

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD C BENCH, AHMEDABAD**

[Coram: Pramod Kumar AM and Rajpal Yadav JM]

MA No. 78/Ahd/2016
Arising out of ITA No. 1863/Ahd/2012
Assessment year: 2009-10

**Prabhudas Kisordas Tobacco
Products Private Limited****Applicant**
659/1, Gulbai Tekra
Panchvati, Ahmedabad
[PNL AABCP1495Q]

Vs.

Additional Commissioner of Income Tax
Range-5, Ahmedabad**Respondent**

Appearances by:

Urvashi Shodhan *for the applicant*
Mudit Nagpal *for the respondent*

Date of concluding the hearing : June 02, 2017
Date of pronouncing the order : June 02, 2017

O R D E R

Per Pramod Kumar AM:

1. By way of this rectification petition, the assessee applicant invites our mistakes to certain mistakes alleged to have crept in the order dated 3rd May 2013 passed by this Tribunal, and urges us to rectify the same.

2. In substance, the mistake pointed out by the applicant is that while the Tribunal has adjudicated upon applicability of rule 8 D, on the facts of this case, and even observed that the learned counsel had not pointed out any defects in the

disallowance made under rule 8D+, the Tribunal has not at all dealt with the objections raised by the assessee, even though the Tribunal has duly recorded these objections, with respect to computation of disallowance on the basis of the said formulae set out in rule 8D. These contentions, as pointed out by the learned counsel, are duly set out in fourth paragraph, at page 3, of the Tribunal's order, which is as follows:

4.Learned counsel for the appellant has filed the paperbook and contended that there was no fresh investment during this year. This investment was coming from the previous year. The assessee had disclosed investment of Rs 77.41 lakhs in the balance sheet which was Rs 1.56 crore in the previous year. The appellant had sufficient interest free funds available with it. There is no nexus between the borrowed funds with the investments in relation to income which does not from part of the total income. Learned counsel further relies on the judgment in the case of Reliance Utilities & Power Limited 313 ITR 340 (Bombay) and Hero Cycles Ltd (290 ITR 398), She further relied in the case of coordinate B bench decision in ITA No 2816/Ahd/2011 for AY 2008-09 in the case of Anand Trade Movers Gujarat Pvt Ltd, wherein coordinate B bench had restored back this issue to the AO for deciding afresh.....

3. Learned counsel for the assessee contends that the Tribunal has simply adjudicated upon the applicability of rule 8D on the facts of this case. To this extent, she has no issues. Her grievance, however, is that the Tribunal has also observed, in the operative portion of the order, that ~~the~~ learned counsel had not pointed out any defects in the disallowance made under rule 8D+ which is in direct conflict with the observations made elsewhere in the order (which we have produced above). It is her contention that the arguments, with regard to quantification of disallowance under rule 8D, have not been disposed of, or even dealt with, at all. She then makes elaborate arguments on why she must succeed on the merits of these arguments but

we are not really concerned with that aspect of the matter at this stage. Suffice to say that she urges us to rectify the order on the aspect of quantification of disallowance under rule 8D. Learned Departmental Representative vehemently opposes the rectification petition and submits that there is no mistake, much less a mistake apparent on record, in the order of the Tribunal. The Tribunal has held that rule 8D does not apply to the facts of this case and that is not even in dispute. The Tribunal has categorically held that no defects were pointed out the disallowance made under rule 8D and it is not open for the assessee to raise any issues on this aspect at this stage, as it was open to the assessee to challenge the said decision in further appeal before Honble High Court. A miscellaneous application cannot be treated as a substitute to the statutory appeal- a remedy which was available to the assessee. We are thus urged to dismiss the rectification application and decline to interfere in the matter. In her brief rejoinder, learned counsel submitted that there is a clear contradiction in the observations made by the Tribunal inasmuch as, on one hand, the Tribunal states that no defects were pointed out in the computation of disallowance but the pleas raised by the assessee, which are duly recorded by the Tribunal, are clearly with respect to quantification of disallowance only. She thus once again reiterated her prayer for rectification of the Tribunal order and adjudication on her grievances with respect to quantification of disallowance under rule 8D. It was in this backdrop that when learned Departmental Representative was asked to reconcile the apparently conflicting observations about arguments of the assessee on quantification of disallowance under section 14A r.w.s. 8D and about the stand of the Tribunal that no defects were pointed out in the quantification of disallowance, he did not have much to say. He nevertheless submitted that even if it is a mistake, it is not the kind of mistake which can be rectified within inherently limited scope of section 254(2).

4. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. As is evident from the observations made in the order of the Tribunal, as also material on the case file, it was specific plea of the assessee that no part of interest payment can be disallowed under section 14A as the interest payment had no nexus with the investments yielding tax exempt income. This plea, and the supporting judicial precedents, are duly noted in the order, and yet the Tribunal has observed that no defects were pointed out the disallowance made under rule 8D. Clearly, therefore, the latter observation is a mistake apparent on record. Once a contention is recorded, as is evident from the reproductions from the Tribunal's original order earlier in this order, there cannot be two opinions about the fact that the contention was raised and it ought to have been disposed of. The disallowance in respect of interest is an integral part of disallowance computation under rule 8D and if no part of the interest can be disallowed whereas interest is otherwise disallowable under rule 8D to some extent, disallowance under rule 8D will have to be scaled down accordingly. The plea of the assessee thus directly affected the computation under rule 8D and it remained to be disposed of. The next question is whether not disposing of a plea, though raised before the Tribunal, amounts to a mistake apparent on record. A mistake apparent from record is not only a mistake in the acts of an authority; even a wrongful inertia of a judicial authority is also a mistake apparent from record. All the powers of someone holding a judicial office are powers held in trust for the good of public at large. There is, therefore, no question of any direct or indirect discretion to use or not to use these powers. It is so for the reason that when a judicial authority has the powers to do something, he has a corresponding duty to exercise these powers when circumstances so warrant or justify. No deviation can be permitted from this approach of fairness and justice. There cannot be any dispute that the Tribunal had the power to dispose of the contentions of the assessee on quantification of disallowance, and, therefore, not exercising these powers is also a mistake apparent on record. There cannot be any two opinions on the fundamental legal position that the Tribunal ought to have dealt with, and dispose of, the contentions of the assessee on quantification of

disallowance under rule 8D. The Tribunal not having done so is, therefore, clearly a mistake apparent on record.

6. In view of the above discussions, as also bearing in mind entirety of the case, we deem it fit and proper to recall the order dated 3rd May 2013 for the limited purposes of dealing with contentions of the assessee with respect to quantification of disallowance under section 14A read with rule 8D. The Registry is hereby directed to fix the appeal, for hearing on this limited aspect, in the last week of September 2017.

7. In the result, the rectification petition is allowed in the terms indicated above. Pronounced in the open court today on the 2nd day of June, 2017.

Sd/-

Rajpal Yadav
(Judicial Member)

Sd/-

Pramod Kumar
(Accountant Member)

Ahmedabad, the 2nd day of June, 2017

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *Commissioner*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad