



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI NABIN KUMAR PRADHAN, ACCOUNTANT MEMBER

ITA no.1703/Mum./2012
(Assessment Year : 2007-08)

Shri Dharmasinh M. Popat
C/o M/s. Mulla & Mulla & Criagie
Blunt & Caroe, Mulla & Mulla House
51, M.G. Road, Fort, Mumbai 400 001
PAN – AAMPP3239N

..... Appellant

v/s

Income Tax Officer
Ward-11(2)(3), Mumbai

..... Respondent

Assessee by : Shri Mihir Shah
Revenue by : Shri B.S. Bist

Date of Hearing – 03.08.2016

Date of Order – 12.08.2016

ORDER

PER SAKTIJIT DEY, J.M.

Instant appeal by the assessee is directed against the order dated 31st January 2012, passed by the learned Commissioner (Appeals)-3, Mumbai, for the assessment year 2007-08.

2. The only issue arising for consideration in this appeal is disallowance made under section 14A of the Income Tax Act, 1961 (for short "the Act") r/w rule 8D of I.T. Rules, 1963.

3. Brief facts are, assessee an individual is an advocate and solicitor by profession. For the assessment year under consideration, assessee filed his return of income on 15th October 2007, declaring total income of ₹ 12,79,670. During the assessment proceedings, the Assessing Officer noticed that the assessee during the relevant previous year, has earned exempt income by way of dividend and share income from a partnership firm. He, therefore, was of the view that part of expenditures claimed by the assessee being attributable to earning of exempt income has to be disallowed in terms of provisions of section 14A r/w rule 8D. After considering the objection of the assessee, the Assessing Officer computed disallowance under section 14A by applying rule 8D(2) of the Act which he quantified at ₹ 8,91,844. Being aggrieved of the disallowance, assessee preferred appeal before the learned Commissioner (Appeals).

4. Learned Commissioner (Appeals), however, upheld the disallowance by holding that the expenditure claimed by the assessee being direct expenditure are disallowable under rule 8D. The learned Authorised Representative submitted, rule 8D being applicable for assessment year 2008-09, will not apply to the impugned assessment year, hence, disallowance made by applying rule 8D is not legally sustainable in view of the decision of the Hon'ble Jurisdictional High Court in *Godrej & Boyce Mfg. Co. Ltd. v/s DCIT*, [2010], 328 ITR 081

(Bom.). Learned Authorised Representative also relied upon the decision of the Tribunal, Mumbai Bench, in assessee's own case for assessment year 2004-05 and 2005-06, ITA no.27 and 20/Mum./2011 dated 16th May 2013, wherein the Tribunal upheld the direction of the learned Commissioner (Appeals) to re-adjudicate the disallowance under section 14A in the light of the decision of the Hon'ble Jurisdictional High Court in Godrej & Boyce Mfg. Co. Ltd. (supra). He, therefore, submitted the matter may be restored back to the file of the Assessing Officer with similar direction.

5. Learned Departmental Representative has no objection for restoring the matter back to the file of the Assessing Officer for deciding in accordance with the decision of the Hon'ble Jurisdictional High Court in Godrej & Boyce Mfg. Co. Ltd. (supra).

6. We have considered the submissions of the parties and perused the material available on record. The only dispute in the present appeal relates to disallowance of expenditure in relation to earning of exempt income. Undisputedly, the Assessing Officer has computed the disallowance under section 14A by applying rule 8D. However, as held by Hon'ble Jurisdictional High Court in Godrej & Boyce Mfg. Co. Ltd. (supra), rule 8D is applicable only from assessment year 2008-09, hence, could not have been resorted to for making disallowance in the

impugned assessment year. We have also noted that in assessment year 2004-05 and 2005-06 in assessee's own case, the Tribunal has directed the Assessing Officer to compute disallowance under section 14A by adopting a reasonable basis in the light of the decision of the Hon'ble Jurisdictional High Court in Godrej & Boyce Mfg. Co. Ltd. (supra). Keeping in view the aforesaid facts, we are inclined to restore the issue back to the file of the Assessing Officer for deciding the issue afresh keeping in view the direction of the Tribunal in earlier years and in terms of the principle laid down by the Hon'ble Jurisdictional High Court in Godrej & Boyce Mfg. Co. Ltd. (supra).

7. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open Court on 12.08.2016

Sd/-
NABIN KUMAR PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 12.08.2016

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai