

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.2744/Mum/2019

(निर्धारण वर्ष / Assessment Years: 2015-16)

M/s. Roha Dychem Pvt. Ltd. A44/45, Road No.2, MIDC, Andheri (E), Mumbai-400093.	बनाम/ Vs.	DCIT, Central Range-7(4) Aaykar Bhavan, Maharshi Karve Road, Churchgate- 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAACR4974P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Snehal Shah
Revenue by:	Shri Bharat Andhale (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 05/01/2021
घोषणा की तारीख /Date of Pronouncement: 01/04/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 04.02.2019 passed by the Commissioner of Income Tax (Appeals)-49, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2015-16.

2. The assessee has raised the following grounds of appeal: -

- “1. The Commissioner of Income Tax Appeals(CIT(A) erred in confirming the additional disallowance of Rs.44,13,583/- u/s 14A r.w.s. 8D under normal provisions as well as u/s 115JB of the Income Tax Act.
2. The appellant prays that the disallowance of Rs.44,13,583/- should be deleted.
Without prejudice, the disallowance be appropriately reduced.
The appellant craves leave to add, amend and/or alter the above grounds of appeal.”

3. The brief facts of the case are that the assessee filed its return of income on 03.12.2015 declaring total income to the tune of Rs. Nil and Book Profit u/s 115JB at Rs.37,24,48,436/-. The case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. On



verification, it was found that the assessee received exempt income in sum of Rs.1,89,68,683/- and suo-moto disallowance expenses in sum of Rs.6,86,460/- u/s 14A r.w.r. 8D from the business income. Notice given and after the reply of the notice, the AO assessed the expenses to earn the exempt income in sum of Rs.51,00,043/-. After the disallowance of self-assessed expenses in sum of Rs.6,86,460/-, the expenses in sum of Rs.44,13,583/- was added to the income of the assessee. After the some more disallowance u/s 36(1)(va), the total income of the assessee was assessed in sum of Rs.90,28,74,017/- and book profit in sum of Rs.37,68,62,019/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

ISSUE NOs. 1 & 2

4. Both the issues are in connection with the disallowance of Rs.44,13,583/- u/s 14A r.w. Rule 8D under the normal provisions u/s 115JB of the Act. At the very outset, the Ld. Representative of the assessee has argued that the issue has duly been covered by the assessee's own case for the A.Y. 2010-11. The relevant finding has been given in para no. 2.5 which is hereby reproduced as under:-

“2.5 We have heard the rival submissions and perused the relevant materials on record. We find from the balance sheet of the assessee company as at 31st March 2010 that its own funds was Rs.2,894,197,392/-. The investment as at 31st March 2010 was Rs.868,635,071/- In *HDFC Bank Ltd. vs. DCIT* [2016] 67 taxmann.com 42 (Bom), the Hon'ble Bombay High Court referring to the decision in *CIT vs. HDFC Bank Ltd.* [2014] 366 ITR 505 (Bom) and *CIT v. Reliance Utilities & Power Ltd.* [2009] 313 ITR 340 (Bom) held as under :

“15. It is clear that for the first time in the case of *HDFC Bank Ltd.* (supra) that this Court took a view that the presumption which has been laid down in *Reliance Utilities & Power Ltd.* (supra) with regard to investment in tax free securities coming out of assessee's own funds in case the same are in excess of the investments made in the securities (notwithstanding the fact that the assessee concerned may also have taken some funds on interest) applies,



when applying Section 14A of the Act. Thus, the decision of this Court in HDFC Bank Ltd. (supra) for the first time on 23rd July, 2014 has settled the issue by holding that the test of presumption as held by this Court in Reliance Utilities and Power Ltd. (supra) while considering Section 36(1)(iii) of the Act would apply while considering the application of Section 14A of the Act. The aforesaid decision of this Court in HDFC Bank Ltd. (supra) on the above issue has also been accepted by the Revenue in as much as even though they have filed an appeal to the Supreme Court against that order on the other issue therein viz. broken period interest, no appeal has been preferred by the Revenue on the issue of invoking the principles laid down in Reliance Utilities & Power Ltd. (supra) in its application to Section 14A of the Act.” In view of the above, we delete the disallowance of Rs.8,67,592/- made by the AO under Rule 8D (2)(ii). ”

5. The assessee has also placed reliance upon the decision of ITAT Mumbai Bench in the case of **ACIT (LTU) 1 Vs. Aditya Birla Nuvo Ltd. (ITA. No.4220/M/2015) for the A.Y.2010-11.** The relevant finding has been given in para no. 5.2 which is reproduced as under.:-

“5.2 The second contention of the assessee is that no disallowance u/r.8D(2)(ii) is warranted as the assessee is having own interest free funds in the shape of share capital, reserves & surplus and profits more than the investments made. Hence, there is no interest expenditure. The assessee by way of additional ground of appeal is seeking relief in respect of disallowance of interest expenditure under Rule 8D(2)(ii). The assessee suo motu disallowed Rs.91.32 crores under Rule 8D(2)(ii). The same was accepted by the Assessing Officer. The Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd.(supra) has held that where the assessee is having borrowed funds and own interest free funds, presumption is that the investments are made by utilizing own interest free funds. The same view has been reiterated by the Hon'ble High Court in the case of HDFC vs. DCIT(supra) and PCIT vs. Shreno Ltd.(supra). Thus, in principle we hold that no disallowance under



section 14A r.w.r. 8D(2)(ii) is warranted if, the assessee is having sufficient own interest free funds to cover the investments made. However, for the purpose of verification of this fact, we deem it appropriate to restore this issue back to the file of Assessing Officer. The Assessing Officer after examining the financial statements of the assessee, if satisfied, that own interest free funds of the assessee are more than the investments made, shall make no disallowance u/s.8D(2)(ii).”

6. The assessee has also reliance upon the decision of Hon’ble High Court of Bombay in the case of **CIT Vs. M/s. Bengal Finance & Investments Pvt. Ltd. (ITA. NO. 337 of 2013)** in which the relevant finding is hereby reproduced as under:-

“3. So far as question (a) is concerned, we find that the Tribunal has merely followed the decision of this court in *Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT 328 ITR 81*, directing the AO to work out the disallowance on a reasonable basis and not under Rule 8D under the Income Tax Rules for the Assessment Year 2007-08. The Tribunal has merely followed the decision of the jurisdictional High Court and no fault can be found with the same. Accordingly, no substantial question of law arises in question (a). Hence dismissed.

4. So far as Question (b) is concerned, the impugned order of the Tribunal followed its decision in *M/s. Essar Teleholdings Ltd. v/s. DCIT* in ITA No. 3850/Mum/2010 to held that an amount disallowed under Section 14A of the Act cannot be added to arrive at book profit for purposes of Section 115JB of the Act. The Revenue’s Appeal against the order of the Tribunal in *M/s. Essar Teleholdings (supra)* was dismissed by this Court in Income Tax Appeal No.438 of 2012 rendered on 7th August, 2014. In view of the above, question (b) does not raise any substantial question of law.”

5. Accordingly, appeal dismissed. No order as to costs.



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7. The assessee has also given the statement of own funds, borrowed funds and investments at page no. 65 of the paper book which is hereby reproduced as under:-

Statement of own funds, borrowed funds and investments	
Own Funds	3,45,00,000
Share Capital	5,38,28,20,679
Reserves & Surplus	5,41,73,20,679
Borrowed funds	
Secured Loans (Terms Loans)	22,97,98,369
Unsecured Loans (Loan from directors, Shareholders	73,71,85,727
And deferred sales tax terms loan)	96,69,84,096
<u>Tax Free Investments</u>	1,53,00,000
Equity shares	15,18,00,000
Preference share capital	16,71,00,000

8. Undisputedly investment is less than assessee's own funds. Accordingly, on the basis of the decision mentioned above, there is no applicability of the provisions u/s 14A r.w. Rule 8D, therefore, we restrict the expenses to the extent of assessee's declaration in sum of Rs.6,86,460/- and delete the remaining addition/disallowance. Accordingly, we partly allowed the claim of the assessee.

9. In the result, the appeal of the assessee is hereby partly allowed.

Order pronounced in the open court on 01/04/2021

Sd/-
(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 01/04/2021
Vijay Pal Singh/Sr. PS

Sd/-
(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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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