

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

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

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.1231/Mum/2014

(निर्धारण वर्ष / Assessment Year : 2010-11)

M/s Lee & Muirhead Pvt. Ltd., Oricon House, 2 nd floor, 12-K, Dubhash Marg, Fort, Mumbai - 400 023.	बनाम/ v.	Deputy Commissioner of Income Tax - Range 2(2), Room No. 548, 5 th floor, Aayakar Bhavan, Mumbai 400 020.
स्थायी लेखा सं./PAN : AAACL0918M		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by	Ms. Aarti Vissanji
Revenue by :	Shri A. Ramachandran

सुनवाई की तारीख / **Date of Hearing** : 14-6-2016

घोषणा की तारीख / **Date of Pronouncement** : 08-09-2016

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee company, being ITA No. 1231/Mum/2014, is directed against the appellate order dated 27th December, 2013 passed by learned Commissioner of Income Tax (Appeals)- 5, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2010-11, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 15th February, 2013 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income Tax Act, 1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee company in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") read as under:-

"1. The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance u/s.14A amounting to Rs. 9,26,019/- worked out as per Rule 8D. Your appellants submit that the disallowance is unwarranted and the same ought to be deleted.

Without prejudice to the above, your appellants submit that the disallowance is excessive and ought to be reduced substantially."

3. The brief facts of the case are that the assessee is recognized customer house agent engaged in the business of rendering services of the clearing and forwarding business. During the year under consideration, it was observed by the AO that the assessee has earned dividend income of Rs. 1,50,33,481/- which was claimed as exempt u/s 10 of the Act. From the P&L account the A.O. observed that the assessee's investment as on 31st March 2010 was Rs. 15,52,80,656/-. Since the assessee has earned exempt income, the A.O. applied section 14A of the Act read with Rule 8D of Income Tax Rules, 1962 and disallowed an amount of Rs. 10,10,669/-. The assessee during the course of assessment proceedings u/s. 143(3) of the Act submitted that the assessee is engaged in the business of rendering services as clearing and forwarding agents. The assessee has made investments in units of Liquid Mutual Funds. The assessee submitted that the investment activity was only incidental to the main activities of the assessee and there was no business of investments or share trading. The assessee had made investment out of its surplus funds and there were no borrowings made for the said investments, hence, interest expenditure cannot be attributable to the earning of exempt income. The assessee submitted that it has huge amount of accumulated reserves as at 31st March, 2010 of Rs. 61,32,10,811/- while as on 31st March 2009 the accumulated reserves were at Rs. 58,49,44,840/-. The assessee submitted that investment in Mutual Funds is Rs 15,31,55,660/- as on 31-

03-2010 which was much less than accumulated reserves. The profit after tax for the year was Rs. 5,20,63,839/-. It was submitted that the assessee has invested only the surplus funds and has not borrowed any funds for the purpose of investments which is clear from the above details. The investments are made from the surplus funds available with the assessee and no finance cost, i.e. interest expense was incurred for the same. It was submitted that the income earned by way of dividend was directly credited through ECS to the assessee's bank account and no expenses were incurred for realizing the dividend income. The assessee has earned tax free dividend income from mutual funds amounting to Rs. 1,50,33,481/- during the year. The assessee submitted that the ratio of the decision of Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Co. Ltd.(2010) 328 ITR 81(Bom. HC) is not applicable to the assessee's case as there is no nexus between the investments made in the Mutual Funds the income from which is exempt and the expenditure incurred as all the investments were made by the assessee out of assessee's own funds. No interest was paid for the purposes of earning exempt income. The assessee submitted that there was redemption of investments during the year and the investments in Mutual Funds as on 31-03-2010 was Rs.15,31,55,660/- as against Rs.21,30,01,868/- as on 31-03-2009. The assessee explained the details of interest paid during the year which is as under:-

S No.	Particulars	Amount (Rs)
1	CC A/c with Corporation Bank	4,14,218/-
2	DHL Lemuir Logistics Pvt. Ltd.	1,19,257
3	Delayed Payment of Service Tax	1,543/-
4	Interest to others	4,351/-
5	Vehicle Loans	33,307/-
	Total	5,72,676/-

Hence, it was submitted by the assessee before the AO that no disallowance can be made u/s 14A of the Act towards interest expenses as interest

expenses were incurred for business purposes. The assessee submitted that no administrative expenses were incurred for the purpose of earning the exempt income as there was no nexus with the earning of exempt income and the expenses incurred. It was submitted that the AO is required to prove that the expenditure has been incurred towards earning of exempt income. The assessee submitted that no expenditure has been incurred for earning exempt income.

The A.O. rejected the contentions of the assessee and held that the assessee has incurred interest expenditure of Rs. 5,72,676/- which is towards mixed activity of business and tax free investment . The AO relied upon decision of Hon'ble Bombay High Court in the case of Godrej and Boyce Manufacturing Company Limited in ITA No. 626 of 2010 wherein Hon'ble Bombay High Court held that even if the assessee has utilized its own funds for making investments which had resulted in exempt income but still the disallowance of expenditure incurred in the earning of exempt income is to be made. The AO accordingly worked out the disallowance of Rs. 10,10,669/- u/s 14-A read with Rules 8-D of the Income tax Rules, 1962 vide assessment order dated 15-02-2013 passed by the AO u/s 143(3) of the Act.

