

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM**

आयकर अपील सं./I.T.A. No.6326/Mum/2011  
(निर्धारण वर्ष / Assessment Year : 2008-09)

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| M/s Bhupinder Investment Co. Pvt.Ltd<br>27, Kirol Vidyavihar (W),<br>Mumbai-400086 | <b>बनाम/</b><br>Vs. | Dy. Commissioner of Income Tax<br>Circle 10(2), Aayakar Bhavan,<br>M K Road,<br>Mumbai-400020 |
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**स्थायी लेखा सं./ PAN : AAACB9117G**

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| अपीलार्थी ओर से/ Assessee by     | Shri Ketan Panchmia   |
| प्रत्यर्थी की ओर से// Revenue by | Shrimati Bharti Singh |

सुनवाई की तारीख / **Date of Hearing** : **26.5.2016**  
घोषणा की तारीख / **Date of Pronouncement** : **9.6.2016**

**आदेश / ORDER**

**PER RAJESH KUMAR, A. M:**

This appeal by the assessee is directed against the order dated 18.5.2011 of Commissioner of Income Tax (Appeals)-21, Mumbai (Hereinafter called as the CIT(A) for assessment year 2008-09.

2. At the outset, the Id. Counsel of the assessee submitted before us that ground No.2 is not pressed, therefore, the same is dismissed as not pressed.

3. The issue raised in the ground no.1 is with regard to the confirmation of disallowance u/s 14A of the Income Tax Act, 1961 (The Act) read with Rule

8D of the Income Tax Rules, 1962 amounting to Rs.17,53,454/- by the Id. CIT(A) as made by the AO.

4. The facts in brief are that the assessee filed its return of income on 27.9.2008 declaring current year's loss at Rs.2,45,41,832/- under the normal provisions of Act and at Rs.1,23,59,022/- under section 115JB of the Act. The case was selected for scrutiny and the statutory notices u/s 143(2) and 142(1) were issued and served upon the assessee. During the course of scrutiny assessment proceedings, the AO noticed that the assessee has exempt income to the tune of Rs.14,97,49,864/- earned by way of dividend income and profit on sale of long term investment. However, the assessee did not attribute any expenditure for earning the said income. Thereafter, the AO after considering the decision of Hon'ble Jurisdictional High Court in the case of 'Godrej & Boyce Manufacturing Co. Ltd.' 328 ITR 81 (Bom) held that the provisions of section 14A r.w.r. 8D were earlier applicable to the assessee and worked out the expenses attributable to the earning of the exempt income to the extent of Rs.17,53,454/- by disallowing the expenses as claimed by the assessee which comprised of Rs.13,99,868/- under 8D(2)(ii) being proportionate interest relating to exempt income and Rs.3,53,586/- being 0.5% of average value of investment on the opening and closing day of the previous year under rule 8D (2)(iii). The AO finally completed the assessment u/s 143(3) vide order dated

21.10.2010 at a loss of Rs.1,51,04,500/- by making the disallowance of Rs.86,98,053/- including the disallowance u/s 14A amounting to Rs.17,53,454/- which is under appeal before the Tribunal. Besides, the AO calculated the book profit at Rs.1,30,23,905/- u/s 115JB of the Act. Aggrieved by the order of the AO, the assessee preferred an appeal before the Id. CIT(A) who also dismissed the appeal of the assessee by observing and holding as under :

