

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI  
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER  
AND  
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

I.T.A. No.2280/Mum/2014  
(Assessment Year: **2010-2011**)

Shri Darashaw Keki Mehta, Flat No.3, 1 <sup>st</sup> Floor, Rajesh Mansion, Sir Dinshaw Vachha Road, Churchgate, Mumbai -400 020.	बनाम/ Vs.	DCIT, Range 2(1), Mumbai.
स्थायी लेखा सं./PAN : AACPM1850C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Mr. Ryan Saldanha
प्रत्यर्थी की ओर से/ Respondent by	:	Shri. B.S. Bist, DR

सुनवाई की तारीख / Date of Hearing : 12.01.2016

घोषणा की तारीख /Date of Pronouncement : 29.01.2016

**आदेश / O R D E R**

**PER D. KARUNAKARA RAO, AM:**

This appeal filed by the assessee on 4.4.2014 is against the order of the CIT (A)-4, Mumbai dated 10.2.2014 for the assessment year 2010-2011. In this appeal, assessee raised the following grounds which read as under:

1. *On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in confirming the action of the Assessing Officer whereby provision of section 14A have been invoked and disallowance has been made as per the Rule 8D without appreciating that no expenditure directly or indirectly has been incurred for earning exempt income.*
2. *On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in confirming disallowance u/s 14A even on debt securities which generates only taxable income, thereby, made higher disallowance."*

2. The only issue raised in this appeal relates to the disallowance u/s 14A r.w. Rule 8D of the Act. In this regard, at the outset, Ld Counsel for the assessee submitted that the Assessing Officer disallowed a sum of Rs. 6,24,738/- under clause (iii) of Rule 8D(2) of IT Rules, 1962 ie 0.5% of the average investment. In our opinion, such disallowance is unfair. In this regard, Ld Counsel for the assessee

brought our attention to page 9 of the paper book and submitted that the total expenditure debited to the P & L Account on account of 'common account' works out to only Rs. 86,949/-. He further submitted that the disallowance made by the AO has exceeded the total debit in the P & L Account, which should be the subject matter of disallowance. Bringing our attention to various decisions, Ld Counsel for the assessee submitted that the disallowance, if any, under the special provisions must not exceed the total debits credited to the P & L Account. The decision of the Tribunal in the case of ACIT vs. M/s. Jayshree Petrochemicals Pvt Ltd in ITA No.7292/M/2011 (AY 2008-2009), dated 29.11.2013 and the decision of the ITAT, Delhi Bench in the case of Gillette Group India (P) Ltd vs. ACIT [2012] 22 taxmann.com 61 (Delhi) are some of the decisions cited by the Ld Counsel for the assessee.

3. We have heard both the parties and perused the orders of the Revenue Authorities as well as the decisions cited by the Ld Counsel for the assessee. On hearing both the parties and on perusal of the cited decision of the Tribunal (supra), we find the order of the ITAT, Delhi Bench in the case of Gillette Group India (supra) is relevant for the proposition that '*disallowance under 14A cannot exceed expenditure actually claimed by the assessee*'. In this regard, we find para 6 of the said Tribunal's order is relevant and the same is extracted as under for the sake of completeness of this order:

"6. From the above, it is evident that as per the sub-section (1) of section 14A, no deduction is to be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of total income. Sub-section (2) of section 14A provides the procedure for determination of such expenditure by the Assessing Officer. The Board has also prescribed Rule 8D for determining the expenditure incurred by the assessee for earning of exempt income. Thus, the disallowance can be made under sub-section (1) for the expenditure incurred for earning of exempt income. In the case under appeal before us, from the perusal of the assessee's profit & loss account, it is evident that the total expenditure incurred was Rs. 49,04,028/- only. Thus, the assessee claimed the deduction for the expenditure of Rs. 49,04,028/- which is debited to the profit & loss account. The disallowance cannot exceed the expenditure actually claimed by the assessee. We, therefore, accept the assessee's contention **that the disallowance made by the AO and sustained by the Ld CIT (A) in excess of total expenditure debited to the profit & loss account was unadjusted. Accordingly, we restrict the disallowance to the extent of expenditure actually claimed by the assessee ie Rs. 49,04,028/-.**"

4. Similar proposition was adopted by the Mumbai Bench of the Tribunal in the case of M/s. Jayshree Petrochemicals Pvt Ltd (supra), wherein one of us (**AM**) is a

party to the said order. While adjudicate the identical issue, ITAT Mumbai has extracted the above said para 6 of the Delhi Bench of the Tribunal's order in the case of Gillette Group India (P) Ltd (supra). Para 6 of the Tribunal's order in the case of M/s. Jayshree Petrochemicals Pvt Ltd (supra) is relevant in this regard. Considering the settled legal proposition that *the disallowance under section 14A cannot exceed expenditure actually claimed by assessee*, as well as respectfully following the cited decisions of the Tribunal, we are of the opinion that the matter should be remanded to the file of the AO for quantifying the disallowance in the light of the above cited binding decisions of the Tribunal. We order accordingly. AO shall grant a reasonable opportunity of being heard to the assessee as per the set principles of natural justice. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

5. In the result, **appeal of the assessee is allowed for statistical purposes.**

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

**Sd/-**  
**(SANDEEP GOSAIN)**  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 29.1.2016  
व.नि.स./ OKK, Sr. PS

**Sd/-**  
**(D. KARUNAKARA RAO)**  
ACCOUNTANT MEMBER

**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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,  
उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**