

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

BEFORE SHRI SHAILENDRA KUMAR YADAV, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.5160/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2009-10)

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| Netmagic Solutions Pvt.Ltd.,<br>Bldg. No.22, Nirlon Complex,<br>Western Express Highway,<br>Goregaon,<br>Mumbai-400063 | बनाम/<br>Vs. | Dy. Commissioner of Income<br>Tax –Circle 9(2),<br>Mumbai. |
|--|--------------|--|

स्थायी लेखा सं./ PAN : **AABCN1254B**

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| अपीलार्थी ओर से / Assessee by  | Shri Anuj Kishnadwala |
| प्रत्यर्थी की ओर से/Revenue by | Shri G N Makwana      |

सुनवाई की तारीख / **Date of Hearing** : **17.8.2016**

घोषणा की तारीख / **Date of Pronouncement** : **25.8.2016**

**आदेश / ORDER**

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

This is an appeal filed by the assessee and directed against the order dated 9.8.2012 passed by the Id.CIT(A)-20, Mumbai for the assessment year 2009-10.

2. At the out set, we find from the record that there is a delay of 240 days in filing the appeal. The learned counsel has submitted that there is a genuine cause for delay in filing the appeal as enumerated by assessee in the affidavit dated 16.7.2013. The Id.counsel prayed that the delay be condoned and appeal be admitted for adjudication.

3. After hearing both the parties and on perusal of the affidavit filed by the assessee, we are of the considered opinion that the reasons stated in the affidavit for condonation of delay are appears to be genuine. Therefore, in the interest of justice, we condone the delay and admit the appeal for adjudication.

4. The issue raised in the grounds of appeal No.1 is against the confirmation of disallowance of Rs.15,25,840/- by the Id. CIT(A) as made by the AO u/s 14A of the Income Tax Act, 1961(hereinafter called and referred to as the Act) r.w.r.8D of the Income Tax Rules, 1962 (hereinafter called and referred to as Rules) and the Id. CIT(A) also ignored the fact that the AO had not reached appropriate satisfaction regarding the amount disallowed by the appellant of Rs.2,50,000/-.

5. The Id. Counsel for the assessee, at the outset, submitted that the assessee has received dividend income of Rs.2,09,85,607/- and made suo mottu disallowance of Rs.2,50,000/- at the time of filing of the return of income which was not accepted by the AO. However, the Id.counsel submitted that while invoking the provisions of section14A r.w.r 8D, the AO has not recorded any satisfaction on the suo mottu disallowance of Rs.2,50,000/- made by the assessee before applying the provisions of the said section. The Id. Counsel took us through the assessment order to justify his argument qua not recording the satisfaction. The Id. Counsel

vehemently submitted that the case of the assessee is fully covered by the various decisions as under :

- a) CIT V/s Taikisha Engineering (370 ITR 338) (Del);
- b) CIT V/s Joint Investments (372 ITR 694) (Del);
- c) Maxopp Investments Ltd V/s CIT (347 ITR 272);
- d) Kalyani Steels Ltd V/s Addl.CIT (ITA No.1733/PN/2012);
- e) 3DPM software Solutions Ltd V/s ITO (ITA No.5736/Mum/2012)

The Id. Counsel submitted that the additions as made by the AO and confirmed by the Id.CIT(A) was totally wrong as the mandatory requirement of recording satisfaction has not been complied with as mandated by provisions of section 14A(2) of the Act. The Id. AR argued that in view of the ratio laid down in the aforesaid decisions, the addition as confirmed by the Id.CIT(A) be deleted. In the alternative argument, the Id. Counsel submitted that the assessee has made investment in the subsidiary companies/group concern and therefore the disallowance made under section 14A was not called for in the said case as motive behind the investment was not to earn dividend but to control the subsidiary companies/sister concern. In support of his argument the Id. Counsel relied on the number of decisions as under :

- a) Cheminvest Ltd. v. CIT (Delhi)(2015) 378 ITR 0033 (Del).
- b) Gareware Wall Ropes Limited V Addl.CIT(ITA No.5408/Mum/2012);
- c) M/s JM Financial Limited V/s Addl CIT(ITA No.4521/M/2012
- d) CIT V/s Oriental Structural Engineers Pvt Ltd (Delhi High Court)

The Id.counsel's last alternative argument is that the temporary deployment of the funds which were lying idle in the company as the assessee has arranged these funds for the purpose of making capital expenditure. On the contrary, the Id. DR heavily relied on the decisions of the authorities below.

6. We have carefully considered the rival submissions and perused the material placed before us including the orders of authorities below. On perusal of the orders, we find that by invoking the provisions of section 14A r.w.r 8D, the AO has not at all commented on the disallowance of Rs.2,50,000/- which was made by the assessee suo mottu for earning exempt income. We are of the considered opinion that invoking the provisions of section 14A r.w.r 8D without recording the satisfaction by the AO is wrong and accordingly the order of the Id.CIT(A) by upholding the action of AO cannot be sustained. The case of the assessee finds support from the various decisions of High Court as well Tribunal referred during the course of hearing. We find that in the case of Kalyani Steels Ltd (supra), the co-ordinate Bench of the Tribunal has held that non recording satisfaction with regard to the correctness of the claim of the assessee which is a mandatory requirement in terms of section 14A of the Act r.w.r 8D to compute the impugned disallowance is untenable in law. The relevant operative part of the order is reproduced below :

