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

**BEFORE SHRI D. MANMOHAN, VICE PRESIDENT AND SHRI RAJENDRA SINGH, ACCOUNTANT MEMBER**

**ITA No.7742/Mum/2010**
Assessment Year : 2007-08

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| Dhanlaxmi Cotex Ltd.<br>285, Princess Street<br>C.J. House, 2nd Floor<br>Mumbai-400 002.<br>**PAN No. AABCD 2387 H** | Vs. | Dy. Commissioner of Income tax , Range 4(1)<br>Mumbai. |
| (Appellant) | | (Respondent) |

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| Assessee by | : | Shri Narayan T. Atal |
| Department by | : | Shri Amardeep |

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| Date of hearing | : | 28.8.2012 |
| Date of Pronouncement | : | 28.8.2012 |

**O R D E R**

**PER RAJENDRA SINGH, AM:**

This appeal by the assessee is directed against the order dated 28.10.2010 of CIT(A) for the assessment year 2007-08. The only dispute raised by the assessee in this appeal is regarding disallowance of expenses under section 14A of the Income tax Act in relation to exempt income.

2. Facts in brief are that the AO during the assessment proceedings noted that the assessee had earned dividend income of Rs.22,20,978/-

which was exempt from tax. The AO, therefore, disallowed the expenses under section 14A of the Act under rule 8D which was computed at Rs.4,37,272/-. The assessee disputed the decision of AO and submitted before CIT(A) that Rule 8D was applicable only from assessment year 2008-09 in view of the judgment of the Hon'ble High Court of Bombay in case of Godrej and Boyce Mfg. Co. vs. DCIT (328 ITR 81). It was also submitted that the assessee had received dividend from investment in shares and major dividend income was received from sister concern in which one time investment was made. The investment made in other companies had not resulted into payment of dividend. Therefore disallowance of expenses @ 0.5% of average investment was not tenable. CIT(A), thereafter proceeded to compute disallowability extent independently. It was observed by him that the direct expenditure as well as in direct interest expenditure shown by the assessee was nil which had been accepted by the AO. As regards the other indirect expenses CIT(A) noted that portfolio managers were charging @ 2-3% which also included their profit element of 1-1.5%. In case of the assessee which was doing other business also further exclusion was required on account of fixed expenses being the administrative expenses. CIT(A), therefore, held that indirect expenses relating to use of infrastructure and staff for maintaining huge portfolio had to be taken at 0.5% of the average investment which is the same as per Rule 8D. He, therefore, confirmed disallowance made by AO aggrieved by which the assessee is in appeal before the Tribunal.

3. Before us, ld. AR for the assessee submitted that in terms of judgment of Hon'ble High Court of Bombay in case of Godrej and Boyce Mfg. Co. (supra), the assessee was required to be given an opportunity regarding disallowance of expenses. It was pointed out that though Rule 8D was not applicable, CIT(A) made disallowance as per Rule 8D only. It was also submitted that actual expenses incurred were nominal against which huge disallowance of Rs.4,37,272/- has been made. It was accordingly urged that the order of CIT(A) should be set aside. Ld. Departmental Representative placed on the order of CIT(A).

4. We have perused the records and considered the matter carefully. The dispute is regarding disallowance of expenses relating to expenses under section 14A of the Act. In view of the judgment of the Hon'ble High Court of Bombay in case of Godrej and Boyce Mfg. Co. (supra), Rule 8D for computation of disallowable expenses is applicable only from assessment year 2008-09 and in respect of prior years disallowance has to made on a reasonable basis after hearing the assessee. In this case AO made disallowance under rule 8D and, therefore, had not considered the issue on merit regarding

reasonableness of expenditure. Though CIT(A) has given reasons for making disallowance @ 5% of average investment, in fact the disallowance is same as provided in rule 8D. CIT(A) has not given any specific opportunity to the assessee regarding basis of disallowance adopted by him. In our view the matter requires fresh examination at the level of AO in the light of judgment of Hon'ble High Court of Bombay in the case of Godrej and Boyce Mfg. Co. (supra). We, therefore, set aside the order of CIT(A) and restore the matter back to AO for passing a fresh order after necessary examination in the light of observations made above and after affording opportunity of hearing to the assessee.

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

**Order pronounced in the open court on 28.8.2012.**

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| **Sd/-** | **Sd/-** |
| **(D. MANMOHAN )** | **(RAJENDRA SINGH)** |
| VICE PRESIDENT | ACCOUNTANT MEMBER |

Mumbai, Dated: 28.8.2012.
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.