

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "A", MUMBAI  
BEFORE SHRI R.S. SYAL (AM) & SHRI S.S. GODARA (JM)**

**I.T.A. No. 3183 /Mum/2011  
(A.Y. : 2003-04)**

M/s. Auchtel Products Ltd., 142 C, Victor House, N.M. Joshi Marg, Lower Parel (W), Mumbai-400 013. PAN: AAACH 0975 L	Vs.	Asst. Commr. of Income-tax, Cir. -6(1), 5 <sup>th</sup> floor, Aaykar Bhavan, M.K. Road, Mumbai-400 020.
Appellant		Respondent

**I.T.A. No. 2649 /Mum/2011  
(A.Y. : 2007-08)**

Asst. Commr. of Income-tax, Cir. -6(1), 5 <sup>th</sup> floor, Aaykar Bhavan, M.K. Road, Mumbai-400 020.	Vs.	M/s. Auchtel Products Ltd., 142 C, Victor House, N.M. Joshi Marg, Lower Parel (W), Mumbai-400 013. PAN: AAACH 0975 L
Appellant		Respondent

**I.T.A. No. 3185 /Mum/2011  
(A.Y. : 2008-09)**

M/s. Auchtel Products Ltd., 142 C, Victor House, N.M. Joshi Marg, Lower Parel (W), Mumbai-400 013. PAN: AAACH 0975 L	Vs.	Dy. Commr. of Income-tax, Cir. -6(1), 5 <sup>th</sup> floor, Aaykar Bhavan, M.K. Road, Mumbai-400 020.
Appellant		Respondent

Assessee by		Shri Kunal Sharma.
Department by		Shri V.V. Shastri.

Date of hearing	25-04-2012
Date of pronouncement	30-04-2012

## **O R D E R**

**PER R.S. SYAL, AM :**

This batch contains one appeal by the Revenue for assessment year 2007-08 and other two appeals by the assessee for assessment years 2003-04 and 2008-09. Since some of the issues raised in these appeals are common and these appeals have been, in fact clubbed, we are therefore disposing them of by this consolidated order for the sake of convenience.

**A.Y. 2003-04 (Assessee's appeal):**

2. The only issue raised in this appeal is against confirmation of disallowance of Rs.2,15,265/- claimed by the assessee as write off of old unrecoverable earnest money deposits deductible u/s. 37(1) of the Act.

3. Briefly stated, the facts of the case are that the assessee wrote off Rs.2,15,265/- as bad and doubtful debts in its books of account. On being called upon to justify the deduction, the assessee stated that these were old earnest money deposits made by the assessee in the course of business which became

irrecoverable and were forfeited by the parties. Not convinced, the AO made the addition because the assessee could not produce any evidence to support its claim. No relief was allowed in the first appeal.

4. Having heard the rival submissions and perused the relevant material on record, it is observed that the assessee wrote off the said sum as bad and doubtful debts. It is further the case of the assessee that the amount represents unrecoverable earnest money deposits, which were made by it in earlier years and written off in the current year due to non-recovery. In this view of the matter, this amount cannot be considered as bad and doubtful debts. The Id. AR has fairly conceded this issue by claiming it as a business loss. At this stage it is relevant to note that the criteria for allowing deduction in respect of bad debts is different from that of business loss. Deduction on account of bad debts is allowed on simple write off without further proving that the amount became bad in this year. Per contra, the deduction on account of business loss can be allowed only when the assessee proves that the amount became irrecoverable. Simple write off, unlike in case of bad debts, is not sufficient to claim deduction for business loss.