*"8. We have carefully considered the rival submissions. Section 14A of the Act contemplates that for the purposes of computing the total*

*income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. Sub-section (2) of section 14A of the Act prescribes that the Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income in accordance with such method as may be prescribed, such prescribed method being contained in rule 8D of the Rules. However, the aforesaid empowerment of the Assessing Officer to invoke application of rule 8D of the Rules is superscribed by a condition contained in sub-section (2) of section 14A of the Act which is to the effect that the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to the income which does not form part of the total income. Therefore, the invoking of rule 8D of the Rules in order to compute the disallowance u/s 14A of the Act is neither automatic and nor is triggered merely because assessee has earned an exempt income. The invoking of rule 8D of the Rules is permissible only when the Assessing Officer records the satisfaction in regard to the incorrectness of the claim of the assessee, having regard to the accounts of the assessee. In other words, section 14A(2) of the Act envisaged a condition precedent for invoking rule 8D of the Rules and computing disallowance thereof only if the Assessing Officer records that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure, having regard to the account of the assessee. In this context, it would be appropriate to refer to the following observations of the Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Co. Ltd. (supra) :- "70. Now, in dealing with the challenge it is necessary to advert to the position that sub-section (2) of section 14A prescribes a uniform method for determining the amount of expenditure incurred in relation to income which does not form part of the total income only in a situation where the Assessing Officer, having regard to the accounts of the assessee is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. It, therefore, merits emphasis that sub-section (2) of section 14A does not authorize or empower the Assessing Officer to apply the prescribed method irrespective of the nature of the claim made by the assessee. The Assessing Officer has to first consider the correctness of the claim of the assessee having regard to the accounts of the assessee. The satisfaction of the Assessing Officer has to be objectively arrived at on the basis of those accounts and*

*after considering all the relevant facts and circumstances. The application of the prescribed method arises in a situation where the claim made by the assessee in respect of expenditure which is relatable to the earning of income which does not form part of the total income under the Act is found to be incorrect. In such a situation a method had to be devised for apportioning the expenditure incurred by the assessee between what is incurred in relation to the earning of taxable income and that which is incurred in relation to the earning of non-taxable income. As a matter of fact, the memorandum explaining the provisions of the Finance Bill, 2006, and the Central Board of Direct Taxes circular dated December 28, 2006, state that since the existing provisions of section 14A did not provide a method of computing the expenditure incurred in relation to income which did not form part of the total income, there was a considerable dispute between taxpayers and the Department on the method of determining such expenditure. It was in this background that subsection (2) was inserted so as to provide a uniform method applicable where the Assessing Officer is not satisfied with the correctness of the claim of the assessee. Sub-section (3) clarifies that the application of the method would be attracted even to a situation where the assessee has claimed that no expenditure at all was incurred in relation to the earning of non-taxable income. 71. Parliament has provided an adequate safeguard to the invocation of the power to determine the expenditure incurred in relation to the earning of non-taxable income by adoption of the prescribed method. The invocation of the power is made conditional on the objective satisfaction of the Assessing Officer in regard to the correctness of the claim of the assessee, having regard to the accounts of the assessee. When a statute postulates the satisfaction of the Assessing Officer "Courts will not readily defer to the conclusiveness of an executive authority's opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is predicated". (M. A. Rasheed v. State of Kerala [1974] AIR 1974 SC 2249\*). A decision by the Assessing Officer has to be arrived at in good faith on relevant considerations. The Assessing Officer must furnish to the assessee a reasonable opportunity to show cause on the correctness of the claim made by him. In the event that the Assessing Officer is not satisfied with the correctness of the claim made by the assessee, he must record reasons for his conclusion. These safeguards which are implicit in the requirements of fairness and fair procedure under article 14 must be observed by the Assessing Officer when he arrives at his satisfaction under sub-*

*section (2) of section 14A. As we shall note shortly hereafter, sub-rule (1) of rule 8D has also incorporated the essential requirements of sub-section (2) of section 14A before the Assessing Officer proceeds to apply the method prescribed under sub-rule (2). [underlined for emphasis by us]"*

7. In the assessee's case also, we find that no satisfaction has been recorded as regard the invoking of the provisions of section 14A r.w.r 8D, and therefore application of section 14A r.w.r.8D is not correct as the necessary satisfaction in terms of section 14A(2) of the Act has not been recorded. Following the ratio laid down in the decision of the Tribunal (supra), we set aside the order of the Id.CIT(A) and direct the AO to delete the addition. This ground is allowed.

8. The issue raised in the ground No.2 of the appeal is with regard to disallowance of Rs.15,25,840/- while computing the book profit u/s 115JB of the Act. Since the issue regarding disallowance made u/s 14A r.w.r.8D has been allowed by us, the issue raised in ground no.2 is also allowed in favour of the assessee by directing the AO to delete the addition made u/s 115JB of the Act. This ground is also allowed.

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

Order pronounced in the open court on 25.08.2016.

Sd  
(SHAILENDRA KUMAR YADAV)  
न्यायिक सदस्य / JUDICIAL MEMBER

sd  
(RAJESH KUMAR)  
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई MUMBAI; दिनांक DATED : 25 .8.2016  
Sr.PS:SRL:

**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

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**आदेशानुसार/ BY ORDER,**

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