

**आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "जे" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI**  
**BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM**

आयकर अपील सं./I.T.A. 3137/Mum/2015  
(निर्धारण वर्ष / Assessment Year: 2008-09)

Dy.Commissioner of Income Tax- CC-6(1), Room No.104, First floor, Aayakar Bhavan, M K Road, Mumbai-400020	<u>बनाम/</u> Vs.	M/s VVF Ltd, Plot No.109, Opp. Sion Fort Garden, Sion, East, Mumbai-400022
स्थायी लेखा सं./जीआइआर सं./PAN : AAACP6224A		
(अपीलार्थी /Applicant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Applicant by	:	Shri T A Khan
प्रत्यर्थी की ओर से/Respondent by	:	Smt.Indra G Anand

सुनवाई की तारीख /Date of Hearing	:	23.1.2017
घोषणा की तारीख /Date of Pronouncement	:	31.1.2017

**आदेश / ORDER**

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

This is an appeal filed by the revenue challenging the order dated 26.2.2015 passed by the Id.CIT(A)-54, Mumbai against deletion of disallowance of Rs.1,38,73,150/- made under rule 8D(2)(ii) of the Income Tax Rules (hereinafter called the Rules) as made by the AO.

2. Brief facts of the case are that the assessment was completed under section 143(3) of the Act on 31.12.2009 determining total income at Rs.32.99,50,630/-. Thereafter the case of the assessee was set aside by exercising revisionary powers under section 263 of the Act and assessment was framed u/s 143(3) r.w.s 263 of the Act vide order passed on 23.3.2013 assessing the total income at Rs.34,51,29,580/- by making disallowance under section 14A r.w.rule 8D of Rs.1,51,78,950/- comprising interest disallowance under rule 8D(2)(ii) of Rs.1,38,73,150/- and disallowance of Rs.13,05,800/- under rule 8D(2)(iii) being 0.5% of the average value of the investments. Aggrieved by the order of the AO, the assessee preferred an appeal before the Id.CIT(A), who partly allowed the appeal of the assessee by deleting the disallowance as made under rule 8D(2)(ii) of the Rules amounting to Rs.1,38,73,150/- and directed to recompute the disallowance under rule 8D(2)(iii) of the Rules by observing and holding as under :

*"4.3.5 I also find merit in the appellant's plea that while computing the disallowance u/s.14A r.w. Rule 8D, the A.O. should not have taken into account the value of its investments in foreign companies because dividend income earned or to be earned from such foreign companies is taxable under the Act. Therefore, the appellant has correctly excluded the opening and closing value of its investments in shares of VVF FZE Dubai, VVF America Inc. and VVF Singapore Pte. Ltd. in the revised working of disallowance u/s.14A r.w. Rule BD as reproduced in 4.2.4 above. However, I do not find substance in the appellant's plea based on certain decisions of Hon'ble ITAT that there should be no disallowance u/s.14A in respect of investments made by the appellant in its group concerns for holding controlling stake because such investments are made in group concerns for the purpose of maintaining controlling interest and not for the purpose of earning dividend which is only incidental In this connection, it*

*would be pertinent to refer to the case of Maxopp Investment Ltd. v. CIT 347 ITR 272 (Del.) wherein the Hon'ble High Court did not find merit in the submission made on behalf of the assessee that no expenditure ought to be disallowed u/s.14A in a case where the shares are acquired for the purpose of acquiring and retaining control of the operating company and not for earning the tax free (dividend) income which is merely incidental. Just because the appellant has made unquoted investments to maintain ownership control in group companies does not mean that the said unquoted shares will not yield tax free dividend income. It is a well-recognized rule of precedent and tenet of judicial discipline that the judgment of a non-jurisdictional High Court will prevail over the decision of the Division Bench/Special Bench of the Tribunal [17 SOT 453 (Mum) and 69 TTJ (Del) 650]. This is based on the principle laid down by the Hon'ble Supreme Court in the case of Asstt. CCE v. Dunlop India Ltd. 154 ITR 172 (SC) that the better wisdom of the Court below must yield to the higher wisdom of the Court above. Thus, in the absence of a judgment of the Hon'ble jurisdictional High Court in the matter, the one by a non-jurisdictional High Court will have precedence over decisions of the Hon'ble ITAT, Mumbai Bench. In other words reliance on the decisions of Hon'ble Tribunal will be of no help to the appellant.*

*4.3.6 In view of the above discussion, it is held that the A.O. was not at all justified in making disallowance of indirect interest expenses of Rs.1,38,73,150/- under Rule 8D(2)(ii) in the present case and the said disallowance made by the A.O. is, therefore, deleted. As far as the balance disallowance of Rs.13,05,800/- under Rule 8D(2)(iii) is concerned, the A.O. is directed to re-compute the same after excluding the value of its foreign investments while computing the average value of investment for the purpose. With this direction, the Ground raised by the appellant "*

3. We have carefully considered the rival submissions and perused the material placed before us including the orders of authorities below. The facts as stated by the Id.AR during the hearing before us are that the assessee has reserves and surplus as on 1.4.2007 of Rs.87.71 crores, balance in the profit and loss account Rs.156.27 corers and profit after tax of Rs.35 crores during the year. As against this the investments in

securities were Rs.2.00 lakhs during the years and other old investments coming over from earlier years were Rs.20.47 lakhs excluding foreign investments. Needless to mention that income accruing from foreign investments is subject to tax and therefore they are not to be considered for the purpose of section 14A of the Act. The Id.AR submitted before us that the assessee has not made any investments out of the borrowings which were for specific purposes and prayed before us that in view of the decision of the Jurisdictional High Court in the case 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 deletion of disallowance under rule 8D(2)(ii) Rs.1,38,73,150/- was rightly made by the FAA and should be upheld in view of the facts of the case and ratio laid down in the above decisions. In our opinion the Id. CIT(A) has taken a correct view as per law and no interference is called for from our side. Therefore, we uphold the order of the Id.CIT(A) by dismissing the appeal of the revenue.

4. In the result the appeal of the revenue is dismissed.

Order pronounced in the open court on 31.1.2017.

**Sd**  
**(Mahavir Singh)**

**न्यायिक सदस्य / Judicial Member**

**sd**  
**(Rajesh Kumar)**

**लेखा सदस्य / Accountant Member**

मुंबई Mumbai; दिनांक Dated :31.1.2017  
SRL,Sr.PS

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