

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ , मुंबई ।

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

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND

SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं /I.TA No.3089/Mum/2013

(निर्धारण वर्ष / Assessment Year:2008-09

M/s. Toshvin Analytical Pvt. Ltd., 103 SJ House, 1 st Floor, Sitaram Mills Compound, N.M. Joshi Marg, Lower Parel, Mumbai-400 011	बनाम/ Vs.	The DCIT 1(3), Aayakar Bhavan, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCT 4482D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर से/ Appellant by:		Shri Mihir Naniwadekar
प्रत्यर्थी की ओर से/ Respondent by:		Shri Sunil Kumar Agarwal

सुनवाई की तारीख / Date of Hearing :08.08.2016

घोषणा की तारीख /Date of Pronouncement :12.08.2016

आदेश / ORDER

PER C.N. PRASAD, JM:

This appeal is filed by the assessee against the order of the Ld. CIT(A)-7, Mumbai dated 27.12.2012 pertaining to assessment year 2008-09.

2. The only issue in the appeal of the assessee is that the Ld. CIT(A) erred in sustaining disallowance u/s. 14A r.w. Rule 8D of the Act.

3. The Assessing Officer while completing the assessment noticed that assessee earned exempt income of Rs. 16,06,621/- as dividend income. The Assessing Officer applying Rule 8D r.w. Section 14A and arrived at the amount of disallowance to be made at Rs. 16,58,130/- and since the assessee himself disallowed Rs. 84,487/- towards expenditure attributable for earning dividend income, he restricted the disallowance to balance amount of Rs. 15,73,643/- u/s. 14A of the Act.

4. The assessee preferred an appeal before the Ld. CIT(A) contending that the Assessing Officer has not recorded any dissatisfaction with reference to the accounts of the assessee in arriving at the disallowance made by the assessee towards expenses attributable for earning dividend income. It was further contended that the Assessing Officer has not given any valid reasons for not accepting the expenditure disallowed by the assessee for earning exempt income therefore no disallowance is required to be made under section 14A. It was further contended before the Ld. CIT(A) that in any case the available surplus/reserves are much more than the investments made by the assessee during the Assessment Year, therefore no disallowance is warranted u/s 14A of the Act. However, the Ld. CIT(A) having agreed the contention of the assessee that Assessing Officer has not assigned any reasons for rejecting the assessee's estimation of expenditure for earning exempt income still he sustained the order of the Assessing Officer observing that assessee has made investments much more than the available funds.

5. The Ld. Counsel for the assessee reiterated the submissions made before the lower authorities. Further, referring to page-3 of the

Ld. CIT(A)'s order, the Ld. Counsel for the assessee submits that for the Assessment Year under consideration, the available surplus/own funds are stood at Rs. 11,76,24,026/- as against the investments made during the Assessment Year at Rs. 9,70,14,760/-. Therefore he submits that the observation of the Ld. CIT(A) that investments made are more than the funds available is not correct. The Ld. Counsel for the assessee further invited our attention to the order of the Ld. CIT(A) for the subsequent Assessment Year 2009-10 and submits that the Ld. CIT(A) restored the issue to the file of the Assessing Officer for verification as to whether the investments were made out of accumulated funds or not and in case such investments are made out of accumulated funds, no disallowance is required to be made. Therefore, he prays that similar direction may be given for this Assessment Year also. He also places reliance on the decision of Hon'ble Bombay High Court in the case of HDFC Bank Ltd Vs DCIT (383 ITR 529) for the proposition that if there are sufficient accumulated funds and assessee makes investments, even if there were some borrowings, the presumption is that the investments are made out of own funds only and not from the borrowed funds and in such circumstances, disallowance u/s. 14A is not warranted.

6. The Ld. Departmental Representative placed reliance on the orders of the authorities below.

7. We have heard the rival submissions and perused the orders of the authorities below. In this case, apparently, the Assessing Officer has not recorded any dissatisfaction with reference to the maintenance of accounts and the expenses disallowed by the assessee for earning exempt income. The Assessing Officer has not

recorded any reasons for not accepting the expenditure disallowed by the assessee for earning exempt income. On a perusal of the Ld. CIT(A)'s order, we also noticed that the funds available with the assessee are much more than the investments made during this Assessment Year. Therefore, in view of the submissions made before the Ld. CIT(A) that the funds available with the assessee are much more than the investments made by the assessee, we restore this issue to the file of the Assessing Officer with a direction to verify as to whether the funds available with the assessee are more than the investments and in case the available funds are more than the investments, no disallowance is required to be made u/s. 14A r.w. Rule 8D(2)(ii) in view of the decision of the Jurisdictional High Court in the case of HDFC Bank (supra). Therefore, we direct the Assessing Officer to decide the issue in the light of the decision of the Jurisdictional High Court in the case of HDFC Bank Ltd Vs DCIT (383 ITR 529). In so far as the disallowance u/s. Rule 8D(2)(iii) is concerned, the Assessing Officer is directed to recompute the disallowance by excluding the investments which do not yield any exempt income while arriving at the average value of investments after giving adequate opportunity to the assessee.

7. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 12th August, 2016.

Sd/-

(RAMIT KOCHAR)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(C.N. PRASAD)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 12th August, 2016

व.नि.स./ Rj , Sr. PS

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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai