

**आयकर अपीलीय अधिकरण, मुंबई डी, न्यायपीठ, मुंबई**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES 'D' MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं**

**श्री राजेन्द्र, लेखा सदस्य के समक्ष**

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER AND  
SHRI RAJENDRA, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.5592/MUM/2012**

**निर्धारण वर्ष /Assessment Year: 2009-10**

M/s Daga Global Chemicals Pvt. Ltd.(Formerly Known as Daga Global Chemicals Ltd.), 101, Mahek Plaza, Off L.T. Road, Maharashtra, Nagar Lane, Borivali(W), Mumbai-400092	Vs.	Asst. Commissioner Income Tax-9(1), Room No.223, Aaykar Bhavan, Marine Lines, Mumbai-400020
(निर्धारित /Assessee)		(प्रत्यर्थी /Respondent)
P.A. NUMBER : AAACD2233M		

निर्धारित की ओर से /Revenue by :	Dr. K.Shivaram & Shri Rahul Hakani
प्रत्यर्थी की ओर से /Revenue by	Shri Akhilendra Yadav

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>01/01/2015</b>
घोषणा की तारीख / <b>Date of Pronouncement :</b>	<b>01/01/2015</b>

**ORDER**

**PER JOGINDER SINGH, JM:**

The assessee is aggrieved by the impugned order dated 02/07/2012 of the Id. First Appellate Authority, Mumbai. The assessee has raised the following grounds:

1. *The ld. Commissioner of Income tax (Appeals) erred in confirming disallowance of Rs.14,58,112/- u/s 14A r.w. Rule 8D without appreciating that no expenditure directly or indirectly was incurred during this year for earning exempt income and investments in shares were made in earlier years out of own fund and not out of borrowed fund and hence disallowance u/s.14A r.w. Rule 8D may be deleted.*
2. *The learned CIT(A) failed to appreciate that dividend income is directly credited to Bank Account and appellant does not have to incur any expenditure for earning exempt income and hence disallowance u/s. 14A r.w. Rule 8D may be deleted.*
3. *The learned CIT(A) failed to appreciate that interest expenditure of Rs.2,35,49,746/- has no nexus with earning of exempt income as the investments on which exempt income is earned is out of own funds and hence disallowance u/s14A r.w. Rule8D may be deleted.*
4. *The learned CIT(A) erred in holding that A.O. duly recorded satisfaction before invoking section 14A r.w. Rule 8D without appreciating the fact that assessee had shown bifurcation of Financial expenses to A.O. to show that interest expense was not incurred for investment in shares or for earning exempt dividend income and A.O. did not reject the same and still A.O. applied Rule 8D in an automatic fashion and hence, no satisfaction was recorded by A.O. as required u/s 14A before invoking Rule 8D.*

5. *The learned CIT(A) failed to appreciate that disallowance u/s 14A read with Rule 8D cannot exceed exempt income.*
6. *Without prejudice to above, dividend received during this year is only Rs.1,82,262/- and demat charges are Rs.1,485/-, hence the disallowance may be restricted to maximum Rs.1,485/-.*

2. At the time of hearing, Dr. K.Shivaram alongwith Shri Rahul Hakani, ld. counsels for the assessee advanced their arguments which are identical to the ground raised by submitting that no expenditure directly or indirectly was incurred by the assessee for earning exempt income and further the investment in shares was made in earlier years out of own funds and not out of borrowed funds, therefore, no disallowance u/s 14A r.w. Rule 8D is to be made.

2.1. On the other hand, Shri Akhilendra Yadav strongly defended the conclusion arrived at by the ld. Commissioner of Income tax (Appeals) by contending that a well reasoned order has been passed by the ld. First Appellate Authority as apportionment of expenditure for earning the dividend income was done as per the provisions of the Act. It was pleaded that section 14A r.w. Rule 8D of the Rules is clearly applicable to the facts of the present appeal.

2.2. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee is a limited company, engaged in trading of bulk and fine, chemicals, solvent and pharmaceutical raw materials declared its

income at Rs.74,40,000/- on 26/09/2009. The assessee credited dividend income of Rs.1,82,262/- in its profit and loss account. The Assessing Officer while framing the assessment invoke section 14A r.w. Rule 8D by contending that assessee claimed various expenses which are related to exempt income in its profit & loss account and disallowed Rs.14,58,412/-. On appeal, before the ld. Commissioner of Income tax (Appeals) broadly the stand taken in the assessment order was affirmed against which the assessee is in further appeal before this Tribunal. The totality of facts clearly indicates, as claimed by the assessee that no borrowed funds were utilized for earning the exempt income by the assessee and further the dividend were directly credited in the bank account of the assessee and no expenditure was claimed. What it may be, we find that the assessee only received Rs.1,82,362/- as dividend income, therefore, there is no question of disallowance of Rs.14,58.412/- by invoking section 14A r.w. Rule 8D under the facts available on record. It was also explained by the ld. counsel for the assessee that on identical fact in earlier years, no disallowance was made. In the present assessment year also, no borrowed funds were invested by the assessee for making investment in shares or for earning dividend income. At best, if any disallowance could be made that can be restricted to Rs. 1,485/- which were claimed as demat charges. Disallowance u/s 14A r.w. Rule 8D cannot exceed the exempt income. In view of this fact, we find merit in the claim of the assessee. The appeal of the assessee is therefore, allowed.

Finally, the appeal of the assessee is allowed.

This order was pronounced in the open court in the presence of ld. Representatives from both sides at the conclusion of the hearing on 01/01/2015.

**Sd/-**  
**(RAJENDRA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(JOGINDER SINGH)**  
**JUDICIAL MEMBER**

**MUMBAI, DATED - 01/01/2015**

*Shekhar, P.S./नि.स.*

**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.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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