



आयकर अपीलीय अधिकरण "एफ़" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI**

श्री अमित शुक्ला, न्यायिक सदस्य एवं

श्री अशवनी तनेजा, लेखा सदस्य के समक्ष।

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

**ITA No. : 7529/Mum/2014**

(Assessment year: 2008-09)

**ITA No. : 1517/Mum/2014**

(Assessment year: 2010-11)

यूनाइटेड शिप्पर्स लिमिटेड M/s United Shippers Ltd., Sir P M Road, Fort, Mumbai -400 001 PAN: <b>AAACU 0809 J</b>	<b>Vs</b>	Asst. Commissioner of Income Tax- -11(1), Aaykar Bhavan, M K Marg, Mumbai -400 020
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)

**ITA No. : 3486/Mum/2013**

(Assessment year: 2009-10)

यूनाइटेड शिप्पर्स लिमिटेड M/s United Shippers Ltd., Sir P M Road, Fort, Mumbai -400 001 PAN: <b>AAACU 0809 J</b>	<b>Vs</b>	Asst. Commissioner of Income Tax- -11(1), Aaykar Bhavan, M K Marg, Mumbai -400 020
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	श्री भूपेंद्र करखनीस Shri Bhupendra Karkhanis मिस मीना जैन Ms Meena Jain
Respondent by	:	श्री राजेश ओझा Shri Rajesh Ojha

सुनवाई की तारीख /Date of Hearing : 20-07-2016

घोषणा की तारीख /Date of Pronouncement : 20-07-2016

**आदेश  
ORDER**

श्री अमित शुक्ला, न्या सः

**PER AMIT SHUKLA, JM:**

The aforesaid appeals have been filed by the assessee against separate impugned orders passed by Ld. CIT (Appeals)-39, Mumbai for the quantum of assessment passed under section 143(3) for the assessment years 2008-09, 2009-10 and 2010-11. Since the facts and issues involved in all the appeals are common, therefore, same were heard together and are being disposed off by way of this consolidated order.

2. To understand the facts and implication thereof on the issue involved, we are taking-up the appeal for the assessment year 2008-09, wherein following grounds have been raised:-

*“1(a) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming disallowance u/s 14A read with rule 8D of Rs.6,15,327/- towards administrative expenses calculated at 0.5% of average investments as against Rs.1,22,223/- disallowed by the appellant on suo motto basis and the reasons assigned for doing so are wrong and contrary to the facts of the case, the provisions of Income Tax Act, 1961 and the Rules made thereunder.*

*(b) On the facts and in the circumstances of the case and in law, the lower authorities failed to appreciate that a sum of Rs.1,22,223/- worked out by the appellant as expenditure disallowable u/s 14A is appropriate and reasonable towards administrative cost incurred for earning the exempt income.*

3. Without prejudice to Ground No.1 (a) & (b), lower authorities ought to have reduced investment made in Joint Venture companies (strategic investment) while calculating average investment generating (strategic investment) while calculating average investment generating exempt income for the purpose of calculating disallowance u/s 14A r.w.r. 8D and

*not doing so are wrong and contrary to the facts of the case, the provisions of Income Tax Act, 1961 and the Rules made there under”.*

3. The relevant facts *qua* the issue of disallowance made u/s 14A are that, the assessee has earned an exempt income of Rs.41,48,878/- which was in the form of an dividend. The AO noted that the assessee had both exempt income yielding investments as well as business assets in the Balance-sheet. For both the purposes the assessee has maintained consolidated accounts, that is, both the activities have not been segregated. Accordingly, the AO required the assessee has to why disallowance under section 14A read with Rule 8D should not be made. The assessee’s submission before the AO in response to the show cause notice was as under:-

(a) *The total investments as on 31.03.08 amounted to Rs.11.56 crores whereas the share capital and reserves as on that date amounted to Rs.125.92 crores. Meaning thereby, that the investment has been made from assessee’s own funds and not from borrowings. The assessee also submitted a statement showing the investments made out of Share Capital and Reserves for the period from FY 1989-90 to FY 2007-08. Reliance in this regard is placed by assessee on the decision of the Hon’ble Bombay High Court in the case of CIT V Reliance Utilities and Power Ltd, 313 ITR 340 (Bom).*

(b) *Out of total exempt income (dividend) of Rs.41,48,378/-, dividend of Rs.35,86,886/- was received form Canara Rebeco Mutual Fund. The investment in the said mutual fund was made through investment broker M/s Practical financial Services Pvt Ltd, Mumbai, who were paid for their services by Canara Rebeco MF directly by*

*way of commission and incentives. Further, other major investments are made in associates companies for a long term and there is no frequent buying or selling of these investments involved.*

- (c) *On account of administrative expenses, the assessee considered Rs.1,22,223/- being 5% of total salary and consultancy fees of Rs.24,44,463/- paid to three personnel of the company based on time spent by them on the work related to investment activity as the reasonable figure to be disallowed”.*

4. The AO rejected the assessee’s contention on the ground that mere comparison of share capital and reserves fund vis-à-vis investments cannot be said to be the test for establishing the fact that acquisition of investment have been made from own funds. Further, assessee has maintained consolidated accounts which preclude the possibilities of establishing one to one nexus between the expenses and the exempt income yielding investments. Accordingly, he observed that, he is “*satisfied*” that assessee is unable to establish the correctness of its claim. He also noted that, assessee has itself offered Rs.1,22,223/- towards disallowance of “administrative expenses”. However, the AO rejected the assessee’s claim and computed the disallowance u/s 14A at Rs.14,48,428/- which included disallowance of interest under section 8D(2) (ii) of Rs.8,33,101/- ;and disallowance of Rs.6,15,327/- towards indirect expenses, computed on the basis of 0.5% of the average investment in accordance with Rule 8D(2)(iii).

