

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI

Before Shri Saktijit Dey, JM & Shri Manoj Kumar Aggarwal, AM

ITA No. 1583/Mum/2015
Assessment Year 2009-10

| | | |
|--|-----|---------------------|
| Sea Linkers Pvt. Ltd. B P T Plot No.107, Quay Street, Darukhana, Mumbai – 400 010 | Vs. | ACIT 7(2) Mumbai |
| PAN AAHCS5084N (Appellant) | | (Respondent) |

Appellant By : Shri Deepak Tralshawala
Respondent By : Dr. A K Nayak

Date of Hearing :24.04.2017

Date of Pronouncement : 03.05.2017

ORDER

Per Saktijit Dey, Judicial Member:

This is an appeal by the assessee against the order dated 27.01.2015 of learned CIT(A)-14, Mumbai, for A.Y. 2009-10.

2. The only issue arising for consideration in this appeal is disallowance of ₹.8,20,131/- made by the AO u/s. 14A of the Act and sustained by the CIT(A).

3. Briefly stated, the assessee, a company, is engaged in manufacture and trading in wire ropes, chain pulley block, lifting appliances, polypropylene ropes etc. During the assessment proceedings, the AO noticed that, in the relevant previous year, the assessee has received exempt income by way of

dividend and Long term capital gain amounting to ₹.10,48,889/- and ₹.4,95,250/- respectively, whereas, it has not disallowed any expenditure towards earning of exempt income, called upon the assessee to explain why disallowance u/s. 14A read with Rule 8D should not be made. In response, it was submitted by the assessee that, since it was having sufficient interest free funds available with it to make the investment in shares and mutual funds, no disallowance of interest expenditure can be made. It was further submitted, since the entire investment activity was routed through Citibank, who do not charge any fees, there is no administrative expenditure incurred by the assessee. Therefore, no disallowance u/s. 14A read with Rule 8D should be made. The AO however, did not find any merit in the submissions of the assessee. The AO observed that as per the decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Co. Ltd. 328 ITR 81, disallowance u/s. 14A has to be made by applying Rule 8D. He further observed that the assessee has not been able to prove that interest bearing funds were not utilized for making investments. The AO observed, since the assessee is maintaining a substantial portfolio of investments in shares and mutual funds and it has debited all the expenses in a common pool relating to its business, it is not possible to find out the exact expenditure attributable to earning of exempt income. With the aforesaid observation, the AO proceeded to compute the disallowance as provided

under Rule 8D. Accordingly, he disallowance an amount of ₹.7,21,303 towards interest expenditure under Rule 8D(2)(ii) and ₹.98,828/- towards administrative expenditure under Rule 8D(2)(iii). Thus, the total disallowance made by the AO u/s. 14A read with Rule 8D amounted to ₹.8,20,131/-. Though the assessee challenged the disallowance before the first appellate authority he also confirmed the disallowance made.

4. The learned AR reiterating the stand taken before the first appellate authority submitted that, during the relevant previous year, the assessee had sufficient interest free fund available with it to make investment in exempt income yielding assets. In this context, the learned AR drew our attention to the balance sheet of the assessee as at 31.03.2009. The learned AR submitted, out of the total investments of ₹.2.49 crores in shares and mutual funds, fresh investments made during the previous year was to the tune of ₹.1.54 crores. He submitted as against the investment made by the assessee it had total interest free fund of ₹.10.32 crores. Therefore, no disallowance of interest expenditure can be made. In support of such contention, he relied upon the following decisions:

- CIT vs. Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Bom)
- CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom)
- HDFC Bank Ltd. vs. DCIT (2016) 383 ITR 529 (Bom)

As far as disallowance of administrative expenditure is concerned, the learned AR relied upon the submissions made before the first appellate authority to

contend that since the entire investment activity is routed through Citibank, which does not charge any fees for such activity, there is no administrative expenditure on account of investment activity carried out by the assessee. Therefore, no disallowance of administrative expenditure can be made.

5. The learned DR relying upon the observations of the CIT(A) and the AO submitted that the assessee having failed to demonstrate before the departmental authorities that the investment in shares and mutual funds were out of the interest free funds available with the assessee, it cannot be accepted that interest bearing funds were not utilized in investment activities.

6. The learned DR submitted as far as administrative expenditure is concerned, it cannot be said that the assessee has not incurred any expenditure on account of investment activities.

7. We have considered the submissions of the parties and perused the materials on record, in the light of the decisions relied upon. As far as disallowance of interest expenditure under Rule 8D(2)(ii) is concerned, it is noted by us that as per the balance sheet of the assessee as at 31.03.2009 it had interest free fund by way of share capital and reserves & surplus amounting to ₹.10,32,33,947/- as against total investments of ₹.2,49,88,674/. Thus, as could be seen, interest free fund available with the assessee is far in excess of the investments made. In fact, the CIT(A) himself in his order has not disputed the availability of surplus interest free funds with the assessee.

The only reason for which assessee's claim has been rejected is it has failed to establish a nexus between the interest free fund and the investment made. In our view, as per the principle laid down in the decisions referred to above, once the assessee is having sufficient interest free fund available with him, the presumption could be the exempt income yielding investments were made out of such interest free funds available with the assessee. Thus, applying the principle laid down by the Hon'ble Jurisdictional High Court in the decisions referred to above, disallowance of interest expenditure under Rule 8D(2)(ii) is not sustainable. Accordingly, we delete the same.

8. As far as disallowance of administrative expenditure under Rule 8D(2)(iii) is concerned, we have noticed that the total investments made in shares and mutual funds as appearing in the balance sheet as on 31.03.2009 stood at ₹.2,49,88,674/-. It is also noticed, the assessee has made investment in a number of shares and mutual funds and looking at the volume of investments made by the assessee in shares and mutual funds, it is little hard to believe that the assessee is not incurring any expenditure by way of salary cost, office rent and other miscellaneous expenditure attributable to investment activities. At the same time, the AO as per the mandate of section 14(2) read with Rule 8D(2)(i) has to record a satisfaction that the claim of the assessee is incorrect, having regard to its books of account. Even before the CIT(A), though, the assessee has made a specific

submission that employee of the bank is looking after the investment activities and the assessee is not bearing any cost, he has not given any finding on the issue. Therefore, on overall consideration of facts and materials on record, we are inclined to restore the issue relating to disallowance of administrative expenditure under Rule 8D(2)(iii) to the file of the AO for fresh adjudication, after affording due opportunity of being heard to the assessee. The grounds raised are partly allowed.

9. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on 3rd day of May 2017.

Sd/-
(Manoj Kumar Aggarwal)
ACCOUNTANT MEMBER

Sd/-
(Saktijit Dey)
JUDICIAL MEMBER

Mumbai; Dated : 3rd May, 2017

SA

.

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai
4. The CIT
5. DR, 'E' Bench, ITAT, Mumbai

//True Copy//

BY ORDER,

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai