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

BEFORE SHRI B. RAMAKOTAIAH, A.M. AND SHRI V. DURGA RAO, J.M.

ITA No. 2748Mum/2011
Assessment Year: 2007-08

The Greater Bombay Co-op Bank Ltd., ***… Appellant***
89, GBCB House, Bhuleshwar,
Mumbai – 400 002.
(PAN – AABAT4479N)

Vs.

Asstt. Commissioner of Income-tax-1(3), ***…Respondent***
Aayakar Bhavan, M.K. Road, Mumbai – 20.

Appellant by : Mr. A.L. Sharma
Respondent by : Mr. A.K. Nayak

Date of Hearing : 02/02/2012
Date of Pronouncement : 24/02/2012

ORDER

PER V. DURGA RAO, J.M.:

This appeal filed by the assessee is directed against the order of CIT(A)-2, Mumbai, passed on 22/02/2011 for the assessment year 2007-08, wherein the assessee has raised the following ground of appeal:-

> "*On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the disallowance of Rs. 93,10,520/- under Rule 8D r.w.s. 14A of the Act, made by the AO.*

2. The AO noted that during the year under consideration, the assessee company had received the exempt dividend income of Rs. 14,81,080/- against which the assessee had not added back any amount as expenditure attributable to earning exempt income. The AO, therefore, intimated the assessee vide order sheet entry dated 14/12/2009 that Rule 8D being brought into the IT Rules, 1962 has to be applied for the purpose of calculating disallowance u/s 14A of

the Act. Accordingly, the AO applying the provisions of Rule 8D made the addition of Rs. 93,10,520/- u/s 14A of the Act. On appeal, before the CIT(A) the assessee submitted that the clause No. 2(ii) of rule 8D is not applicable in the assessee's case since the interest expenditure is directly related to the interest earnings by the assessee. As such the addition of any should have been restricted to 0.5% of the average value of investments. Without prejudice to the above, the assessee submitted that the disallowance is highly disproportionate to the dividend income which is only Rs.14,81,080/- against which disallowance had been made to the extent of Rs. 93,10,820/-, which is highly excessive. The CIT(A) after considering the submissions of the assessee and after analyzing the issue with case laws, held as under:-

> *"8. Both the wisdom, that of the judiciary as pronounced by Hon'ble Bombay High Court in the case of Godrej & boyce and, that of the legislature as contained in Rule 8D, convey that in the present scenario, the best wisdom is to apply principles contained in Rule 8D for determining disallowance u/s 14A, subject of course to section 14A(1) of the Act. Therefore, I hold that the disallowance to be made u/s 14A for expenses incurred in relation to income which does not form part of the total income under the Income-tax Act has to be the basis of principles as spelt out in the Rules as contained in the Notification dated 24th March, 2008.*
>
> *9. In the instant case the disallowance has been done in accordance with formula contained in Rule 8D and is therefore confirmed."*

Aggrieved by the order of the CIT(A) the assessee is in appeal before us.

3. Before us, the learned counsel for the assessee canvassed that the issue under consideration is squarely covered by the decision of the ITAT, Mumbai Bench "C", Mumbai in the case of Parle Bisleri (P) Ltd. Vs. ACIT in ITA Nos. 5522/Mum/09 and 3135/Mum/10 for AYs. 2006-07 and 2007-08 vide order dated 30th December, 2011. A copy of the said order has been filed on record.

4. On the other hand, the learned DR has not controverted the facts available on record nor brought any contrary decision to this effect.

5. We have considered the rival submissions, perused the record and gone through the records as also the decision of the Co-ordinate Bench (supra). The Co-ordinate bench in the case of Parle Bisler (P) Ltd. held as under:-

> *"Assessee has received dividend income of Rs. 18,35,874/- in A.Y 2006-07 and Rs. 43,62,186/- in A.Y 2007-08. Invoking the provisions in section 14A r.w.r 8D(2)(iii), the Assessing Officer disallowed an amount of Rs. 16,44,641/- in A.Y 2006-07 and Rs. 18,23,631/-. It was the submission that invoking Rule 8D in this year does not arise as decided by the Hon'ble Bombay High Court in the case of Godrej Boyce Mfg Co 328 ITR 81 (Bom). The learned Counsel has no objection if the "reasonable amount" to be disallowed under section 14A is fixed to 5% of the dividend as decided by the Coordinate Benches in various decisions more particularly in the case of M/s P.N. Writer & Co. Pvt. Ltd., Vs. Add. CIT in ITA Nos.4388 & 4390/Mum/2010 dated 14th October, 2011.*
>
> *After hearing the rival contentions, we find that the Assessing Officer disallowed ½ % of the average valuation of the investment on the ground that these are relatable to earning of income. However, considering the facts of the case that assessee had invested from surplus funds, we hold that no part of interest is to be considered for disallowance made under section 14A. Moreover Rule 8D is not applicable to this year as held by the Jurisdictional High Court in the case of Godrej Boyce Mfg Co 328 ITR 81 (Bom). In our considered opinion, the ends of justice would be met if 5% of the dividend income earned by assessee is disallowed as expenditure incurred in relation to the earning of exempt income. Thus, we allow these grounds in part and direct the Assessing Officer to disallow only 5% of the dividend income as expenditure relatable to earning that income under section 14A. Grounds No 2 in both appeals are accordingly partly allowed."*

6. Since the issue under consideration is identical to that of the case decided by the Tribunal in the case of Parle Bisleri (P) Ltd. (supra), respectfully following the said decision, we set aside the order of the CIT(A) and hold that 5% of the dividend income earned by the assessee is disallowed as expenditure incurred in relation to the earning of exempt income. Thus, the ground raised by the assessee is partly allowed.

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

Pronounced in the open court on this 24th day of February, 2012.

Sd/-	**Sd/-**
(B. RAMAKOTAIAH)	**(V. DURGA RAO)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 24th February, 2012

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Copy to:-

1) *The Appellant.*
2) *The Respondent.*
3) *The CIT (A) concerned.*
4) *The CIT concerned.*
5) *The Departmental Representative, "G" Bench, I.T.A.T., Mumbai.*

By Order

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Asst. Registrar,
I.T.A.T., Mumbai.