

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : B : NEW DELHI  
BEFORE SHRI R.S. SYAL, VICE PRESIDENT  
AND  
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.3898/Del/2014  
Assessment Year : 2009-10

Dhanuka Labs Ltd.,  
861-862, Joshi Road,  
Karol Bagh,  
New Delhi.

Vs. DCIT,  
Circle-10(1),  
New Delhi.

PAN: AAACD2877R

(Appellant)

(Respondent)

Assessee By : Shri Himanshu Gupta  
Department By : Shri Anshul Prakash, Sr. DR

Date of Hearing : 17.08.2017  
Date of Pronouncement : 18.08.2017

ORDER

PER R.S. SYAL, VP:

This appeal filed by the assessee arises out of the order passed by the CIT(A) on 02.05.2014 in relation to the assessment year 2009-10.

2. The only issue raised in this appeal is against the confirmation of disallowance made by the Assessing Officer u/s 14A of the Income-tax Act, 1961 (hereinafter also called 'the Act').

3. Briefly stated, the facts of the case are that the assessee is engaged in the business of manufacturing bulk drugs. It earned certain amount of dividend income during the year which was claimed as exempt. On being called upon to explain as to why no disallowance u/s 14A was made, the assessee tendered its reply which has been reproduced in the assessment order. Not satisfied, the Assessing Officer computed disallowance u/s 14A read with Rule 8D at Rs.56,15,000/- consisting of Rs.50.16 lac on account of interest under Rule 8D(2)(ii) and Rs.4.48 lac towards expenses @  $\frac{1}{2}$  % of the average value of investments under Rule 8D(2)(iii). The Id. CIT(A) reduced the amount of disallowance under clause (ii) of Rule 8D(2) to Rs.24,19,402/- and sustained the disallowance at Rs.4.48 lac under clause (iii) of Rule 8D(2). The assessee is aggrieved against sustenance of disallowance at such level.

4. We have heard both the sides and perused the relevant material on record. In so far as the disallowance under clause (ii) of Rule 8D(2) is concerned, we find that the assessee argued before the authorities that investment in shares was made out of its own funds. On a specific query, the ld. AR could not place on record the balance sheet of the assessee for showing the availability of shareholders' funds for the purposes of investment in securities yielding exempt income.

5. The Hon'ble Karnataka High Court in *CIT & Anr vs. Microlabs (2016) 383 ITR 490 (Kar)* has held that when investments are made from common pool and non-interest bearing funds are more than the investment in tax free securities, no disallowance of interest expenditure u/s 14A can be made. This view has been taken by following the judgments of the Hon'ble Bombay High Court in *CIT vs. HDFC Bank Ltd. (2014) 366 ITR 515 (Bom)*. It is further observed that this issue is no more *res integra* in view of the recent judgment delivered by the Hon'ble Supreme Court in

*Godrej & Boyce Manufacturing Company Ltd. vs. DCIT (2017) 394 ITR 449 (SC)*, in which it has been held that when interest free funds in the form of share capital and reserves are more than investment, then no disallowance of interest can be made u/s 14A. Since the necessary details demonstrating the availability of interest refunds in the form of share capital and reserves etc. are not available on record, we set aside the impugned order and restore the matter to the file of the Assessing Officer for deciding the component of disallowance, if any, under clause (ii) of section 8D(2) afresh in consonance with the decisions discussed hereinabove. Needless to say, the assessee will be allowed an adequate opportunity of hearing by the AO in such fresh proceedings.

6. As regards the sustenance of disallowance under clause (iii) of Rule 8D(2), we find the same to be fully justified. As such disallowance @ ½% of the average value of investments is required to be made in terms of Rule 8D, we, therefore,

uphold the sustenance of disallowance at Rs.4.48 lac. This part of the ground fails.

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

The order pronounced in the open court on 18.08.2017.

Sd/-

[K. NARASIMHA CHARY]  
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]  
VICE PRESIDENT

Dated, 18<sup>th</sup> August, 2017.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.