

IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI

**BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER
AND
SRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA No.192/Mum/2015

(A.Y.:2010-11)

JHP Securities Ltd., Dev Neo Vikram, “B”Wing, 2 nd floor, Sahakar Nagar CHS, above Audi Car Showroom, New Link Road, Andheri (West), Mumbai 53	Vs.	The Asst. Commissioner of Income Tax, Range-4 (3), Aayakar Bhavan, 6 th floor, M. K. Marg, Mumbai 20
PAN:AAACJ 2847 H		
Appellant	..	Respondent
Appellant by	..	Sri Dev Datta Mainkar, AR
Respondent by	..	Sri Durga Dutt, Sr. DR
Date of hearing	..	18-08-16
Date of pronouncement	..	18-08-16

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of the CIT (A)-8, Mumbai in appeal No.CIT (A)-8/Cir.4/165/2013-14 dated 17-10-2014. Assessment was framed by the ACIT- 4(3), Mumbai for the assessment year 2010-11 vide his order u/s 143(3) of the Income Tax Act, 1961 (hereinafter “the Act”) dated 22-03-2013.

2. The first issue in this appeal of the assessee is against the order of the CIT (A) confirming the disallowance of expenses relatable to exempted income by invoking the provisions of Section 14A of the Act read with Rule 8D (2) (ii) of the Income Tax Rules, 1962 (hereinafter “the Rules”) at Rs.10,49,330/-.

3. Briefly stated facts are that the assessee has earned dividend income of Rs.3,95,624/- and claimed the same as exempt. Admittedly, this income does not form part of the total income. The AO by invoking the provisions of Section 14A of the Act read with Rule 8D of the Rules made disallowance of total expenses of Rs.11,02,270/- as under:-

(i)	The amount of expenditure directly related to income which does not form part of total income		52,941
(ii)	Proportionate of interest expenditure computed in accordance with the formula given in Rule 8D (2)(ii)	$21,94,714 * 13,11,61,235.17 / 64,47,57,238.60$	4,46,464.78
(iii)	Amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income as appearing in the Balance Sheet of the assessee, on the first day and the last day of the previous year.	$0.5/100 * 13,11,61,235.60$	6,55,806.18
Total Expenditure disallowed u/s. 14A			11,02,270.96

Aggrieved, the assessee preferred appeal before the CIT (A). Before the CIT (A) the assessee contended that during the previous year relevant to this assessment year an aggregate amount of Rs.1,03,32,925/- was invested in the shares of Indian Companies and an amount of Rs.1,98,36,897/- was realized on account of sale of shares. The learned Counsel for the assessee explained that as on 31-03-2010, the assessee's share capital was at Rs.71,42,400/- and reserves and surplus stood at Rs.19,60,96,668/-. According to the assessee the total capital in hand for utilization/investment available with the assessee is at Rs.20,32,39,068/- and out of the same, the assessee has made investment in shares at Rs.1,03,32,925/- from where the assessee has earned dividend income. It was also explained by the assessee that current year's profit was to the tune of Rs.2,39,17,686/-. Before the CIT (A) the assessee also contended that the AO has not dealt with the submissions of availability of funds and investment in shares vis-à-vis the nexus of investment. According to him, the AO applied Rule 8D of the Rules mechanically and without recording of any satisfaction. The learned Counsel for the assessee before the CIT (A) also relied on the decision of the Hon'ble Bombay High Court in the case of CIT Vs Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Bom.) and also recent judgment of the Hon'ble Bombay High Court in the case of CIT Vs HDFC Bank Ltd. (2014) 366 ITR 505 (Bom.).

But, neither the CIT (A) nor the AO has dealt with the issue of availability of funds and the CIT (A) just confirmed the addition. The CIT (A) only recorded the following findings in Para 2.3 of his order:-

“2.3 During the course of appellate proceedings, it was submitted that average value investment has been wrongly computed by the AO. The AR of the appellant submitted that correct figure should be Rs.1,05,88,208/- as against a sum of Rs.13,11,61,235/- adopted by the AO. The AO is accordingly directed to verify this fact and adopt correct figure of average investment and thereafter, recomputed the disallowance accordingly. This ground of appeal is, thus treated as partly allowed”.

Aggrieved, the assessee is in second appeal before the Tribunal.