*"2.3 The appellant has challenged the disallowance of indirect interest expenditure of Rs.13,99,868/-, on the ground that the investments were made out of own funds i.e. reserves and surplus and therefore, interest expenditure was not attributable to earning of exempt income. I have considered the appellant's this argument. Schedule - 6 of the balance sheet contains the details of investment i.e. quoted shares, long term investments and also unquoted shares. The appellant was holding shares of various scrips as appearing in the Schedule-6 of investments. The details shows that in respect of various scrips, the opening and closing balance were the same that means during the year no movements took place in those scrips. However, in case of shares of various other scrips, the opening balance of investments either increased or decreased. There were no new investments made during the year whereas in case of some of scrips, the same were sold during the year. Though the appellant has claimed that the new investments made during the year had not been made by borrowed capital, however, the appellant has failed to substantiate its claim by demonstrating that as on date of purchase of new investment there were positive balances in the bank accounts. Similarly, though the appellant has claimed but has failed to prove that the investments made in earlier years were also made out of surplus funds. In the facts and circumstances, the appellant's claim was not substantiated by facts that the investments were not made by use of borrowed funds.*

*As per decision of Hon'ble Bombay High Court in the case of Godrej Boyce Mfg. Co. Ltd. 234 CTR 1, the provisions of Rule 8D were applicable from the year under consideration, i.e., A.Y. 2008-09. The provisions of sec. 14A(2) r.w. Rule 80 are mandatory and any disallowance u/s.14A has to be worked out strictly as per formula provided in Rule 80 of the IT. Rules.*

*In the case under consideration, the AO was not satisfied with the appellant's claim that indirect interest expenditure was not attributable to the investments made during the year and in earlier years. Thus, the AO recorded a satisfaction u/s.14A(1) of the Act regarding the incorrectness of the appellant's claim that no expenditure was incurred in relation to income which does not form part of total income. In my considered view, the satisfaction recorded by AO u/s 14A(1) was correct and on justified reasons. Once the satisfaction is recorded u/s.14A(1) of the Act, the applicability of provision of sec.14A(2) and the provisions of Rule 8D are mandatory and automatic. Therefore, the AO was justified in working out the disallowance of indirect interest expenditure as per formula provided in Rule 8D of the IT. Rules. The disallowance made: by AO, is, therefore, upheld. This ground of appeal is therefore, dismissed."*

5. Aggrieved by the decision of the Id.CIT(A), the assessee filed appeal before the us. The Id. AR submitted before us that the order passed by the AO and as confirmed by the Id. CIT(A) is totally wrong on facts and under law as the AO failed to appreciate the facts that the assessee's own funds were far more than the cost of investment held by the assessee. The Id. CIT(A) also failed to appreciate above facts and wrongly came to this conclusion that the assessee failed to demonstrate dates of purchase of new investments and bank balance by completely ignoring the facts of the case. The Id AR also submitted that where the assessee have its own funds beside having interest bearing funds and investment in shares and securities , it has be to presumed that investments in shares and securities were made out of own funds if the value of investment is less than own funds. The Id. AR while drawing our attention to the balance sheet of the assessee filed at page 1 of the paper book submitted

that the share capital and reserve as on 31.3.2008 were Rs.20,06,22,262/- as against the investment on that date of Rs.11,12,76,771/- and the loan fund were to the tune of Rs.5,19,09,835/- which clearly demonstrated that the assessee's own funds were sufficient to cover the investment and no loan funds were utilized for the purpose of investment in the share and securities . The Id. AR, in defence of his arguments, placed reliance on the decision of CIT V/s RELIANCE UTILITIES AND POWER LTD. [2009] 313 ITR 340 (Bom) and the decision in the case of CIT V/s HDFC BANK LTD. [2014] 366 ITR 505 (Bom). The Id. Counsel, therefore submitted that the addition of Rs.13,99,868/- made by the AO u/s 14A r.w.r.8D(2)(ii) was unwarranted and be deleted in view of the ratio laid down by the Hon'ble Jurisdictional High Court in the above mentioned cases. As regard the disallowance of Rs.3,53,586/- made under Rule 8D(2)(iii), the Id. Counsel of the assessee submitted that the AO made the disallowance by totally disregarding the investment of Rs.1,36,65,695/- in the equity shares of associate concerns which was a purely strategic investment and not covered under the said sub-rule. The Id. Counsel also submitted that the AO also did not consider the investment in growth schemes of mutual funds amounting to Rs.8,15,61,466/- which are not tax free income yielding investment and therefore he submitted that the AO be directed to work out the disallowance by reducing the cost of strategic investment of Rs.1,36,65,695/- and investment in growth schemes of Mutual funds amounting to Rs.8,15,61,466/- for the

purpose of section 14A r.w.rule 8D (2)(iii). The Id. counsel while drawing our attention to the page 5 of the paper book submitted that the correct disallowance as per rule 8D(2)(iii) worked out to Rs.68,809/- as against the disallowance made by the AO at Rs.3,53,586/-. Finally the Id. Counsel strongly requested for the deletion of the additions as prayed.

6. On the other hand, the Id. DR heavily relied on the orders of the authorities below.

7. We have considered the rival contentions of the parties and perused the relevant material placed before us including the decisions relied upon by the parties. From the records, we find that the assessee's own fund comprising the share capital and reserves were to the tune of Rs.20,06,22,262/- vis a vis the investments in shares of Rs.11,12,76,771/- and the loan funds were Rs.5,19,09,835/- at the year end. Thus, it is amply clear from the above facts that the assessee's own funds were far more than the value of investments in shares and there is merit in the submissions and arguments of the Id. counsel of the assessee that disallowance under rule 8D (2)(ii) of Rs.13,99,868/- was not justified. Further, the case of the assessee is fully covered by the decision of the jurisdictional High Courts. In the case of CIT V/s RELIANCE UTILITIES AND POWER LTD. [2009] 313 ITR 340 (Bom), it has been held that if both funds are available with the assessee i.e. interest bearing funds and interest free funds

then the presumption would arise that investment made would be out of interest free funds available with the company, if the interest free funds are sufficient to meet the investments. In the case of HDFC BANK LTD (supra) the Hon'ble jurisdictional High Court held that the petitioner was possessing sufficient interest free funds namely investment in tax free securities funds and consequently there is a presumption that the investment which has been made in the tax free securities is out of interest free fund available with the assessee. This decision has also reached finality as revenue has not challenged the decision before the Hon'ble Apex Court. So far as the disallowance of Rs.13,99,868/- is concerned the facts of the case are squarely covered by the decision referred to above and therefore, in our opinion, the addition made under rule 8D (2)(ii) cannot be sustained. So far as the addition made under rule 8D(2)(iii) is concerned, the assessee company has demonstrated before us that the AO has completely ignored the facts of strategic investments of Rs.1,36,65,695/- in the associate concerns which were intended not for the purpose earning gain or tax free income but to acquire the control over those concerns. Similarly, the Id. Counsel argued before us that the investments made in growth schemes of mutual funds a non tax free income yielding investments amounting to Rs.8,15,61,466/- were also totally ignored. The details of investments in those associate concern and growth scheme of Mutual funds is filed at page 5 of the assessee's paper book. A working of the

disallowance under section 14A r.w.r 8D was also filed by the assessee at page 5 of the assessee's paper book which was arrived at after reducing the amount of investments in strategic concerns Rs.1,36,65,695/- and investment in growth scheme of Mutual funds Rs.8,15,61,466/- as on 31.3.2008 from the total value of investments of Rs.11,12,76771/- and thus the disallowance u/s 14A r.w.r.8D 2(iii) was worked out at Rs.60,809/- which is in our opinion is the correct amount of disallowance. In view of the above facts discussed hereinabove and ratio laid down by the Hon'ble Bombay High Courts, we direct the AO to delete the addition of Rs.13,99,868/- as made u/r 8D(2)(ii) and Rs. 2,92,780/- as made u/r 8D (2)(iii).

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

Order pronounced in the open court on 9th June, 2016

Sd

(MAHAVIR SINGH )

न्यायिक सदस्य / Judicial Member

sd

(RAJESH KUMAR)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 09.06.2016

Sr.PS:SRL:

**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 – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai

6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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