

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI N.K. PRADHAN, AM**

ITA No. 5195/Mum/2014

(A.Y:2009-10)

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| Morgan Stanley Investment Management Private Limited 18F/19F, Tower-2, One Indiabulls Centre, 841 Senapati Bapt Marg, Mumbai-400 013 PAN No.AAACM4066F | Vs. | Dy. Commissioner of Income Tax – 1(2) Aayakar Bhavan, Mumbai-400 020 |
| Appellant | .. | Respondent |

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| Assessee by | .. | S/Shri Sunil M Lala, Rahul Jain & Rahul Vora, ARs' |
| Revenue by | .. | Shri Suman Kumar, DR |

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| Date of hearing | .. | 18-09-2017 |
| Date of pronouncement | .. | 20-09-2017 |

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of CIT(A)-2 Mumbai, in appeal No. CIT(A)-2/IT-159/2012-13, dated 28/10/2013. The Assessment was framed by DCIT Circle 1(2), Mumbai for the A.Y. 2009-10 vide order dated 25-02-2013 under section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act').

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in making disallowance u/s 14A of the Act read with rule 8D of the Income Tax Rules, 1962 ('the Rules'). For this assessee has raised following three grounds: -



"1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) [CIT(A)] has erred in confirming the action of the learned Assessing Officer ('AO') of making additional disallowance of Rs. 99,27,500 under Section 14A of the Income tax Act, 1961 ('the Act') read with Rule 81) of the Income-tax Rules, 1962 ('the Rules'), without appreciating the fact that the Company has suo motto disallowed Rs 68,565 on a scientific basis.

It is prayed that the learned AO be directed to delete the additional disallowance of Rs. 99,27,500.

2. Without prejudice to Ground No. 1 above, on the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in confirming disallowance made by the AO under Section 14A of the Act in excess of the dividend income of Rs 32,34,925, earned by the Appellant during the year.

It is prayed that the learned AO be directed to restrict the disallowance under Section 14A to the dividend income of Rs 32,34,925.

3 Without prejudice to Ground No. 1 and 2 above, the learned CIT(A) has legally erred in confirming the action of the AO in treating the suo-moto disallowance of Rs. 68,565 made by the Appellant, as expenditure directly related to the exempt dividend income and thereby erred in making double disallowance of Rs. 68,565.

It is prayed that the learned AO be directed to delete the addition of Rs. 68,565 made under Rule 8D(2)(i) of the Rules.."



3. We have heard rival contentions and gone through the facts and circumstances of the case. The brief facts of the case are that the assessee company is engaged in the business of providing asset management services to Morgan Stanley Mutual Fund in the nature of management, advisory, financial consultancy, exchange of economy, industry, sector research and other ancillary support services to India, emerging markets and Asia Pacific Funds managed by Morgan Stanley Investment Management Inc. The assessee claimed dividend income of Rs.28,46,505/- from investments made in mutual funds and Rs. 3,88,420/- from investment in preferential shares of one of its group companies i.e. Morgan Stanley India Securities Pvt. Ltd. and claimed the same as exempt u/s 10(34) of the Act. The assessee made suo moto disallowance of Rs. 68,565/- u/s 14A of the Act read with rule 8D(2) of the Rules. The AO noted that the disallowance made by assessee suo moto amounting to Rs. 68,565/- is not acceptable and accordingly, he made disallowance under rule 8D(2)(iii) i.e. ½% of the average of the value of investment and he took the value of investment at Rs.198,55,00,000/- and accordingly he computed disallowance of Rs. 99,96,065/-. Aggrieved, assessee preferred the appeal before CIT(A).

4. The CIT(A) relying on the decision of Mumbai ITAT in the case of DCIT vs. Damani Estates and Finance Pvt. Ltd. noted that there is no presumption regarding sufficiency of funds invested in equity shares that would yield interest free incomes because the tax payer has utilised the common facilities for the investment activities and other business activities, therefore, the indirect expenditure under Rule 8D(2)(iii) of the Rules is required to be disallowed. Therefore, he also confirmed the action of the AO. Aggrieved, now assessee is in second appeal before Tribunal.

5. Before us, the learned Counsel for the assessee, first of all stated that once the assessee has made suo moto disallowance of Rs. 68,565/-



i.e. indirect expenses and there is no finding that the disallowance made by the assessee is incorrect and before applying the formula under rule 8D(2)(iii) for the disallowance of $\frac{1}{2}$ % of the average of the value of investment, the AO should record objective satisfaction that the assessee's claim of expenses incurred in relation to the exempt income or disallowance u/s 14A of the Act having regard to the accounts of the assessee is incorrect and that also how? In the present case, the learned Counsel for the assessee argued that there is no such finding by the AO or CIT(A) and no satisfaction recorded as applicable under Rule 8D of the Rules. The second proposition argued by the learned counsel for the assessee is that the assessee is engaged in the business activities of providing asset management services and the case law referred to by the CIT(A) of Damani Estate and Finance Pvt. Ltd. of ITAT Mumbai is not applicable because in that case the fact are that assessee was engaged in share trading business yielding both taxable income in the form of share trading profit and tax exempt income by way of dividend income and Tribunal applied the provisions of section 14A of the Act to stock in trade. The third proposition argued by the learned Counsel for the assessee is that, without prejudice to the other propositions, that assessee's dividend from investment in mutual funds is at Rs. 3,88,420/- and disallowance to this extent can be restricted in view of the decisions of Hon'ble Delhi High Court in the case of Joint Investment P. Ltd. Vs. CIT (2015) 372 ITR 694 (Del).