4. We have heard the rival contentions and gone through the facts of the case. We noted from the above facts that the assessee before the CIT (A) has demonstrated from the balance sheet that it was having interest funds available with it for investment in shares. The AO or the CIT (A) has nowhere proved the nexus of tax free income generated out of investments made from interest bearing funds, despite the fact that the entire facts were available before them. The assessee has reasonably demonstrated before us that the interest free funds i.e. assessee's own share capital as well as reserves and surplus is more than Rs.20 Crores as against the investments in shares that gave tax free income at Rs.1.03 Crores which is much more lower than the interest free funds available. Hence, this being the position, we are of the view that the assessee's case is squarely covered by the decision of the Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (supra) wherein the Hon'ble High Court has held as under:-

“If there be interest-free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest-free funds available. In our opinion, the Supreme Court in East India Pharmaceutical Works Ltd. v. CIT (1997) 224 ITR 627 had the occasion to consider the decision of the Calcutta High Court in Woolcombers of India Ltd. (1982) 134 ITR 219 where a similar issue had arisen. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced

earlier it did not require to be answered. It then noted that in Woolcombers of India Ltd.'s case (1982) 134 ITR 219 the Calcutta High Court had come to the conclusion that the profits were sufficient to meet the advance tax liability and the profits were deposited in the overdraft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there was sufficient material and the assessee had urged the contention before the High Court. The principle, therefore, would be that if there were funds available both interest-free and over draft and/or loans taken, then a presumption would arise that investments would be out of the interest-free funds generated or available with the company if the interest-free funds were sufficient to meet the investment. In this case this presumption is established considering the finding of fact both by the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal.”

(emphasis supplied)

Respectfully following the above decision of the Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (supra), we allow the ground of appeal of the assessee.

5. The next issue in this appeal of the assessee is against the order of the CIT (A) confirming the action of the AO in disallowing depreciation of Rs.5,61,644/- on motor car by holding that the car is registered in the name of one of the directors and legal ownership is not in the name of the Assessee Company.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. Admittedly, the AO was of the view that motor car is declared by the assessee in its balance sheet and in the schedule of fixed assets. It is also admitted position that the funds utilized for purchase of the car is out of assessee's accounts. Only reason for disallowance was that the car was purchased in the name of the director of the Company and not in the name of the Assessee Company. According to the AO this is immoral practice and just to save higher registration charges, the assessee got the car registered in the name of the director. Accordingly, he disallowed the claim of depreciation. Aggrieved, now the assessee is in second appeal before the Tribunal.

7. We find from the facts of the case that the assessee has purchased the motor car from its own funds but registered the same in the name of one of the

directors. There is no dispute about this fact. In such a circumstance, the issue is covered by the decision of the Hon'ble Bombay High Court in the case of CIT Vs Dilip Singh Sardarsingh Bagga 201 ITR 995 (Bom.) wherein it has been categorically held that ***“registration under Motor Vehicle Act is not essential requirement for acquiring ownership of the motor vehicle and purchasing of motor vehicle for valuable consideration from assessee’s account and using the same for the business purpose, depreciation cannot be denied on the ground that the vehicle was not registered in assessee’s name”***. Following the above decision of the Hon'ble Bombay High Court in the case of Dilip Singh Sardarsingh Bagga (supra) we allow the claim of the assessee. This ground of assessee’s appeal is allowed.

8. The third issue raised by the assessee is as regards to the disallowance of expenses qua exempted income while computing book profit u/s 115 JB of the Act. We have already adjudicated this issue in the first ground and deleted the disallowance. Accordingly, while computing book profit u/s 115 JB of the Act, the same decision will apply. Resultantly, this ground of appeal of the assessee stands allowed.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 18-08-2016.

Sd/-
(**MANOJ KUMAR AGGARWAL**)
ACCOUNTANT MEMBER

Sd/-
(**MAHAVIR SINGH**)
JUDICIAL MEMBER

Mumbai, Dated, 18/08/2016
Lakshmikanta Deka/Sr.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.

//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI

		Date	Initial	
	Dictation pad attached with the Draft Order	Yes		
1.	Draft dictated on	18-08-16		Sr.PS
2.	Draft placed before author	18-08-16		Sr.PS
3.	Draft proposed & placed before the second member	-		JM
4.	Draft discussed/approved by Second Member.	-		AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			