आयकर अपीलीय अधिकरण "ई" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री आर.सी.शर्मा, लेखा सदस्य **एवं** सुश्री सुषमा चावल, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI R.C. SHARMA, AM AND Ms. SUSHMA CHOWALA, JM

आयकर अपील सं./I.T.A. No.5348/Mum/2012
(**निर्धारण वर्ष /** Assessment Year : 2009-10)

M/s. Stock Holding Corporation of India Ltd. C/o. Kalyaniwalla & Mistry Army & Vavy Bldg., 3rd Floor 148, M.G. Road, Fort Mumbai 400001 स्थायी लेखा सं./PAN : AABCS1429B	**बनाम**/ Vs.	A C I T – 3(3) Room No. 609, 6th Floor Aayakar Bhavan, M.K. Marg Mumbai 400020
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/Appellant by :	Shri M.M. Golvala & Shri Bhaumik Sanghvi
प्रत्यर्थी की ओर से/Respondent by :	Shri Neil Philip

सुनवाई की तारीख /Date of Hearing	: 03.06.2015
घोषणा की तारीख /Date of Pronouncement	: 10.06.2015

आदेश / O R D E R

Per Sushma Chowla, J.M.

This appeal by the assessee is directed against the order dated 24.04.20121 passed by CIT(A)-7, Mumbai and it pertains to A.Y. 2009-10.

2. Following grounds were urged by the assessee before us: -

"1. The CIT(A) erred in confirming the disallowance of Rs.39,40,500/- under Section 14A of the Income-tax Act read with Rule 8D(2)(iii) of the Income Tax Rules.

2. The CIT(A) erred in not following the methodology adopted by the CIT(A) in preceding assessment years for computing the disallowance under section 14A, which methodology has been accepted by the Department.

3. The CIT(A) erred in confirming the disallowance under section 14A read with Rule 8D(2)(iii) without appreciating the fact that the Assessing Officer has not recorded any satisfaction to the effect that the

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disallowance under section 14A as computed by the Appellant was incorrect."

3. Brief facts necessary for disposal of the appeal are that the assessee-company provides custodial & depository services to institutional investors, mutual funds and retail investors. The assessee filed return of income for A.Y. 2009-10 on 30.09.2009 declaring total income at ₹85,72,598/-. The assessee showed book profit of ₹82,71,41,992/- under section 115JB of the Act. The return was processed under section 143(1) of the Act. Later on it was selected for scrutiny by issue of notice under section 143(2) of the Act on 20.08.2010. Notice under section 142(1) alongwith detailed questionnaire was also been issued to the assessee. During the year under consideration assessee earned dividend income of ₹7,81,80,792/-, which it claimed as exempt income under section 10(34) of the Act and claimed deduction of ₹19,72,280/- under section 14A of the Act. The AO was of the opinion that the claim of deduction under section 14A was not as per Rule 8D of the Income Tax Rules. Therefore, the assessee was asked to furnish details of expenses incurred for earning exempt income and was also show caused as to why the expenses incurred for earning exempt income should not be disallowed as per the provisions of section 14A read with Rule 8D.

4. In response assessee submitted that it suo moto made disallowance of ₹19,72,280/- under section 14A of the Act and since it had not incurred any expenditure on interest as it had no borrowings, no further disallowance is merited under section 14A read with Rule 8D of the I.T. Rules. The AO rejected the explanation of the assessee and observed that where the assessee had not applied provisions of Rule 8D and in view of the ratio laid down by the Hon'ble Bombay High Court in the case of M/s. Godrej & Boyce Mfg. Co. Ltd. vs. DCIT reported in (2010) 328 ITR 81 (Bom.) provisions of Rule 8D are applicable from assessment year 2008-09 onwards. Therefore, the attributable expenditure for earning exempt income had to be computed as per the procedure mentioned in the said rules. The AO thereafter computed the expenses attributable to exempt income as per Rule 8D and worked out the disallowance at ₹47,25,088/- . Since the assessee suo moto made a disallowance of ₹19,72,280/- the disallowance was restricted to ₹27,52,808/-.

