.R., on the other hand, did not raise any objection to the argument advanced by the ld. A.R. during the course of hearing in view of the order of the co-ordinate Bench in assessee's own case.

6. After going through rival submissions and material on record, we find that in ITA No.6349/Mum/2011, A.Y.2008-09, wherein an identical issue relating to disallowance u/s.14A r.w.Rule 8D has been decided in favour of assessee vide order dated 10.08.2012 vide para no.5, which is reproduced as under:

"5. We have heard the arguments of both the sides and also perused the relevant material on record. The learned counsel for the assessee at the outset has invited our attention to the working made by the AO as per Rule 8D of Income-tax Rules, 1962 given on page No.2 and 3 of the assessment order to point out that the total disallowance worked by the Assessing Officer was on account of interest amounting to Rs.5,13,993/- and other expenses amounting to Rs.42,695/-. As demonstrated by him from the balance sheet of the assessee company as on 31-03-2008, shareholders' funds in the form of share capital and reserve and surplus aggregating to Rs.19.82 crores were available with the assessee company as on 31st March, 2008. Thus own funds to the extent of Rs.19.82 crores were available with the assessee company at the relevant time which were more than the investment of Rs.2.17 crores made by it in the shares and securities during the corresponding period. It is no doubt true that no separate account was maintained by the assessee in respect of investment made in shares and securities and it was a case of mixed funds available in the form of own funds and borrowed funds which were utilized for making investments in shares as well as for other purpose. However, as held by the Hon'ble Bombay High Court in this context in the case of Reliance Utilities and Power Ltd. 313 ITR 340, if there are funds available, both interest free and interest borrowing, then a presumption would arise that investment would be out of interest free funds generated or available with the company. Relying on the said decision of Hon'ble jurisdictional High court, we hold that the assessee having sufficient own funds to make investment in shares and securities, it cannot be said that interest expenditure incurred by it on borrowed funds which were utilized for the purpose of business was in relation to earning of exempt dividend income so as to warrant any disallowance on account of interest

expenditure u/s.14A. In so far as disallowance out of other expenses amounting to Rs.42,695/- is concerned, we find that the same has been worked out by the AO by applying Rule 8D and since it cannot be disputed that other expenses incurred by the assessee were also in relation to the earning of exempt dividend income, we are of the view that the disallowance made u/s 14A out of other expenses is sustainable. Accordingly we modify the impugned order of the learned CIT(Appeals) on this issue and sustain the disallowance made by the AO u/s 14A to the extent of Rs.42,695/-. The ground raised by the assessee in this appeal is thus partly allowed.”

In the said order, the Tribunal deleted the disallowance on account of interest and sustained the disallowance out of other expenses. In the case before us, ld. A.O. disallowed the interest u/s.14A(ii) to the tune of Rs.6,50,973/- and disallowance u/s.14A(iii) on the basis of average investment at Rs.1,18,579/-. In our view the case of the assessee is covered by its own case for the preceding assessment year and by respectfully following the above decision, we delete the addition of Rs.6,50,973/- on account of interest and sustain the addition of Rs.1,18,579/-. The ground raised by the assessee in this appeal is partly allowed.

7. As a result, appeal filed by assessee is partly allowed.

Pronounced in the open Court on this the 4th day of December, 2015.

Sd/-
(SHAIENDRA KUMAR YADAV)
JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai: Dated 04/12/2015

True Copy

S.K.SINHA

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

1. राजस्व / Revenue
2. □ वेदक / Assessee

3. संबंधित □ यकर □ युक्त / Concerned CIT
4. □ यकर □ युक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, □ यकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाइल / Guard file.

By order/□ देश से,

उप/सहायक पंजीकार,
□ यकर अपीलीय अधिकरण, मुंबई ।