IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

INCOME TAX APPEAL No. 19 OF 2013

The Asstt. Commissioner of Income Tax, Wardha Circle, Wardha.

-Vrs.-

M/s Jamnalal Sons Pvt. Ltd., Wardha.

AND

INCOME TAX APPEAL No. 18 OF 2013

The Asstt. Commissioner of Income Tax, Wardha Circle, Wardha.

-Vrs.-

M/s Jamnalal Sons Pvt. Ltd., Wardha.

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Mr. S.N. Bhattad, counsel for appellant.
Mr. Thakar, counsel for respondent.

CORAM : B.P. DHARMADHIKARI AND P.N. DESHMUKH, JJ.

DATED : 1st OCTOBER, 2015

The income tax department has questioned use of Rule 8D added to Income Tax Rules 1962 for Assessment Year 2008-09. The assessment years in dispute in these appeals are 2004-05 and 2005-06 respectively. Assessing Officer records a finding of fact which shows that borrowed amount has been used and invested by Assesee for his business and accordingly interest paid on such borrowed amount has been disallowed under section 14A of Income Tax Act. We are not giving the exact figures here but then assessee filed separate appeals before CIT(A) challenging this finding of fact. Submission of assessee before CIT was that he invested his own fund and therefore the exempt income was not earned with assistance of said borrowed fund. In alternate, attention was also invited to Rule 8D.

2. The CIT(A) has looked into only alternate submission and applying provisions of Rule 8D, calculated the disallowance in terms of formula prescribed thereunder.

3. This was questioned by appellant only before ITAT. ITAT in the impugned order found that as per judgment of parent High Court (this High Court) the provisions of Rule 8D are prospective and therefore could not have been applied to the assessment years in question. It, therefore, allowed the appeals partly.

4. The department in these two appeals contends that even if Rule 8D, is held to be not applicable, the application of Section 14A of Income Tax Act needed appreciation and TIAT ought to have therefore remanded matter back to CIT(A).

5. Advocate Thakar does not dispute this proposition. According to him, CIT(A) erred in deciding two appeals of assessee only by looking into alternate submission. Main submission that Section 14A itself had no application has been lost sight of. He attempts to demonstrate to this court that in fact assessee had invested its own fund and no part of borrowed amount was used to earn the exempt income.

Perusal of record shows that CIT(A) has not looked into the main ground raised by assessee in his appeals. CIT(A) ought to have first considered whether finding of fact recorded by Assessing Officer about the utilization of borrowed amount in part by assessee was correct or not. That exercise has not been undertaken. ITAT also has overlooked this aspect.

In this situation, with the consent of parties, we place the matter back before CIT(A) and only for said purpose the impugned order of ITAT dated 16.10.2012 is quashed and set aside. CIT(A) shall hear the parties on correctness or otherwise of the finding recorded by Assessment Officer on utilization of part of borrowed amount by assessee and then find out relevance of Section 14A of Income Tax Act.

We direct the parties to appear before the said authority on 18.11.2015 and to abide by further instructions in the matter. Needless to clarify that controversy in relation to application of Rule 8D as amended lateron is not open for debate before CIT(A) and it stands concluded by order of TIAT.

JUDGE **JUDGE**

Hirekhan