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5. The CIT(A) upheld the order of the AO. However, the CIT(A) observed that the AO had disallowed STT paid of ₹7,78,804/- in addition to the disallowance made by the assessee at ₹19,72,280/-. The CIT(A) held that same had led to double disallowance of STT and accordingly the disallowance made by the AO at ₹7,78,804/- under section 14A read with Rule 8D(2)(i) of the I.T. Rules was deleted. The assessee is in appeal against the said order of the CIT(A).

6. The learned A.R. for the assessee, at the outset, pointed out that before making the disallowance under section 14A read with Rule 8D of the I.T. Rules, the AO has not recorded any satisfaction as to why the disallowance made by the assessee under the said provisions should not be accepted. Our attention was drawn to the working of disallowance worked out by the assessee which is placed on page 35 of the paper book, under which assessee had declared 19,72,280/- and also explanation of the assessee on page 37 of the paper book under which explanation was given as to why the provisions of Rule 8D are not applicable. The learned A.R. for the assessee further contended that assessee was maintaining separate treasury department and the percentage of tax free income was 28% as against the percentage of taxable income which was 72% and hence the percentage of 28% was applied to the total expenses incurred by the assessee, in order to compute the disallowance under Rule 8D of the I.T. Rules. The learned A.R. for the assessee further pointed out that the observations of the AO at page 2 are factually incorrect and it was further contended by the learned A.R. for the assessee that the disallowance made under Rule 8D(i) and 8D(ii) has been deleted by the CIT(A), against which Revenue is not in appeal. The assessee is in appeal against the disallowance made under Rule 8D(iii), i.e. 0.5% of the total investment. The contention of the learned A.R. for the assessee before us was that the main section, i.e. section 14A lays down additional jurisdiction upon the AO and where he does not record satisfaction then the disallowance worked out by the AO under section 14A of the Act needs to be cancelled. In this regard the learned A.R. for the assessee drew our attention to the observation of the Hon'ble High Court in the case of Godrej & Boyce Mfg. Co. Ltd. (supra) and further reliance was placed upon the ratio laid down by the Hon'ble Delhi High Court in the case Maxopp Investment Ltd. vs. CIT reported in (2012) 347 ITR 272 (Delhi) and CIT vs. Taikisha Engineering

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India Ltd. reported in (2015) 370 ITR 338 (Delhi). Further reliance was placed on the ratio laid down by the Mumbai Bench of the Tribunal in the case of Raj Shipping Agencies Ltd. vs. ACIT in ITA No. 4868/Mum/2011 relating to assessment year 2008-09, order dated 15.03.2013. Another contention of the learned A.R. for the assessee was that the Tribunal in assessee's own case relating to assessment year 2008-09 accepted the plea of the assessee that the AO had not recorded his satisfaction with regard to working/claim of the assessee. However, the matter was set aside to the file of the AO with the direction to clarify the claim computation/calculation made by the assessee and reassess the income in the hands of the assessee.

7. The learned D.R. for Revenue, placing reliance on the orders of the authorities below and on the order passed by the Tribunal in assessee's own case pointed out that either the matter should go back to the file of the AO or the disallowance worked under section 14A merits to be upheld in the hands of the assessee.