5. Adverting to the facts of the instant case, it is observed that the assessee has made out a case that many years ago, it gave earnest money deposits to several concerns with which it was dealing. However, when the matter was taken

up for recovery of the said earnest money deposits, the parties refused. On a pertinent query, the Id. AR could not place on record any evidence showing, firstly, that the amounts in question were given in earlier years on account of earnest money deposits in the course of business to its business associates and secondly the said parties refused to refund such amount to it. It was, however, maintained that the assessee made strenuous efforts to recover the said amount but could not get it back. The Id. AR submitted that he has got the evidence in this regard, but the same was not readily available. It was, therefore, prayed that one more opportunity be granted to the assessee to lead evidence in support of its case on both these issues. No serious objection was taken by the Id. DR. Having regard to the facts and circumstances of the instant case, we are of the opinion that it will be in the interest of justice if the impugned order is set aside and the matter is restored to the file of AO. We order accordingly and direct the AO to give one more opportunity to the assessee to lead evidence in support of its claim about the amounts having been given as advances in the course of its business and about the said parties having refused to refund the earnest money deposits. If the assessee still fails to lead evidence, then the AO will be at liberty to confirm the addition.

6. In the result, the appeal is allowed for statistical purposes.

**A.Y. 2007-08: (Revenue's appeal):**

7. The Revenue is aggrieved against the direction given by the Id. CIT(A) to the AO to recompute the disallowance u/s. 14A on a reasonable basis by relying on the judgment of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. The ground has been taken that this direction has been given without appreciating the fact that the judgment of the Hon'ble Bombay High court has not been accepted by the Revenue and SLP has been proposed.

8. Briefly stated, the facts of the case are that the assessee earned certain exempt income. No disallowance was offered u/s. 14A. On being called upon to substantiate its case, the assessee submitted that it has not incurred any expenditure in earning dividend income". The AO computed the disallowance u/s.14A at Rs.15,04,791/- by applying Rule 8D. When the matter went to the Id. CIT(A), he directed the AO to make disallowance u/s.14A on a reasonable basis in conformity with the judgment of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co.Ltd. vs. DCIT [since reported in (2010) 328 ITR 81 (Bom) ]. From the ground taken by the Revenue, it is observed that they are aggrieved against the application of the judgment in the case of Godrej & Boyce Mfg. Co. Ltd. on the ground that the said judgment has not been accepted by the Revenue and SLP has been proposed. In our considered opinion, the force of judgment of any High Court is not diluted simply because the aggrieved party

prefers SLP before the Hon'ble Supreme Court or even if such SLP is admitted. It is only when the Hon'ble Supreme court reverses the judgment of Hon'ble High Court that it loses its binding force.

9. Adverting to the facts of the instant case, it is noticed that the Id. CIT(A) has directed the AO to work out the amount disallowable u/s.14A in consonance with the judgment of the Hon'ble jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Ltd. (supra). The said judgment still holds the field inasmuch as no material has been brought to our notice that the appeal of the Revenue against the said judgment has not been disposed of by the Hon'ble Supreme Court in either way. We, therefore, approve the view taken by the Id. CIT(A) in restoring the matter to the file of AO for computing the disallowance u/s.14A in conformity with the aforementioned judgment of the Hon'ble jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Ltd. (supra).

10. In the result, the appeal is dismissed.

**A.Y. 2008-09 (Assessee's appeal):**

11. The only issue raised by the assessee in its appeal is against the confirmation of disallowance of Rs.12,81,496/- made by the AO u/s.14A as per Rule 8D.

12. Briefly stated, the facts of the case are that in this year also the assessee earned certain exempt income without offering any amount disallowable u/s.14A. On being called upon to substantiate its claim in this regard, : “the assessee submitted that it has not incurred any expenditure in earning dividend income”. The AO computed disallowance u/s.14A as per Rule 8D which amount was determined at Rs.12,81,496/-. The assessee submitted before the Id. CIT(A) that there was no nexus whatsoever of the interest bearing deposits with the investments made by the company from which such exempt income was earned. Relying on certain judgments and certain orders passed by the Tribunal, the assessee contended that in order to invoke the provisions of sec. 14A, it was required to be determined first whether any expenditure was actually incurred to earn such exempt income. Not convinced with the assessee’s submission, the Id. CIT(A) observed that the Hon’ble jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Ltd. has held that Rule 8D is applicable w.e.f. assessment year 2008-09. He, therefore, upheld the action of the AO in computing disallowance as per Rule 8D.

13. Having heard the rival submissions and perused the relevant material on record, there is no dispute on the fact that Rule 8D is applicable w.e.f. assessment year 2008-09. Presently, we are dealing with the assessment year 2008-09 and resultantly Rule 8D is to be applied. However, it has been contended by the Id. AR that sufficient material was placed before the AO in

support of its claim of not having incurred any interest expenditure in respect of the exempt dividend income. From the assessment order, it can be seen that the AO has categorically recorded “Assessee’s submission is kept on record”. There is no discussion whatsoever on the submissions so made on behalf of the assessee in this regard.

14. At this juncture, it will be relevant to note that section 14A provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act’. So the reference to the amount disallowable is the expenditure incurred by the assessee in relation to exempt income. It is relevant to note down the provisions of sub-sections (2) and (3) of section 14A which have been inserted w.e.f. assessment year 2007-08 reading as under :

*“(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts 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 does not form part of the total income under this Act.*

*(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act.”*



15. A bare perusal of the above provisions indicates that the AO shall determine the amount disallowable as per Rule 8D, if he, “is not satisfied with the correctness of the claim of the assessee” in respect of such expenditure in relation to exempt income. Even if the assessee claims that no expenditure was incurred in respect of exempt income, the AO is supposed to follow the mandate of Rule 8D if he is not satisfied with the correctness of the assessee’s claim. To put it simply, the further disallowance u/s.14A is called for when the AO is not satisfied with the assessee’s claim of having incurred no expenditure or some amount of expenditure in relation to exempt income. Satisfaction of the AO as to the incorrect claim made by the assessee in this regard is *sine qua non* for invoking the applicability of Rule 8D. Such satisfaction can be reached and recorded only when the claim of the assessee is verified. If the assessee proves before the AO that it incurred a particular expenditure in respect of earning the exempt income and the AO gets satisfied, then there is no requirement to still proceed with the computation of amount disallowable as per Rule 8D. From the assessment order, it is observed that the AO simply kept the assessee’s submissions on record without appreciating as to whether these were correct or not. He proceeded on the premise as if the disallowance as per Rule 8D is automatic irrespective of the genuineness of the assessee’s claim in respect of expenses incurred in relation to exempt income. It is an incorrect course adopted by the AO. The correct sequence, in our considered opinion, for making any disallowance u/s.14A is to, firstly, examine the assessee’s claim of having

incurred some expenditure or no expenditure in relation to exempt income. If the AO gets satisfied with the same, then there is no need to compute disallowance as per Rule 8D. It is only when the AO is not satisfied with the correctness of the claim of the assessee in respect of such expenditure or no expenditure having been incurred in relation to exempt income, that the mandate of Rule 8D will operate. In the instant case, the authorities below have directly gone to the second stage of computing disallowance u/s.14A as per Rule 8D without rendering any opinion on the correctness or otherwise of the assessee's claim in this regard. We, therefore, set aside the impugned order on this issue and restore the matter to the file of AO to re-compute disallowance, if any, in accordance with our above observations after duly examining the assessee's claim in this regard.

16. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced on the 30th day of April , 2012.

**Sd/-**

**(S.S. GODARA)**  
**JUDICIAL MEMBER**

Mumbai: 30th April , 2012.

NG:

Copy to :

**Sd/-**

**(R.S. SYAL)**  
**ACCOUNTANT MEMBER**

1. Assessee.
2. Department.
- 3 CIT(A)-14,umbai.
- 4 CIT-6,Mumbai.
- 5.DR,"A" Bench, Mumbai.
- 6.Master file.  
(TRUE COPY)

BY ORDER,

Asst. Registrar, ITAT, Mumbai.

	Details	Date	Initials	Designation
1.	Draft dictated on	25-04-12		Sr.PS/
2.	Draft Placed before author	25-04-12		Sr.PS/
3.	Draft proposed & placed before the Second Member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/
6.	Kept for pronouncement on			Sr.PS/
7.	File sent to the Bench Clerk			Sr.PS/
8.	Date on which the file goes to the Head clerk			
9.	Date on which file goes to the AR			
10.	Date of dispatch of order			

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