

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH
KOLKATA**

Before : **Shri M.Balaganesh, Accountant Member and
Shri S.S.Viswanethra Ravi, Judicial Member**

**ITA No. 2435/Kol/2013
A.Y 2009-10**

M/s. Ragini Finance Limited Vs. I.T.O Ward 4(1), Kolkata
PAN: AABCR 2321R [Appellant] [Respondent]

Appellant by : Shri Kalyan Acharya Bhaduri, AR
Respondent by : Shri Dinabandhu Naskar, Addl.CIT, DR

Date of Hearing : 06-10-2016
Date of Pronouncement : 25-11-2016

ORDER

Shri S.S.Viswanethra Ravi, JM:

This appeal by the assessee is directed against the order dated 24-06-2013 passed by the Commissioner of Income Tax(Appeals)-IV, Kolkata for the assessment year 2009-10.

2. The only issue in this appeal of assessee is to be decided is as to whether the CIT-A justified in confirming the addition made by the AO to an extent of Rs.11,94,800/- under Rule 8D of Income Tax Rules,1962 *for short "Rules" hereafter* r/w Sec 14A of the Act in the facts and circumstances of the case.

3. The facts of the case are that the assessee is a non-banking financial company *for short "NBFC" hereafter* and engaged in the business of capital gain and deriving its income from other sources. The assessee filed its return of income on 26-09-2009. Under scrutiny, notice u/s. 143(2) of the Act was issued. In response, the assessee produced relevant books of account and other documents.

4. During such proceedings the AO found that the assessee earned dividend income to an extent of Rs.1.25 crores. The assessee while claiming such income as exempt disallowed an amount of Rs.1,00,335/-on its own as expenditure incurred towards earning of such dividend income. The AO applied Rule 8D(2) of the Rules for the purpose of calculation of disallowance of expenses u/s. 14A of the Act attributable to in earning of exempt income as under:-

1.	Expenses directly attributable to earning of exempt income (STT already disallowed)	Rs.99,335/-
	Depository charges	Rs. 5,886/-
2.	A. Interest paid debited to P & L A/c Rs. 9,23,939/-	
	B. Average Investments Rs.21,75,97,507/-	
	C. Average Assets Rs.24,96,55,542/-	
	$\frac{A \times B}{C}$	Rs. 8,05,297
3.	0.5% Average Investment	Rs.10,87,987/-
	Total (1+2+3)	Rs.18,99,170
	Limited to the total expenses claimed by the assessee	Rs.11,94,800/-

5. By the above, the AO determined the expenses that would have been incurred by the Assessee by computing the same by applying the method as contemplated in Rule 8D(2)(i),(ii)and (iii) to an extent of Rs.11,94,800/-. Aggrieved by such order of the AO, the assessee preferred an appeal before the CIT-A.

6. Before the CIT-A the assessee contended that the AO did not dispute the correctness of calculation or disallowance of expenditure as made by the assessee on its own and without recording the reasons, he rejected the calculation of expenses as submitted by the assessee and disallowed the impugned addition by applying Rule 8D(2) of the Rules. The assessee further submitted that that there was no common interest expenses attributable to exempt and non exempt income. The assessee further submitted that when the assessee disallows the expenses on its own then provision of Rule 8D(2) of the Rules does not apply automatically, unless the AO records his satisfaction under Rule 8D(1) of the Rules and computation of expenses under Rule 8D(2) does not arise. Before him the Ld. A/R of the assessee has

relied on the decision of Kolkata Tribunal in the case of Champion Commercial Co. Ltd Vs. ACIT, Kolkata in ITA No. 644/Kol/2012 for the AY 2008-09, wherein it held that the disallowance made by the AO by applying Rule 8D is liable to be set aside and assessee's calculation for disallowance should be upheld.

7. The CIT-A was of the opinion that the decisions with regard to investments are very much complex and such decisions on the investment can only be taken by the Board of Directors and such meetings incurs some administrative expenses, besides, investment requires substantial market research, day to day analysis of market trends in order to acquire retention and sale of shares and mutual funds. The CIT-A was not satisfied with the disallowance made towards administrative and establishment expenses to an extent of Rs.4114/- as disallowed by the assessee on its own. He found that the order of the AO is correct in respect of invoking of provision of section 14A (2) of the Act and computation thereon by applying the Rule 8D(2) and confirmed the disallowance made by the AO.

8. The assessee is in challenge before us against the impugned order of the CIT-A.

9. Before us the Ld.AR submits that the assessee derives its income not only from investment, but also from other sources and further submits that the assessee earned interest income of Rs.26,88,674/- from Fixed Deposits and paid interest to an extent of Rs. 9,23,949/- only and argued that the said payment of interest is only attributable to income, which is not exempt. He further submits that the assessee made investments from own funds to an extent of Rs.21,54,78,206/- and argued that the assessee has own surplus fund of Rs.23,29,52,776/- more than the investment and the Mutual Funds and debentures are also covered in such investments on which no exempt income was earned. The Ld. AR argued that the AO without examining the accounts of the assessee in respect of correctness of such

account and without giving any cogent reasons whatsoever for rejection of such accounts as produced by the Assessee mechanically made applicable under rule 8D(2) of the Rules. In support of his contention, relied on the decision of Tribunal in the case of The Laxmi Salt Co.Ltd Vs. ITO, Kolkata in ITA No. 2435/Kol/2013 for the AY 2009-10 and urged to set aside the impugned order of the CIT-A.

10. On the contrary, the Ld.DR argued that the AO recorded his satisfaction and the same was considered by the CIT-A in his order and referred to para no-2 of page 6 of the impugned order of the CIT-A.