8. We have heard the rival contentions and perused the record. The issue arising before us is in relation to application of the provisions of section 14A of the I.T. Act and Rule 8D of the I.T. Rules. Section 14A lays down that while computing the total income in the hands of the assessee, no deduction shall be allowed in respect of expenditure incurred by the assessee in earning such income, which does not form part of the total income under the Act. In other words, the expenditure relating to the income, which is exempt from tax is not to be allowed as a deduction under section 14A of the Act. Subsection 2 to the section provides that the AO shall determine the amount of expenditure incurred in relation to such income, which does not form part of total income under the Act, in accordance with such method as may be prescribed. It is further provided that if the AO having regard to the facts of the assessee, is not satisfied with the correctness of the claim of the assessee, in respect of such expenditure, in relation to income which do not form part of the total income, then such disallowance has to be worked out. In other words, before relying to the provisions of Rule 8D provided under the Income Tax Rules, which prescribes the method of calculating the expenditure relatable to the exempt

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income, which is to be disallowed in the hands of the assessee, there is another condition laid upon the AO. The AO has to first record his satisfaction that the claim of the assessee in respect of the expenditure relatable to exempt income is not correct and after recording such satisfaction the AO is to determine the amount of expenditure which is to be excluded while assessing the income in the hands of the assessee, which is exempt from the provisions of the Act. Such non-fulfillment of recording satisfaction in turn is held to vitiate the order of the AO in disallowing expenditure under the provisions of section 14A of the Act.

9. The Hon'ble Supreme Court in the case of Godrej & Boyce Mfg. Co. Ltd. (supra) had laid down the following proposition vis-a-vis subsection 2 to section 14A of the Act: -

> *"Hence, sub-s. (2) does not ipso facto enable the AO to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income is correct. The AO must, in the first instance, determine whether the claim of the assessee in that regard is correct and the determination must be made having regard to the accounts of the assessee. The satisfaction of the AO must be arrived at on an objective basis. It is only when the AO is not satisfied with the claim of the assessee, that the legislature directs him to follow the method that may be prescribed. In a situation where the accounts of the assessee furnish an objective basis for the AO to arrive at a satisfaction in regard to the correctness of the claim of the assessee of the expenditure which has been incurred in relation to income which does not form part of the total income, there would be no warrant for taking recourse to the method prescribed by the rules." (underline provided by us).*

10. The Hon'ble Bombay High Court in the case Godrej & Boyce Mfg. Co. Ltd., while concluding the discussion on various aspect of the case, further observed as under:-

> *"..........*
>
> *(viii) Sub-s. (2) of s. 14A does not enable the AO to apply the method prescribed by r. 8D without determining in the first instance the correctness of the claim of the assessee, having regard to the accounts of the assessee. Sub-s. (2) of s. 14A mandates that it is only when having regard to the accounts of the assessee, the AO is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to income which does not form part of the total income under the Act, that he can proceed to make a determination under the rules;*

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(ix) The satisfaction envisaged by sub-s. (2) of s. 14A is an objective satisfaction that has to be arrived at by the AO having regard to the accounts of the assessee. The safeguard introduced by sub-s. (2) of s. 14A for a fair and reasonable exercise of power by the AO, conditioned as it is by the requirement of an objective satisfaction, must, therefore, be scrupulously observed. An objective satisfaction contemplates a notice to the assessee, an opportunity to the assessee to place on record all the relevant facts including his accounts and recording of reasons by the AO in the event that he comes to the conclusion that he is not satisfied with the claim of the assessee;

...........”

11. The Hon'ble Bombay High Court in Taikisha Engineering India Ltd. (supra) held as under: -

“Section 14A of the Act postulates and states that no deduction shall be allowed in respect of expenditure incurred by an assessee in relation to income which does not form part of the total income under the Act. Under sub Section (2) to Section 14A of the Act, the Assessing Officer is required to examine the accounts of the assessee and only when he is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to exempt income, the Assessing Officer can determine the amount of expenditure which should be disallowed in accordance with such method as prescribed, i.e. Rule 8D of the Rules (quoted and elucidated below). Therefore, the Assessing Officer at the first instance must examine the disallowance made by the assessee or the claim of the assessee that no expenditure was incurred to earn the exempt income. If and only if the Assessing Officer is not satisfied on this count after making reference to the accounts, that he is entitled to adopt the method as prescribed i.e. Rule 8D of the Rules. Thus, Rule 8D is not attracted and applicable to all assessee who have exempt income and it is not compulsory and necessary that an assessee must voluntarily compute disallowance as per Rule 8D of the Rules. Where the disallowance or ‘nil’ disallowance made by the assessee is found to be unsatisfactory on examination of accounts, the assessing officer is entitled and authorised to compute the deduction under Rule 8D of the Rules. This pre-condition and stipulation as noticed below is also mandated in sub Rule (1) to Rule 8D of the Rules.

12. The Hon'ble High Court in the case of Taikisha Engineering India Ltd. further upheld the ratio laid down by the Hon'ble Delhi High Court in Maxopp Investment Ltd. (supra) that on similar proposition that under sub-section 2 of section 14A of the Act, the AO is required to determine the amount of such expenditure only if the AO, having regard to the accounts of assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure, in relation to such income which does not form part of the taxable income.

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13. Now coming to the facts of the present case assessee, during the year under consideration, had received dividend income of ₹81,80,792/- which was 28% of its total income of ₹27,48,09,826/-. Assessee was maintaining separate treasury and STT department for looking after its investments and assessee computed the disallowance which was relatable to earning of present income. The detailed working of the expenses shows that an amount of ₹19.72 lakhs are attributable to the exempt income earned by the assessee (record placed at pages 44 to 46 of the paper book). In view of the detailed working given by the assessee and following the ratio laid down by the Hon'ble Bombay High Court in Godrej & Boyce Mfg. Co. Ltd. (supra) and by the Hon'ble Delhi High Court in the case Taikisha Engineering India Ltd. and Maxopp Investment Ltd. before applying the provisions of Rule 8D of the I.T. Rules, the AO was duty bound to record his dissatisfaction that the working of the disallowance made by the assessee under section 14A of the Act was incorrect. A perusal of the assessment order reflects that no such dissatisfaction was recorded by the AO and in view thereof the provisions of section 14A(2) of the Act had not been applied and accordingly we find no merit in the disallowance made by the AO under section 14A(2) of the Act read with Rule 8D without recording dissatisfaction that the working made by the assessee vis-à-vis the expenditure which is to be disallowed under section 14A of the Act was incorrect. Another aspect to be noted in the case is that the Tribunal in assessee's own case had though accepted the proposition that AO in straightaway applying Rule 8D without recording objective satisfaction that the working of the assessee was not correct, cannot be appreciated. However, the issue was set aside to the file of the AO as the assessee had deviated from the formula consistently adopted in earlier years and it adopted a new formula for working out the disallowance. The assessee in the earlier year had disallowed the expenditure to the extent of 40%. However, in the preceding year the disallowance was made at 32% and in the year in appeal before us the disallowance has been computed @ 28% of the related expenditure. The explanation of the assessee in this regard was that the percentage of expenditure disallowed by the assessee was in relation to the percentage of exempt income earned by the assessee vis-à-vis the total receipts for each year of assessment. In view of the fact that assessee having explained the basis for adopting the aforesaid formula before us in

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the instant assessment year, we find no merit in setting aside the said issue to the file of the AO. Accordingly we hold that where the AO has not recorded his satisfaction with the working of the assessee vis-à-vis the expenditure relatable to earning exempt income, being not correct, then the disallowance worked out by the AO under the provisions of section 14A read with Rule 8D cannot be upheld. Accordingly the grounds raised by the assessee are allowed.

14. In the result, the appeal of the assessee is allowed.

परिणामतः निर्धारिती की अपील स्वीकृत की जाती है ।

Order pronounced in the open court on 10th June, 2015.
आदेश की घोषणा खुले न्यायालय में दिनांकः 10.06.2015 को की गई ।

Sd/-	Sd/-
(आर.सी.शर्मा)	(सुश्री सुषमा चावल)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

मुंबई Mumbai; दिनांक Dated 10th June, 2015

n.p

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, "E" Bench, ITAT, Mumbai
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