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

BEFORE SHRI DINESH KUMAR AGARWAL (J.M.)
AND SHRI RAJENDRA SINGH (A.M.)

ITA No. 8675/Mum/2010
Assessment Year : 2006-07

Asst. Commissioner of Income Tax 4(1), R. No. 640, 6th floor, Aayakar Bhawan, Mumbai - 20.	Vs.	M/s Gandhi Securities Pvt. Ltd., 9-A, Homi Mody Street, Fort, Mumbai- 400 001. PAN : AABCG2758F
(Appellant)		**(Respondent)**

Revenue by : Shri Amar Deep
Assessee by : None

Date of hearing	**09-8-2012**
Date of pronouncement	**22-8-2012**

O R D E R

PER DINESH KUMAR AGARWAL, J.M.

This appeal preferred by the Revenue is directed against the order dated 11-10-2010 passed by the ld. CIT (A)- 8, Mumbai for the assessment year 2006-07.

2. At the time of hearing, none attended on behalf of the assessee nor filed any application for the adjournment of the case, therefore, it was decided to dispose of the appeal ex parte qua the assessee, on merits, after hearing the ld. D.R.

3. Briefly stated facts of the case are that during the assessment proceeding the A.O. inter alia observed that the assessee has shown dividend income of Rs. 4,84,995/- and has claimed the same as exempt. On being asked to explain as to why the disallowance should not be made u/s 14A of the Income Tax Act, 1961 (the Act) r.w.r. 8-D, the assessee filed details of break-up of income to show that major portion i.e. 91.42% of interest has been incurred in relation to earning of taxable income while only small portion i.e. 8.58% has been incurred in relation to earning tax free income, therefore, he offered 8.5% of interest i.e. Rs. 1,90,777/- as disallowable u/s 14A of the Act. However, the A.O. did not accept the assessee's explanation. The A.O. after calculating the amount of disallowance as per working given in para 4.2 of his order has made the disallowance of Rs. 14,51,155/- u/s 14A of the Act. On appeal the ld. CIT(A) after following the decision of the Hon'ble jurisdictional High Court in Godrej & Boyce Manufacturing Company Ltd. vs. DCIT and Others (2010) 328 ITR 81 (Bom) has directed the A.O. to determine the quantum of such expenditure by applying the ratio as mentioned in the decision of Hon'ble jurisdiction High Court (supra) and disallow the same as per the provisions of section 14A after allowing credit for the amount disallowed by the assessee.

4. Being aggrieved by the order of the ld. CIT(A) the Revenue is in appeal before us taking the following grounds of appeal:-

> "1. (i) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 14,51,155/- made u/s 14A r.w. Rule 8D of the Income Tax Act by Assessing Officer.
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> 2. On the facts and in the circumstances of the case and in law, the impugned order of the Ld. CIT(A) is contrary to law and consequently merits to be set aside and that of the Assessing Officer be restored."

5. At the time of hearing the ld. D.R. supports the order of the A.O.

6. We have carefully considered the submissions of the ld. D.R. and perused the material available on record. The question of making the disallowance u/s.14A is no more resintegra in view of the decision of Hon'ble Jurisdictional High Court in the case of Godrej & Boyce Manufacturing Company Ltd. (supra) holding that the provision of section 14A are applicable and the disallowance has to be worked out by the A.O. on some reasonable basis and not under Rule 8D. Since the A.O. while calculating the disallowance u/s.14A has also applied Rule 8D of the Income Tax Rules, 1962, which is applicable from the A.Y. 2008-09, therefore, we respectfully following the decision of the Hon'ble Jurisdictional High Court (supra) direct the A.O. to make disallowance, if any, in the light of the above decision, after allowing reasonable opportunity of being heard to the assessee. Subject to the above, the order passed by the ld. CIT(A) on this account does not call for any interference. The grounds taken by the Revenue are, therefore, partly allowed for statistical purpose.

7. In the result, the Revenue's appeal stands partly allowed for statistical purpose.

Order pronounced on 22-8-2012.

Sd/-	Sd/-
(RAJENDRA SINGH)	(DINESH KUMAR AGARWAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated 22-8-2012

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Copy to:
1. The Appellant
2. The Respondent
3. Commissioner of Income Tax (Appeals)- 2 Mumbai
4. Commissioner of Income Tax – -1, Mumbai
5. Departmental Representative, Bench 'G', Mumbai

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ASSTT. REGISTRAR, ITAT, MUMBAI