6. The fourth proposition argued by the learned Counsel for the assessee is as regards to the Principal of consistency. The learned Counsel for the assessee stated that the relevant assessment year is 2009-10 and he drew our attention to the balance sheet of the assessee as on 31-03-2009 and referred to Schedule D, wherein investments as on 31-03-2009 is at Rs. 198,55,00,000/- and similarly, as on 31-03-2008 same investment of Rs. 198,55,00,000/- is made by the assessee and



this is carried forward as on 31-03-2009. The learned counsel for the assessee stated that no addition by invoking the provisions of section 14A r.w.r 8D(2)(iii) was made by the AO for the AY 2008-09. Similarly, the learned Counsel for the assessee further drew our attention to the balance sheet for the AYs 2010-11 and 2011-12 and the assessment orders for AY 2010-11 and 2011-12 and argued that no disallowance under this section was made by the AO despite the fact that the same investment was carried forward as on 31-03-2010 and 31-03-2011. In view of these four propositions, the learned Counsel for the assessee argued that the case be decided accordingly.

7. On the other hand, the learned Sr. DR only objected to raising of the issue of satisfaction by the learned Counsel, because no such ground is taken by the assessee. For other propositions the learned Sr. DR however, relied on the orders of the lower authorities.

8. We find from the facts of the case that the assessee has earned dividend income of Rs. 28,46,505/- from investments made in mutual fund and Rs 3,88,420/- from investment in preference shares of one of its group companies i.e. Morgan Stanley India Securities Private Limited, which was claimed as exempt under section 10(35) and 10(34) of the Act respectively. The assessee had suo-motto disallowed Rs 68,565/- on a scientific basis, under Section 14A of the Act, being portion of the fully loaded cost of treasury personnel allocated to the Company, based on time spend by the treasury personnel for carrying out treasury activities viz. co-ordination of mutual fund investments, redemption of mutual fund, parking of funds in fixed deposits, etc. The assessee has filed a copy of the working for disallowance made by it under section 14A of the Act, which is enclosed in assessee's paper book. We find from the above facts that the assessee has earned exempt dividend income and it has computed suo moto disallowance of expenditure incurred for earning the said dividend income. In case, the AO want to disturb the computation of



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the assessee regarding disallowance that it had incurred more expenditure in relation to the exempt income, it is pre-requisite in order to invoke the provisions of Rule 8D of the Rules that the AO has to record his objective satisfaction regarding assessee's claim of expenses in relation to exempt income or disallowance u/s 14A of the Act read with Rule 8D having regard to the accounts of the assessee. This issue has been analyzed by Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. v. DCIT (2010) 234 CTR 001 (Bom), wherein it is held that sub-section (2) of section 14A of the Act does not authorize or empower the AO to apply the prescribed method irrespective of the nature of the claim made by the assessee. The AO has to first consider the correctness of the claim of the assessee having regard to the accounts of the assessee. The satisfaction of the AO has to be objectively arrived at on the basis of those accounts, after considering all the relevant facts and circumstances. The application of the prescribed method arises in a situation where the claim made by the assessee in respect of expenditure which is relatable to the earning of income which does not form part of the total income under the Act is found to be incorrect. On the very first proposition, argued by the learned Counsel for the assessee in the present case before us, we are of the view that the assessee has specifically raised ground regarding disallowance u/s 14A of the Act read with rule 8D(2) of the Rules and this is merely a proposition on which the assessee is arguing this issue. He need not to raise any specific ground qua this proposition as contested by the learned Sr. DR. We, accordingly, are of the view that in the present case the AO failed to adhere to the provisions of section 14A of the Act read with rule 8D of the Rules. The AO could not find any mistake in the computation of disallowance suo moto by the assessee. Accordingly, we delete the disallowance and allow this issue of the assessee's appeal.



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9. The next issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in levying interest u/s 234C of the Act. For this assessee has raised following ground No.4: -

“4. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in confirming the action of the learned AO of levying interest under section 234C of the Act amounting to Rs. 32,26,844/-, without appreciating the fact that there is no tax due on returned income.

It is prayed that the learned AO be directed to delete the interest 234C of the Act amounting to Rs. 32,26,844/-”

10. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the AO while computing Income Tax liability for the subject assessment year levied interest u/s 234C of the Act amounting to Rs. 32,26,844/- on the assessed income, whereas as per section 234C of the Act the interest is to be charged on the returned income. We find from the facts of the case that there is no tax due on the returned income and hence, no interest can be levied u/s 234C of the Act in the present case before us. We direct the AO to delete the levy of interest and compute levy of interest on returned income u/s 234C of the Act. We direct the AO accordingly.

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

Order pronounced in the open court on 20-09-2017.

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 20-09-2017

Sudip Sarkar /Sr.PS



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Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//
BY ORDER,
Assistant Registrar
ITAT, MUMBAI