

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “B”, MUMBAI
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No.2386/Mum/2012 (Assessment Year- 2008-09)**

Mutha Engineering Pvt. Ltd. C/o G.P. Mehta & Co., CAS, 807, Tulsiani Chambers, 212, Nariman Point, Mumbai-400021. PAN: AABCM 0781G	Vs.	ACIT Circle-4(2), Aayakar Bhavan, 6 th Floor, M.K. Road, Mumbai-400020.
(Appellant)		(Respondent)

Assessee by : Shri G.P. Mehta (AR)
Revenue by : Shri Suman Kumar (DR)
Date of hearing : 17.04.2017
Date of Pronouncement : 21.04.2017

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by u/s 253 of the Income-tax Act ('the Act') is directed by assessee against the order of Id. CIT(A)-8, Mumbai dated 25.11.2011 for AY-2008-09. Though the assessee has raised as many as five grounds of appeal. However, as per our considered view the only substantial ground of appeal is "*whether the lower authorities erred in making the addition of Rs. 1,78,814/- u/s 14A of the Act.*"
2. Brief facts of the case related with the issue raised in the present appeal are that the assessee filed return of income for relevant AY on 28.09.2008 declaring total income of Rs. 1,92,55,600/-. The assessment was completed on 22.11.2010 u/s 143(3) of the Act. The Assessing Officer (AO) while passing the assessment order disallowed Rs. 1,78,814/- u/s 14A r.w. Rule 8D of the Act. On appeal before the Id. CIT(A), the disallowance was sustained. Hence, further aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.

3. We have heard the Id. Authorized Representative (AR) of assessee and Id. Departmental Representative (DR) for Revenue and perused the material available on record. The Ld. AR of the assessee argued that assessee earned exempt income of Rs. 2,78,484/- being dividend income during the relevant AY. The AO determined the disallowance u/s 14A r.w. Rule 8D of the Act at Rs. 1,78,814/-. The disallowance consist of interest expenses of Rs. 1,58,596/- and expenses of Rs. 20,218/- being .5% of average value of investment. There was no direct expenditure relating to the exempt income. The Ld. AR of the assessee vehemently argued that the assessee is aggrieved by the disallowance of interest expenditure only. The Ld. AR of the assessee submits that assessee has own interest free fund are more than the investment made during the year under consideration. The Id AR of the assessee invited our attention to the capital account of the assessee as on 31.03.2008. The assessee has shown the reserve and surplus fund of Rs. 3,20,84,516/- as on 31.03.2008. The assessee made the investment of Rs. 64,05,486/- only. In support of his submission, Id. AR of the assessee relied upon the decision of HDFC Bank Ltd. v/s DCIT reported in 383 ITR 529 and prayed that the disallowance of interest expenses may be deleted. On the other hand, Id. DR for the Revenue supported the order of authorities below. The Id DR argued that the assessee earned exempt income of Rs. 2,78,484/- and the disallowances is less than the exempt income and reasonable one.
4. We have considered the rival contention of the parties and gone through the order of authorities below. In the return of income, the assessee has shown the exempt income of Rs. 2,78,484/- as dividend income. No voluntary disallowance was made by the assessee. The AO asked the assessee to explain the expenditure incurred for earning the exempt income. In reply the assessee contended that no expenditure has been incurred to earn the exempt income. The contention of assessee was not accepted by AO holding that certain percentage of expenses claimed by the assessee-company would definitely be attributed to the tax free income earned by the assessee. The assessee is having common pool of human and financial resources. Thus, the AO invoked provisions of Rule 8D and worked

out the disallowance of Rs. Nil under Rule 8D(i), Rs. 1,58,596/- under Rule 8D(ii) and Rs.20,218/- under Rule 8D(iii). The Id.CIT(A) confirmed the disallowance.

5. We have seen that the AO has not recorded its dissatisfaction under section 14(2) before invoking the provisions of Rule 8D. From the Profit & Loss Account, we have noticed that assessee was having sufficient interest free fund available with it. As per the decisions of Hon'ble Bombay High Court in Reliance Utility 313 ITR 340 (Bom) and HDFC Bank Ltd. 366 ITR 505 wherein it was held that where both interest free fund and interest bearing fund are available with assessee and interest free funds are more than the investment made, the presumption is that the investment in the tax free security would have been made out of the interest free funds available with the assessee. Thus, respectfully following the order of jurisdictional High Court, we direct the AO to delete the interest disallowance made under Rule 8D(ii).
6. With these observations, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 21st day of April 2017.

Sd/-

(G.S. PANNU)

ACCOUNTANT MEMBER

Mumbai; Dated 21/04/2017

S.K.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai