



**The Bombay High Court ruled that once the taxpayer's submissions with respect to section 14A was accepted by a tax officer, the Tribunal cannot send back the same matter for the tax officer's re-consideration**

Recently, the Bombay High Court in the case of Topstar Mercantile Pvt. Ltd.<sup>1</sup> has held that the Income-tax Appellate Tribunal (the Tribunal) was not justified in sending back the matter to Assessing Officer (AO) to consider the applicability of section 14A of the Income Tax Act, 1961 (Act) after applying the ratio of the decision in the case of Daga Capital Management Pvt. Ltd.<sup>2</sup> since the submissions made by the taxpayer in this regard was accepted by the tax officer during the assessment proceedings.

### Facts of the case

The taxpayer earned dividend income which was exempt. The AO during the course of assessment proceedings made enquiry in respect of disallowance of expenditure attributable to the exempted dividend income in view of section 14A of the Act. The taxpayer had made appropriate submissions in that regard. The AO did not record any findings with respect to the disallowance of part of the expenditure under section 14A of the Act at the time of passing the assessment order. However, the AO disallowed interest expenditure to the extent of INR 15 million after holding it as not expended wholly and exclusively for earning business income. The Commissioner of Income-tax (Appeals) [CIT(A)] confirmed the disallowance made by the AO.

The Mumbai Tribunal accepted the contentions of the taxpayer but the matter was sent back to the AO to reconsider the issues including that of the disallowance of expenditure under section 14A of the Act after applying the ratio of Daga Capital Management Pvt. Ltd.

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<sup>1</sup> Topstar Mercantile Pvt. Ltd v. ACIT (2009-TIOL-458-HC-MUM-IT)

<sup>2</sup> ITO v. Daga Capital Management Pvt. Ltd [2008] 312 ITR 1 (SB) (Mum)

### **Issue before the High Court**

- Whether the Tribunal was right in sending back the matter to AO to consider the applicability of the provision of section 14A of the Act?

### **Contentions of the taxpayer**

- The AO made some enquiry regarding the applicability of the section 14A of the Act and the taxpayer made appropriate submission which was accepted by the AO.
- The disallowance of interest expenditure made by the AO was for not being expended wholly and exclusively for earning any business income and not on the grounds of section 14A of the Act.
- Therefore, the direction issued by the Tribunal to decide the matter after applying the decision of Daga Capital Management Pvt. Ltd. was beyond its jurisdiction.

### **Ruling of the Bombay High Court**

- The Bombay High Court held that the Tribunal was not justified in sending back the matter to AO to consider the applicability of section 14A of the Act after applying the ratio of the decision in the case of Daga Capital Management Pvt. Ltd. since the submissions made by the taxpayer was accepted by the AO in that regard.

### **Our Comments**

The Bombay High Court has ruled that the Tribunal cannot send the matter back to AO to reconsider on a particular issue which was already accepted by AO while passing the assessment order.

This decision will help the taxpayers not only while dealing with section 14A issue but also for all those issues which are accepted by AO during the assessment proceedings on which the Tribunal wants to refer the matter back to AO.

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