11. Heard rival submissions and perused the material available on record. We find that the submissions of the Ld.AR was same as made before the CIT-A and before us in respect of recording of satisfaction of the AO ought to have conducted under Rule 8D(1). The sub section (2) of Section 14A empowers the AO to determine the amount of expenditure said to have been incurred in earning of exempt income as prescribed under Rule 8D Rules. Rule 8D(1) explains that the Assessing Officer shall have to examine the conditions as provided in (a) and (b) of Rule 8D(1). Therefore, the option left to him whether to accept the correctness of the claims of the assessee or to reject the same by giving cogent reasons therewith. In the present case, the assessee disallowed the expenditure consisting of administrative expenses of Rs.1,96,153/- and Rs.10,000/- towards depository charges, printing & stationery and staff cost on its own on account of actual direct expenses as provided at page no's 1&2 of paper book. We find that there was no satisfaction as recorded by the AO with regard to the claims of assessee under rule 8D(1) of Rules.

12. The decision of the Co-ordinate Bench as relied on by the Ld.AR *in the case of The Laxmi Salt Co.Ltd supra* at para no-6 held that any expenditure directly attributable to earning exempt income satisfies Rule 8D(i) of the Rules. The Tribunal deleted the addition made specifically in respect of Rule

8D(2)(ii) by relying on the decision in the case of CIT vs. HDFC Bank Ltd reported in (2014) 366 ITR 0505 (Bom), wherein the Hon'ble Bombay High Court has held that no addition under Rule 8D(2)(ii) is maintainable, if assessee's capital, profit reserves, surplus and current account deposits are higher than the investment in tax free securities and it would have to be presumed that investments made would be out of interest free funds available. Further with regard to Rule 8D(iii), the Co-ordinate Bench held that the AO applied 0.5% of average investment mechanically without considering the disallowances made by the Assessee on its own. The relevant portion of the decision *supra* covering the facts and submissions of the Ld.AR in para's at 10 and 11 is reproduced herein below:

10. In COMMISSIONER OF INCOME TAX, CENTRAL-1, CALCUTTA Versus ASHISH JHUNJHUNWALA G.A No. 2990 of 2013, wherein the Hon'ble Jurisdictional High Court of Calcutta confirmed the following observations of this Tribunal in ITA No. 1809/Kol/2012:

"While rejecting the claim of the assessee with regard to expenditure or no expenditure, as the case may be, in relation to exempted income, the AO has to indicate cogent reasons for the same. From the facts of the present case, it is noticed that the AO has not considered the claim of the assessee and straight away embarked upon computing disallowance under Rule 8D of the Rules on presuming the 'average' value of investment at ½ % of the total value. In view of the above and respectfully following the coordinate bench decision in the case of J.K Investors (Bombay) Ltd., supra, we uphold the order of CIT(A) "

11. From the above discussion, we conclude that own funds of the assessee are sufficiently in excess of investment and the legal requirement of the AO to record the reasons for resorting to Section 14A of the Act read with Rule 8D of the Rules in this matter are conspicuously absent. Viewing from any angle, we are convinced that there is no justification for the authorities below to sustain disallowing a sum of Rs.8,87,670/- over and above which was added by the Assessee under section 14A of the Act read with Rule 8D of the Rules.

For these reasons, while answering this issue in the negative, we hold that the authorities below are not justified in disallowing a sum of Rs.8,87,670/- over and above which was added by the Assessee under section 14A of the Act read with Rule 8D of the Rules, and any addition on such score has to be deleted. We order accordingly."

13. From the assessment order, it is seen that there was no recording of reasons for applying of Rule 8D(2) of the Rules by the AO. The AO computed the expenditure under Rule 8D(2) to an extent of Rs.11,94,800/- by

applying the formula as prescribed therein, in other words, so mechanically which is not permissible. The submission of assessee as recorded by the CIT-A in his order clearly shows that surplus reserve funds of the assessee is more than investment and also that the assessee earned income on interest on fixed deposits is also more than the interest paid by the assessee, according to Ld.AR even the said payment of interest does not include the exempt income. It is also brought to our notice that the Hon'ble Jurisdictional High Court of Calcutta has upheld the decision of Kolkata Tribunal in the case of DCIT Vs. Ashish Jhunjhunwala. The principle as laid down in the aforementioned case is clearly applicable to the facts of the present case, In view of the same, we hold that the AO did not record his satisfaction in terms of Rule 8D(1) having regard to the accounts of the assessee as to how the claim of disallowance u/s. 14A made by the AO is incorrect, but instead automatically resorted to Rule 8D(2), which is bad in law, and, therefore, the order of the CIT-A is quashed in this regard and addition made thereon is deleted. Accordingly, the sole ground as raised by the Assessee is allowed.

14. In view of above discussion and respectfully following the decision of the Hon'ble High Court of Calcutta in the case of *CIT Vs ASHISH JHUNJHUNWALA* and as relied by the Tribunal in the case of *The Laxmi Salt Co.Ltd supra*, we allow the grounds raised by the assessee.

15. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 25th November, 2016

Sd/-
M. Balaganesh
Accountant Member

Sd/-
S.S.Viswanethra Ravi
Judicial Member

Dated 25-11-2016

Copy of the order forwarded to:

1. Appellant/Assessee: M/s. Ragini Finance Limited 21, Strand Road, Kolkata-700 001.
2. Respondent/Department : Income Tax Officer W 4(1) Aaykar, P-7, Chowringhee Square, Kolkata-700 069.
3. CIT,
4. CIT(A),
5. DR, Kolkata Benches, Kolkata

****PP/SPS** [True Copy]

By order,

Asstt Registrar