

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D"

BEFORE SHRI R.K. PANDA, A.M. AND SHRI VIJAY PAL RAO, J.M.

ITA No. 5547/Mum/2010

Assessment year 2007-08

ACIT – 7(2), R. No. 624, Aayakar Bhawan, M.K. Road, Mumbai – 20.	Vs.	M/s Reliance Land Pvt. Ltd., 6 th Floor, Nagin Mahal, 82 Veer Nariman Road, Churchgate, Mumbai 400 020. PAN AAACR 2367J
Appellant		Respondent

Appellant by	Dr. B. Senthikumar
Respondent by	Shri Jitendra Sanghvi

Date of hearing	30.11.2011
Date of pronouncement	14.12.2011

ORDER

PER R.K. PANDA A.M.

This appeal filed by the Revenue is directed against the order dt. 13.03.2010 of the CIT(A)- 13 Mumbai relating to A.Y. 2007-08.

2. The Revenue in its grounds of appeal has challenged the order of the Id. CIT(A) in restricting the disallowance u/s 14A of the I.T. Act to Rs. 47,99,527/- as against 3,67,72,335/- made by the A.O.

3.1. Facts of the case in brief are that the A.O. during the course of assessment proceedings noted that the assessee has earned exempt dividend income of Rs. 4,63,50,000/- on investments made. He noted that the assessee

has borrowed interest bearing funds and has invested in shares and securities. Therefore, he was of the opinion that the assessee satisfies all the conditions for disallowance of expenses attributable for earning of exempt income u/s 14A of the Act. On being confronted by the A.O. it was submitted by the assessee that it has suo motu disallowed an amount of Rs. 47,99,527/- u/a 14A. The assessee filed detailed break-up of amount borrowed and amount invested and tried to prove the nexus of borrowed funds utilized for giving loans and advances. It was explained that the expenditure of Rs. 47,99,527/- has been directly incurred in relation to investment in shares of Adlabs Films Ltd. and balance interest of Rs. 8,39,12,877/- is directly incurred in relation to loan given to Swan Consultants Ltd. on which taxable interest has been received. It was accordingly submitted that no disallowance u/s 14A read with rule 8D(2)(ii) can be resorted to. However, the A.O. was not satisfied with the explanation given by the assessee and calculated the disallowance u/s 14A r.w. Rule 8D at Rs. 4,15,71,862/-. After deducting interest expenditure of Rs. 47,99,527/- disallowed by the assessee, the A.O. made an addition of Rs. 8,31,91,23,665/-.

3.2 Before the Id. CIT(A), the assessee filed statement of loan taken and utilization thereof showing one to one nexus. It was further submitted that Rule 8D(2)(ii) can be applied only when the expenditure incurred by way of interest during the previous year is not directly attributable to any particular income or receipt. It was further submitted that the expenditure of Rs. 47,99,527/- has been directly incurred in relation to investment in shares of Adlabs Films Ltd. and balance interest of Rs. 8,39,12,877/- has been directly incurred in relation to loan given to Swan Consultants Pvt. Ltd. on which taxable interest is received. It was accordingly argued that there cannot be any further disallowance u/s 14A read with rule 8D(2)(ii).

3.3 Based on the arguments advanced by the assessee and the various details furnished, the Id. CIT(A) noted that an amount of Rs. 300 crores taken

from Reliance Capital Ltd. by the assessee on 29.1.2007 at 11% interest has been given to Swan Consultants P. Ltd. on the same day. The interest paid at Rs. 5.61 crores to Reliance Capital Ltd. has been received from M/s Swan Consultants P. Ltd. Similarly, the assessee has received interest of Rs. 2,78,58,082/- on account of loan given to Swan Consultants (P) Ltd. and the assessee has paid interest of Rs. 2,78,58,082/- to Reliance Capital Ltd. from whom the loan was taken. However, interest has been paid to Sonata Investments Pvt. Ltd. at Rs. 47,99,527/- on borrowed funds which has been invested in shares of Adlabs Films Ltd. Thus he noted that there is one to one nexus between interest paid and interest received. He, therefore, rejected the contention of the A.O. that the expenses incurred for earning exempt income cannot be correctly worked out. He thus deleted the addition made by the A.O. u/s 14 read with Rule 8D of the I.T. Rules. Aggrieved with such order of the Id. CIT(A), the Revenue is in appeal before us.

4. We have considered the rival arguments made by both the sides, pursued the orders of the Assessing Officer and the CIT(A) and the paper book filed on behalf of the assessee. After going through the various details filed by the assessee in the paper book as well as the item-wise details given by the Id. CIT(A) in his order regarding loan taken and utilisation thereof we find the assessee has proved beyond doubt that interest paid to Reliance Capital Ltd. (7% interest on Rs. 538 crores) amounting to Rs. 2,78,58,082/- has been received from Swan Consultants (P) Ltd. on account of loan advanced to them. Further, the loan was taken on 28.4.2006 and given also on 28.4.2006. Similarly, interest paid to Reliance Capital Ltd. amounting to Rs. 5,60,54,795/- on account of loan of Rs. 300 crores @ 11% interest taken on 29.1.2007 has been given to Swan Consultants P. Ltd. on the same day on which equal amount of interest has been received from them. Only the amount borrowed from Sonata Investments P. Ltd. on which interest of Rs. 47,99,527/- has been paid can be disallowed u/s 14A read with Rule 8D since the loan has been

utilized in shares of Adlabs Films Ltd., the income of which is exempt from tax. In this view of the matter and in absence of any contrary material brought to our notice by the ld. D.R against the factual finding given by the ld. CIT(A) that there is one to one nexus between interest paid and interest received, we do not find any infirmity in the order of the ld. CIT(A). Accordingly the same is upheld. The grounds raised by the Revenue are accordingly dismissed.

7. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on 14.12.2011.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Mumbai, dated 14.12.2011.

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Copy to...

1. The appellant
2. The Respondent
3. The CIT(A) -13, Mumbai
4. The CIT - 7, Mumbai
5. The DR Bench, "D"
6. Master File

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BY ORDER
DY/ASSTT. REGISTRAR
ITAT, MUMBAI