5. Before the Ld. CIT(A) detailed submissions were made by the assessee which has been incorporated by the CIT(A) in para 5.2 from pages 10 to 17 of the appellate order. However, the Ld. CIT(A) considering the fact that there was decrease in the tax free

investments; reduction in loan amount; and assessee had sufficient interest free/surplus funds to make the investments, accordingly, he directed the AO to delete the disallowance of interest of Rs8,32,101/- u/r 8D(2)(ii). However, so far as disallowance of indirect expenditure of Rs.6,15,327/-, is concerned he confirmed the said disallowance.

6. After considering the rival submissions and on perusal of the impugned orders as well as material placed before us, we find that, only issue before us is with regard to disallowance of indirect expenditure computed in accordance with Rule 8D(2)(iii), that is, after taking 0.5% of the average value of investments. Before us, the Ld. Counsel for the assessee submitted that out of the total investment shown as on 31<sup>st</sup> March, 2008 at Rs.12,80,66,601/-, the investments which are giving taxable income (that is, income from such investments are not exempt) are Rs.1,29,41,526/-; and strategic investments made for business purpose were at Rs.8,93,25,000/-. These investments he contended that, should be removed from the working of the average value of investments. Apart from the above he submitted that, further those investments which had not yielded or given tax free income during the year should also be removed from the working which were to the tune of Rs.1,34,50,000/-. He, thus, submitted the disallowance if at all should be restricted to Rs.1,11,702/- which will work out to under rule 8D(2)(iii) after removing those investments.

7. So far as the Ld. Counsel's plea that, investment which have yielded taxable income should be excluded from the working of the average value, we agree with such a contention because these investments have yielded taxable income, therefore, they are outside the purview Rule 8D(2)(iii) and cannot be part of average value of investments. Further so far as contention of the ld.

Counsel that, assessee has made strategic investment by way of business necessity in associated and subsidiary companies, we agree with him that same should not be part of the investment for the purpose of disallowance, because the said investment cannot be said to be made for the purpose of earning the exempt income but for business and strategic compulsions which falls within the realm of 'business purpose' and this view has been upheld by the Tribunal in various decisions including that of Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs. CIT (ITA NO. 749/2014 dated 2.09.2015). Thus, we direct the AO to also exclude the strategic investment made in subsidiary companies for the purpose of working the disallowance of value of the investment.

8. However, so far as other contention that the investments which has not yielded dividend or tax free income during the year should only be included, we are unable to accept the Ld. Counsel's contention with regard to Rule 8D(2)(iii) which lays down that, "*an amount equal to ½% of the average value of the 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*" shall be taken. What is required to be seen is, whether the income from the investment which "*does not*" or "*shall not*" form part of the income. The phrase "*does not*" conveys something done or to be done in present, that is, 'income during the year'; and "*shall not*" conveys something about in future, a strong assertion or intention, that is, 'not earned income in future'. Hence in our opinion, the phrase "*shall not*"

covers a situation where income earned in future or whenever it is earned, then it shall not form part of the total income at any time. Thus, this contention of the assessee *prima facie* does not appear to be in correct interpretation or in line with the Rule 8D(2)(iii). Thus, we direct the AO only to remove the investments which are giving taxable income and also the strategic investment from the working of average value of investments and from the balance, he should compute the disallowance as per Rule 8D (2)(iii). With these observations, grounds raised by the assessee are partly allowed.

10. In the result, appeal of the assessee stands partly allowed.

11. Now, we will take up assessee's appeals in ITAs No.3486 of 2013 and 1517 of 2014 respectively for AYs 2009-10 and 2010-11 respectively.

12. It has been admitted by both the parties that, grounds raised in the impugned appeals are similar to the grounds raised in the aforesaid appeal which we have already decided after due deliberation by this order in the assessee's appeal for AY 2008-09. Accordingly, our finding given therein will apply *mutatis mutandis* on the impugned issues as similar facts are permeating in these years also, therefore, we direct the AO to work out the disallowance on similar lines following our conclusion and direction in the said appeal. Thus, the issues raised in both the appeals are treated as partly allowed.

यूनाइटेड शिप्पर्स लिमिटेड  
M/s United Shippers Ltd.  
ITA No. : 7529/Mum/2014  
ITA No. : 3486/Mum/2013  
ITA No. : 1517/Mum/2014

13. In the result, both the appeals of the assessee are partly allowed.

To sum-up:

All the appeals of the assessee are partly allowed.

Order pronounced in the open court on 20<sup>th</sup> July, 2016.

**Sd/-**  
(अशवनी तनेजा)  
लेखा सदस्य  
**(ASHWANI TANEJA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
(अमित शुक्ला)  
न्याईक सदस्य  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Mumbai, Date: 20<sup>th</sup> July, 2016**

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
  - 2) प्रत्यर्थी /The Respondent.
  - 3) The CIT -15, Mumbai.
  - 4) The CIT-IV, Mumbai
  - 5) विभागीय प्रतिनिधि "एफ", आयकर अपीलीय अधिकरण, मुंबई/  
The D.R. "F" Bench, Mumbai.
  - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

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आयकर अपीलीय अधिकरण, मुंबई  
Dy./Asstt. Registrar  
I.T.A.T., Mumbai

\*चव्हान व.नि.स

\*Chavan, Sr.PS