

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI  
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND  
SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.8006/M/2010 (AY: 2007-2008)

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| <b>Shakuntaladevi Trade &amp; Investments Pvt. Ltd.,</b><br>745/2, Krishna Kutir Society,<br>Khar Pali Road, Behind Khar<br>RTO Office, Khar (West),<br>Mumbai – 400 052. | बनाम/<br>Vs. | <b>The ITO-9(3)(1),</b><br>Room No.227, 2 <sup>nd</sup> Floor,<br>Aayakar Bhavan,<br>Mumbai – 400 020. |
| स्थायी लेखा सं./PAN : AAACS 7846 R  |              |  |
| (अपीलार्थी /Appellant)  | ..           | (प्रत्यर्थी / Respondent)  |

|                                      |                       |
|--------------------------------------|-----------------------|
| अपीलार्थी की ओर से / Appellant by :  | Shri Bikas Kumar Bogi |
| प्रत्यर्थी की ओर से/ Respondent by : | Shri M.L. Perumai, DR |

सुनवाई की तारीख /Date of Hearing : 19.11.2013

घोषणा की तारीख /Date of Pronouncement : 06.12.2013

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM:**

This appeal filed by the assessee on 19.11.2010 is against the order of CIT (A)-20, Mumbai dated 20.9.2010 for the assessment year 2007-08.

2. In this appeal, assessee raised the following grounds which read as under:

- "1. The CIT (A) erred in confirming the **disallowance u/s 14A of Rs. 2,28,944/-** made by the AO and not granting relief as claimed by the appellant.
2. The CIT (A) erred in confirming disallowance u/s 14A of Rs. 2,28,944/-, which is based on the formula given in **Rule 8D** in spite of the fact that the Hon'ble **Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd** held that Rule 8D is not applicable for AY 2007-2008.
3. The CIT (A) erred in concluding that there was nothing wrong to make disallowance based on the method prescribed under Rule 8D even though Rule 8D was not applicable to the relevant year.
4. The CIT (A) erred in ignoring the fact that firstly AO has to give his finding having regard to the account of the assessee that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.
5. The CIT (A) erred in concluding that the appellant failed to meet its onus to establish expenses disallowed by the AO, since there was no disallowance of

*expenses rather it was ½% of average value of investment that was disallowed by the learned officer.*

6. *The CIT (A) erred in relying to the judgment of Hon'ble Supreme Court in the case of Munjal Sales Corporation vs. CIT 298 ITR (SC), since the facts of the given case and your appellant's case are not the same."*

3. The only issue emanating from the above grounds is the disallowance of Rs. 2,28,944/- u/s 14A made by the AO and confirmed by the CIT (A). At the outset, Shri Shri Bikas Kumar Bogi, Ld Counsel for the assessee brought our attention to the judgment of the Hon'ble Bombay High Court in the case of **CIT vs. M/s. Godrej Agrovet Ltd vide Income Tax Appeal No. 934 of 2011, dated 8.1.2013** and mentioned that in view of the above mentioned judgment of the, the ITAT has taken the view that the disallowance u/s 14A should be restricted to 2% of the dividend income. Ld Counsel also relied on various decisions of the ITAT, Kolkata Benches in support of his contention.

4. On the other hand, Ld DR relied on the orders of the Revenue Authorities.

5. We heard both the parties and perused the orders of the Revenue. It is a fact that the relevant assessment year is 2007-08 under consideration is outside the scope of provisions of Rule 8D. The said provisions cannot be treated as applicable to the A.Y.2007-08 under consideration indirectly when the same is precluded by the Hon'ble Bombay High Court in the case of **Godrej & Boyce Mfg. Co. Ltd. Vs. DCIT, reported in (2010) 328 ITR 81(Bom)**. The Hon'ble Bombay High Court also in the case of **CIT vs. M/s. Godrej Agrovet Ltd vide Income Tax Appeal No. 934 of 2011, dated 8.1.2013**, has held that percentage of the exempt income can constitute a reasonable estimate for making disallowance in the years earlier to the assessment year 2008-09. The relevant portion of the said judgment of the Bombay High Court (supra) reads as under:

*"4. So far as question (b) is concerned, the Tribunal in its impugned order dated 17.9.2010 while applying the decision of this court in the matter of Godrej (supra) has disallowed the expenditure only to the extent of 2% of the total exempt income earned by the respondent-assessee on the basis its order dated 27.2.2009 for the assessment year 2002-2003 and order dated 10.9.2009 for the Assessment Years 2003-2004 and 2004-2005 wherein disallowance was restricted to 2% of the exempt income. Further; the Tribunal has remanded the matter to the AO to verify the disallowance claimed and **restrict the disallowance only to the extent to 2% of the total exempt income. We find no fault with the order of the Tribunal. "***

Considering the binding nature of the judgment, we direct the AO to quantify the disallowance in the light of the aforesaid judgments of the Hon'ble High Court. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 6<sup>th</sup> December, 2013.

Sd/-  
**(SANJAY GARG)**  
JUDICIAL MEMBER

Sd/-  
**(D. KARUNAKARA RAO)**  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 6.12.2013

व.नि.स./ OKK, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,  
उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**