4. Aggrieved by the assessment order dated 15-02-2013 passed by the AO u/s. 143(3) of the Act, the assessee filed appeal with the learned CIT(A) and reiterated the submissions as were made before the AO. The additions made by the AO of Rs. 84,650/- u/s 14A of the Act read with Rule 8D(2)(ii) of Income Tax Rules, 1962 was deleted by the learned CIT(A) on the grounds that the assessee has its own surplus funds which are far in excess of the investments in Mutual Funds made by the assessee as set out above. The learned CIT(A) sustained the additions made by the AO u/s 14A of the Act read with Rule 8D(2)(iii) of Income Tax Rules, 1962 of Rs.9,26,018/- on account of administrative and other indirect costs which was considered by

learned CIT(A) to be reasonable administrative and other indirect costs which needed to be disallowed and accordingly by applying Rule 8-D(2)(iii) of Income Tax Rules, 1962 read with Section 14A of the Act, 0.5% of the average investments for such administrative and other indirect expenses was worked out which comes to Rs. 9,26,018/- and the said disallowance was sustained by the learned CIT(A). Thus, out of the total disallowance of Rs. 10,10,669/- , the addition to the extent of Rs. 9,26,018/- on account of administrative and other indirect expenses was confirmed by learned CIT(A) and the assessee got relief of Rs. 84,650/- vide appellate order dated 27.12.2013 passed by learned CIT(A).

5. Aggrieved by the appellate order dated 27.12.2013 passed by the ld. CIT(A), the assessee is in second appeal before the Tribunal.

6. The ld. Counsel for the assessee, at the outset, submitted that the issue is covered by the decision of the Tribunal in assessee's own case vide common orders dated 15-02-2016 in ITA No. 7435/Mum/2011 and ITA No. 7849/Mum/2011 both for the assessment year 2008-09 and ITA No. 6518/Mum/2012 for the assessment year 2009-10 whereby disallowance made by the authorities below by applying Rule 8D(2)(iii) of Income Tax Rules, 1962 read with Section 14A of the Act was reduced by the Tribunal from Rs.14,61,622/- to Rs. 6,61,622/- for the assessment year 2008-09. Similar relief was granted by the Tribunal for the assessment year 2009-10. The ld. Counsel drew our attention to the paper book page No. 22, 25 & 26 which consists of part of audited financial statement of the assessee whereby all the details of investments were shown which are mostly in mutual funds to the tune of Rs. 153,155,660/- and in shares, securities and capital gains bonds to the tune of Rs. 2,124,996/-. The ld. Counsel also drew our attention to the various expenses incurred towards personal costs and administrative expenses and contended that the A.O. has erred in making the addition under

Rule 8D(2)(iii) of the Income Tax Rules, 1962 read with Section 14A of the Act as none of the expenses incurred by the assessee were attributable to the earning of exempt income.

7. The ld. D.R., on the other hand, relied upon the orders of authorities below.

8. We have considered the rival contentions and also perused the material placed on record including the Tribunal orders. We have observed that the assessee has made investment to the tune of Rs. 155,280,656/- as on 31st March 2010 and in the preceding year to the tune of Rs. 215,126,864/-. The ld. Counsel drew our attention to the paper book pages 22, 25 and 26 which consists of audited financial statement and contended that the assessee has not incurred any expenses towards earning of exempt income. We find that the assessee is engaged in the business of rendering services as clearing and forwarding agents. In our considered view the disallowance under Rule 8D(2)(iii) of Income Tax Rules, 1962 read with Section 14A of the Act can be made having regard to the accounts of the assessee as per the mandate of Section 14A(2) of the Act and it cannot be applied straight-away without having regard to the accounts of the assessee. The assessee has not submitted any details of the expenses incurred and claimed that no expenditure has been incurred which could be attributable to the earning of exempt income. The assessee has incurred expenses of Rs. 8.31 crores towards personnel costs and Rs. 10.05 crores towards administrative expenses which needed to be scrutinized by the authorities to compute indirect expenses which were incurred for earning the exempt income for which onus is on the assessee to submit the details before the authorities. In our considered view, the matter needs to be set aside and restored to the file of the A.O. for de-novo determination of the administrative and other indirect expenses to be disallowed u/s 14A of the Act and accordingly we set aside

matter to the file of the A.O. who is directed to work out the reasonable disallowance towards indirect expenses incurred for earning exempt income having regards to the accounts of the assessee . The assessee is directed to produce before the A.O. all necessary and relevant details for computing the disallowance of indirect and administrative expenses u/s. 14A of the Act having regard to the accounts of the assessee and in the absence thereof , if the AO is not satisfied then invocation of Rule 8D(2)(iii) of Income Tax Rules, 1962 read with Section 14A of the Act for computing disallowance of administrative and other indirect expenses u/s 14A of the Act will be justified. While passing the order, the A.O. shall consider the aforesaid Tribunal orders dated 15th February, 2016 (supra) and determine the issue de novo after giving reasonable opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law .We order accordingly.

9. In the result, appeal filed by the assessee in ITA No. 1231/Mum/2014 for the assessment year 2010-11 is allowed for statistical purpose.

Order pronounced in the open court on 8th September, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 08-09-2016 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 08-09-2016

I

व.नि.स./ R.K., Ex. Sr. PS

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "A" Bench
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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