

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Sanjay Garg (JM)

I.T.A. No. 6483/Mum/2012
(Assessment Year 2008-09)

Mrs. Anita Dalal 18B, Rajabahadur Mansion 8, Hamam Street Mumbai-400 023. (Appellant)	Vs.	ACIT 12(1) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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PAN No. AAEPD9039Q

Assessee by	Shri Neelkanth Khandelwal
Department by	Shri A. Ramachandran
Date of Hearing	17.8.2016
Date of Pronouncement	19.8.2016

O R D E R

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 28-09-2012 passed by Ld CIT(A)-23, Mumbai and it relates to the assessment year 2008-09. The assessee is assailing the decision of Ld CIT(A) in confirming the disallowance made by the AO u/s 14A of the Act.

2. We heard the parties and perused the record. During the year under consideration, the assessee earned dividend income of Rs.7,82,664/- and claimed the same as exempt. The assessee did not make any disallowance u/s 14A of the Act. The AO disallowed a sum of Rs.44,45,873/- by invoking the provisions of Rule 8D of the I.T Rules. The Ld CIT(A) also confirmed the same. Aggrieved, the assessee has filed this appeal before us.

3. The Ld A.R submitted that the AO has made disallowance under Rule 8D(2)(i), 8D(2)(ii) and 8D(2)(iii) of the I.T rules. The Ld A.R submitted that the

assessee does not have any grievance on the disallowance made under Rule 8D(2)(i) of the I.T Rules.

4. With regard to the disallowance of proportionate interest expenditure made under Rule 8D(2)(ii) of the I.T Rules, the Ld A.R submitted that the interest free funds available with the assessee is in far excess of the investments made and hence no disallowance of interest expenditure is called for, in view of the binding decision of Hon'ble jurisdictional Bombay High Court rendered in the case of HDFC Bank (366 ITR 505). With regard to the disallowance of proportionate administrative expenses made under Rule 8D(2)(iii) of the I.T Rules, the Ld A.R submitted that the AO has taken the value of investments made in the group companies, Public provident fund etc. for working out the disallowance.

5. On the contrary, the Ld D.R placed strong reliance on the order passed by Ld CIT(A).

6. Having heard rival submissions, we are of the view that there is merit in the submissions made by the Ld A.R with regard to the disallowance made under Rule 8D(2)(ii) of the I.T Rules, since his contentions are getting support from the decision rendered by the jurisdictional High Court in the case of HDFC Bank Ltd (supra). The Ld A.R invited our attention to page 20 of the paper book to show that the interest free funds available with the assessee is Rs.601.34 lakhs as on 31.3.2008, where as the value of investment made on that date stand at Rs.576.66 lakhs. The Ld A.R submitted that the interest free funds available with the assessee as on 31.3.2007 is also in excess of the investment made on that date. Interest free funds available with the assessee has been claimed to include loans taken from certain parties and a partnership firm. In our view, the said fact alone requires verification. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the

assessing officer for the limited purpose of examining the interest free loans taken by the assessee. If the AO is satisfied with that these funds are interest free funds, then he is directed to delete the disallowance accordingly, by following the decision rendered by the jurisdictional Hon'ble Bombay High Court in the case of HDFC Bank Ltd (supra).

7. The next issue relates to the disallowance made under Rule 8D(2)(iii) of the I.T Rules. A perusal of "investment" list shows that the same includes investment made in immovable property, jewellery and Public Provident fund. These items are not required to be included in the value of investments for the purpose of computing disallowance under rule 8D(2)(iii). Further the Ld A.R submitted that the Non-Trade investments made in M/s Krishvi Securities P Ltd and M/s Deepani Villa P Ltd are strategic investments made and the assessee is the major share holder therein. Hence, they also require to be excluded as per the decision rendered by the Co-ordinate bench in the case of Garware Wall Ropes Ltd. However, the above said claim of the assessee requires verification. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for the purpose of re-working the value of Investments for the purpose of computing the disallowance under Rule 8D(2)(iii) of the I.T Rules.

8. The assessee has also urged grounds relating to charging of interest u/s 234B and 234C of the Act. They are consequential in nature and hence do not require adjudication.

9. In the result, the appeal filed by the assessee is treated as partly allowed for statistical purposes.

Order has been pronounced in the Court on 19.8.2016

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 19/8/2016

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

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