IN **THE INCOME TAX APPELLATE TRIBUNAL**
MUMBAI BENCHES "C", MUMBAI

Before Shri N K Saini, Accountant Member &
Shri Sanjay Garg, Judicial Member

ITA No.1514/Mum/2011 : Asst.Year 2007-2008

Practical Financial Services P. Ltd. 56 B, Mittal Tower, 210 Nariman Point, Mumbai- 400 021 PAN AAACP2852N	Vs.	The ACIT Cir. 4(2), Mumbai
(Appellant)		(Respondent)

Appellant By : Shri K Gopal
Respondent By : Shri Ravi Prakash

Date of Hearing : 05.02.2014		Date of Pronouncement :14.02.2014

O R D E R

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order of the CIT(A) dated 8.12.2010. The assessee is aggrieved by the confirmation of disallowances of Rs.1,59,082/- made by the Assessing Officer under section 14 A of Income Tax Act and expenditure of Rs. 3,90,587/- incurred on account of repair of tenanted premises, claimed by the assessee as revenue expenditure and treated by the Assessing Officer as capital in nature.

2. The assessee company is in the business of Share broking and Arbitrage. During the assessment proceedings, the AO noticed that the assessee had earned exempt income. However the assessee had not allocated

any expenditure incurred for earning of such tax free income. He therefore made the above said disallowance under section 14A of the Income Tax Act applying Rule 8D of the Income Tax Rules.

3. In the first appeal, the CIT(A) observed that Rule 8D was not applicable for the assessment year under consideration in view of the judgment of the Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT [(2010) 328 ITR 81 (Bom)] and that for the assessment years prior to assessment year 2008-09 disallowance was required to be made on reasonable basis. However, after making the above observations, he held that the disallowance made by the AO under Rule 8D was quite reasonable. He therefore confirmed said disallowance. The assessee is thus in appeal before us on this issue.

4. We have heard the learned representatives of both the parties and have also gone through the records on this issue. An identical issue came for consideration before the co-ordinate bench of the Tribunal in the case of “M/s. The Sirdar Carbonic & Gas Co. Ltd.” ITA No.7746/M/10 & 8001/M/10 decided on 29.11.13(present judicial member being party to that order), wherein the tribunal has observed as under:

> *“It may be observed that in the case of Godrej & Boyce Manufacturing Co. Ltd. (supra) the Hon'ble Bombay High Court has held that Rule 8D r.w.s. 14A(2) is not arbitrary or unreasonable but can be applied only if the assessee's method is not satisfactory. It has been further held that Rule 8D is not retrospective and applies from A.Y. 2008-09. For the years for which Rule 8D is not applicable and in the event of that the AO is not satisfied with the explanation/working given by the assessee, disallowance under section 14A has to be made on a reasonable basis. Almost similar view has been expressed by Hon'ble Delhi High Court in the case of 'Maxopp Investment Ltd. & Others' vs. CIT (247 ITR 162).*

> *15. We are not inclined to accept the reasoning of the CIT(A) that because of in his view, the mechanism provided under Rule 8D was reasonable hence the action of the AO in applying Rule 8D can be said to be justified. In fact, in view of the proposition of law laid down by the Hon'ble jurisdictional High Court, the AO was required to make the disallowance on some reasonable basis and not by applying Rule 8D. First to hold that the Rule 8D was not applicable for the assessment year then to confirm the disallowance made by the AO under Rule 8D, is in fact an act which is not in conformity with the proposition of law laid by the Hon'ble High Court. It may be observed that it is not a case where no exempt income was received by the assessee despite making investments for earning exempt income. It is also not the case of the Revenue that the exempt income earned by the assessee was very less or not in proportion to the investments made by the assessee for this purpose. Under such circumstances the different co-ordinate benches of this Tribunal have observed that in such cases certain percentage of exempt income can constitute a reasonable estimate for making disallowance for the years earlier to assessment year 2008-09. The Hon'ble Bombay High Court in the case of CIT vs. 'Godrej Aggravate Ltd.' (ITA No.934/2011) decided on 08.01.13 has upheld the order of the Tribunal directing the AO to restrict the disallowance to the extent of 2% of the total exempt income earned by the assessee.*
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> *16. Since in the case in hand also, it is not the case of the Revenue that the assessee has earned no income or very less income in comparison to investments made for earning exempt income, hence in our view it would be reasonable to restrict the disallowance to the extent of 2% of the exempt income earned by the assessee during the year. This issue is accordingly allowed in favour of the assessee."*

5. In present case also, it is not the case of the Assessing Officer that the assessee, in fact, had incurred much more expenditure in comparison to the exempt income earned by the assessee, rather he had made the disallowance assuming that the assessee might have incurred some expenditure in earning the exempt income. Under such circumstances, the issue under consideration is squarely covered by the above reproduced decision of the co-ordinate

bench of the Tribunal. Following the same, the disallowance u/s 14 A is restricted to 2% of the exempt income earned by the assessee.

6. The second issue is relating to the disallowance of expenditure of Rs. 3,90,587/- incurred on account of repair of tenanted premises, claimed by the assessee as revenue expenditure whereas treated by the Assessing Officer as Capital in nature. The assessee, during the year under consideration, carried out certain repairs in the office premises in the shape of flooring, carpentry and painting work. According to the Assessing Officer the same was capital expenditure observing that enduring benefit would accrue to the assessee because of the new look of the office premises. The learned CIT(A) also rejected the contention of the assessee that the repairs were carried out on the leased premises for the business purposes of the assessee company.

7. Before us, the learned representative of the assessee submitted that the necessary repairs in the shape of flooring, paint and wooden work were carried out for creating proper working environment which was the immediate need of the business of the assessee. He has further contended that the assessee is just a tenant in the premises and as such no enduring benefit of such repairs can be said to have accrued to the assessee. He has further relied upon the decision of the co-ordinate bench of the Tribunal "Dy. CIT v. Bijesh " (2012) 49 SOT 502 (Mum.)

On the other hand the learned DR has relied upon the findings of the lower authorities.

8. It may be observed that in the case of "Dy. CIT v. Bijesh Thakkar" (2012) 49 SOT 502 (Mum.), the facts were that the assessee, a Solicitor, had taken office premises on rental basis. During relevant assessment year, the assessee carried our renovation work in office premises which included tiling,

plastering, POP, electrification work, etc. The Assessing Officer treated the said expenses as capital expenditure. The Tribunal held that since the expenses had been incurred by assessee only to create a better working environment and agreement specifically provided that repairs shall be carried out only by assessee subject to permission of land lord. Assessee had not made any construction of structure or carried out any work in the form of renovation or extension, improvement of the building. The building that was taken on lease remained intact. The expenses were allowable under section 30(a)(i) as well as under section 37(1) of the Income Tax Act.

9. Since the facts of the present case are identical to that in the case of "Bijesh Thakkar" even the nature of repairs carried out is also similar, hence respectfully following the decision of the co-ordinate bench of the tribunal, this issue is decided in favour of the assessee and the additions made on the above issue are hereby ordered to be deleted.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 14.02.2014

Sd/-	**Sd/-**
(N K Saini)	**(Sanjay Garg)**
ACCOUNTANT MEMBER	JUDICIAL MEMBER

MUMBAI, Dt : 14th February, 2014

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Copy forwarded to :

1. The Appellant
2. The Respondent
3. The C.I.T. concerned Mumbai
4. The CIT (A) concerned Mumbai
5. The DR, "C" - Bench, ITAT, Mumbai

//True Copy// BY ORDER

ASSISTANT REGISTRAR
ITAT, Mumbai Benches, Mumbai