

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "C" KOLKATA**

Before **Shri Mahavir Singh, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

<b>ITA No.1288-1290/Kol/2009</b> Assessment Years:2001-02-2002-03 & 2004-05
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Oberoi Buildings & Investments Pvt. Ltd., 4, Mangoe Lane, Kolka-700 001 <b>[PAN No.AAACO 2860 R]</b>	<b>V/s.</b>	ITO, Ward-6(3), Aayakar Bhavan, P-7, Chowringhee Square, Kolkata-700 069
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri A.K. Gupta, FCA
राजस्व की ओर से/By Respondent	Shri Ashok Kumar, JCIT-DR
सुनवाई की तारीख/Date of Hearing	16-02-2016
घोषणा की तारीख/Date of Pronouncement	29-02-2016

**आदेश /O R D E R**

**PER Waseem Ahmed, Accountant Member:-**

These three appeals by the same assessee are arising out of orders of Commissioner of Income Tax (Appeals)-VI, Kolkata dated 11.05.2009 and 11.05.2009. Assessments were framed by ITO Ward-6(3), Kolkata u/s 143(1)/147/143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his orders dated 01.08.2008 for assessment years 2001-02, 2002-03 & 2004-05 respectively.

Shri A.K Gupta, Ld. Authorized Representative appearing on behalf of assessee and Shri Ashok Kumar, Ld. Departmental Representative appearing on behalf of Revenue.

2. Since common grounds are involved in all these appeals, therefore they were heard together and we deem it appropriate to dispose them by this common order. At the time of hearing Ld. AR has submitted that assessee has not raised the ground No. 1, in all the appeals, regarding re-assessment proceedings u/s. 147 of the Act. Hence, ground no. 1 in all the assessee's appeals are dismissed as not pressed.

3. Except figure, all the facts in all the appeals are same therefore we are taking the facts of the case for the **AY 2001-02** as a lead case for the sake of convenience and passing a consolidated order for all the appeals.

4. The issue raised in ground No. 2 in this appeal by assessee is that Ld. CIT(A) erred in confirming the addition made by Assessing Officer u/s 14A of the Act for an amount of ₹ 3,33,842/-.

4.1 The facts are that assessee in the present case is a Private Limited Company and engaged in business of real estate and investment in shares. During the course of assessment proceedings, AO observed that assessee has earned dividend income at ₹1,35,67,570/- which was claimed as exempted income u/s 10(33) of the Act. The AO further observed that assessee has not disallowed any expense in relation to exempted income by virtue of Sec. 14A of the Act. On question by AO, assessee submitted that it has not incurred any expense in earning of dividend income. So the question of disallowance of expense u/s 14A of the Act does not arise. However, AO disregarded the claim of assessee by observing that for earning of dividend income various expenses are incurred directly and indirectly such as the common fund, common establish and common accounting expenses etc.

Accordingly, AO disallowed the expenses under section 14A of the Act on *pro rata* basis.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who confirmed the action of AO by observing as under:-

*“7. The plea of the appellant that he has not incurred any expenditure for earning dividend income cannot be accepted. I direct the Assessing Officer to apply provisions of section 14A read with rule 8D following the decision of special bench of Mumbai Tribunal in the case of Daga Capital management pvt ltd in I.T.A No. 8057/Mum/03: Assessment year 2001-02 to calculate the disallowance. The grounds of appeal are **Partly allowed.**”*

Being aggrieved by this order of Ld. CIT(A) assessee preferred second appeal before us.

6. We have heard rival contentions and perused the materials available on record. Ld. AR submitted paper book which is running pages from **1 to 58**. On perusal of appellate order, we find that direction has been issued to Assessing Officer for making disallowance in terms of provision of Sec. 14A r.w.s. 8D of the IT Rules, 1962. However we understand that the Rule 8D of the IT Rules came into effect from 24.03.2008 and the instant case before us is for AY 2001-02. Therefore, the provisions of Rule 8D of the IT Rules is not applicable in assessee's present case. We further find that prior to insertion of Rule 8D of the IT Rules various courts have held that the disallowance in terms of provision of Sec. 14A of the Act should be restricted @ 1% of dividend income. On the other hand the Id. DR vehemently supported the order of authorities below. However we disagree with the order of the lower authorities below and put our reliance in **GA No. 3019 of 2012** in ITAT No. 243 of 2012 of Hon'ble jurisdictional High Court in the case of *CIT v. M/s R.R.Sen & Brothers (P) Ltd.*, where the Hon'ble court has held:

*“The assessee did not show any expenditure incurred by him for the purpose of earning the money which is exempted under the income tax. The Tribunal has computed expenditure at 1 per cent of such dividend*

*income which, according to them, is the thumb rule applied consistently. We find no reason to interfere. The appeal is dismissed.”*

In this view of the matter, we reverse the orders of authorities below and directed the Assessing Officer to make disallowance @ 1% of dividend income. Accordingly, this ground of assessee's appeal is partly allowed in terms of above.

7. In the remaining appeals, since the facts are exactly identical, both the parties are agreed whatever view taken in the above appeal may be taken in those appeals also, we hold accordingly.

**8. In the result, assessee's appeals are partly allowed.**

Order pronounced in the open court 29/02/2016

Sd/-  
(Mahavir Singh)  
(Judicial Member)  
Kolkata,

Sd/-  
(Waseem Ahmed)  
(Accountant Member)

\*Dkp

दिनांक:- 29/02/2016 कोलकाता ।

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

1. आवेदक/Assessee-Oberoi Buildings & Investments Pvt. Ltd. 4, Mangoe Lane, Kol-01
2. राजस्व / Revenue-ITO Ward-6(3), Aayakar Bhavan,P-7 Chowrighee Square, Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।