IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES " H ", MUMBAI

BEFORE SHRI RAJENDRA SINGH, A.M. AND
SHRI VIJAY PAL RAO, J.M.

ITA No. : 6940/Mum/2010
Assessment Year : 2007-08

HDFC Bank Limited (successor to Business of Centurion Bank Limited Senapati Bapat Marg Lower Parel Mumbai-400 013. **PAN NO:AAACC 2272 R**	Vs.	Asstt. Commissioner of Income tax -2(3) Room No.555, Aayakar Bhavan Mumbai.
(Appellant)		(Respondent)

Appellant by	:	Shri Yogesh A. Thar
Respondent by	:	Shri G.S. Rao
Date of hearing	:	22.02.2012
Date of Pronouncement	:	22.02.2012

ORDER

Per RAJENDRA SINGH (AM)

This appeal by the assessee is directed against the order dated 16.7.2010 of CIT(A) for the assessment year 2007-08. The assessee in this appeal has raised disputes on two different grounds which relate to disallowance of expenses under section 14A in relation to exempt income and applicability of provisions of section 50C for computation of capital gain in respect of depreciable assets.

2. The facts concerning the first dispute regarding disallowance of expenses under section 14A are that AO noticed that the assessee had received tax free income but, there was no disallowance of expenses relating to such income. He, therefore, disallowed a sum of Rs.1158.36 lacs under rule 8D. CIT(A) upheld the applicability of rule 8S but reduced deduction to Rs.872.63 lacs. Aggrieved by the decision of CIT(A), assessee is in appeal before the Tribunal.

3. We have heard both parties, perused the records and considered the matter carefully. The dispute is regarding disallowance of expenses relating to exempt income under section 14A of the IT Act. Under the provisions of Section 14(2) and 14(3), expenses relating to exempt income are required to be computed as per method prescribed by the Government. The Government has since notified the method in the form of Rule 8D w.e.f. 1.4.2008. The Hon'ble Bombay High Court in the case of Godrej and Boyce Mfg. Co. vs. DCIT (328 ITR 81) have held that Rule 8D was applicable only from assessment year 2008-09 and in respect of prior years, disallowance has to be made on a reasonable basis, of both direct and indirect expenses after allowing opportunity of hearing to the assessee. Therefore, order of CIT(A) confirming the disallowance following Rule 8D cannot be upheld as assessment year involved is 2007-08. We, therefore, set aside the order of CIT(A) and restore the matter to the file of AO for passing a

fresh order after necessary examination in the light of the decision of Hon'ble Bombay High Court in case of Godrej and Boyce Mfg. Co. vs. DCIT (supra), after allowing opportunity of hearing to the assessee.

4. The second dispute is regarding applicability of provisions of section 50C for computation of capital gain in respect of depreciable assets under section 50 of the Income tax Act, 1961 (I.T. Act). Under the provisions of section 50C, in case of capital gain arising from sale of land or building or both if consideration received or accruing is lower than the value of the asset assessed or assessable for the purpose of levy of stamp duty, then value adopted for stamp duty purpose has to be taken as sale consideration for computation of capital gain. In this case the assessee had transferred three residential properties for the purpose of business which were depreciable assets and therefore, computation of capital gain in respect of such assets is required to be made under section 50. The assessee adopted actual sale consideration for the purpose of computation of capital gain. The AO however invoked provisions of section 50C and adopted stamp duty value for the purpose of computation of capital gain. In appeal CIT(A) confirmed the method adopted by AO aggrieved by which the assessee is in appeal before the Tribunal.

5. We have heard both the parties, perused the records and considered the matter carefully. The limited issue raised is whether for the purpose of computation of capital gain in respect of depreciable assets under section 50 of the Act, the provisions of section 50C as per which in respect of sale of land or building or both, the stamp duty value is required to be adopted as consideration for sale are applicable. This issue is already decided by the Special Bench of the Tribunal in the case of ITO vs. United Marine Academy (130 ITD 113) in which it has been held that provisions of section 50C would apply for computation of capital gain in respect of depreciable assets under section 50 of the Act. The decision taken by CIT(A) is in conformity with the decision of the Special Bench of the Tribunal in the case of United Marine Academy (supra), and the same is therefore, upheld.

6. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 22.2.2012.

Sd/-	**Sd/-**
(VIJAY PAL RAO)	**(RAJENDRA SINGH)**
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated: 22.2.2012.
Jv.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT(A) Concerned, Mumbai
The DR " " Bench

True Copy

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.