

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1828/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Ajinkya Electromelt Pvt. Ltd.,
Khandelwal Jain & Associates,
1st Floor, Alankar Cinema Building,
Above United Bank,
Pune – 411001

.... अपीलार्थी/Appellant

PAN: AABCA5142M

Vs.

The Dy. Commissioner of Income Tax,
Circle 8, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri R.G. Nahar

प्रत्यर्थी की ओर से / Respondent by : Shri Achal Sharma, Addl.CIT

सुनवाई की तारीख / Date of Hearing : 05.03.2018	घोषणा की तारीख / Date of Pronouncement: 21.03.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against the order of CIT(A)-6, Pune, dated 22.05.2017 relating to assessment year 2013-14 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following ground of appeal:-

1. *On the facts and circumstances prevailing in the case and as per provisions & scheme of the Act it be held that the disallowance of Rs.1,20,33,699/- made u/s 14A r.w. Rule 8D of the Income Tax Rule is not in accordance with the provisions of the Act & Judicial pronouncements made in this behalf. The disallowance so made be deleted.*

3. The issue raised in the present appeal is against disallowance made under section 14A of the Act read with Rule 8D of Income Tax Rules, 1962 (in short 'the Rules') at ₹ 1,20,33,699/-.

4. Briefly, in the facts of the case, the assessee was engaged in the business of trading in steel products. For the year under consideration, the assessee had furnished the return of income declaring total income of ₹ 1,15,78,410/-. The assessee had derived tax free dividend income of ₹ 40,62,488/-. The Assessing Officer noted that during the year under consideration, the assessee had derived the said income from investments made at ₹ 22,56,86,109/-. Further, the assessee had debited interest expenditure of ₹ 2,88,97,978/-. The assessee was thus asked as to why disallowance should not be made as per provisions of section 14A of the Act read with Rule 8D of the Rules. The submissions of assessee before the Assessing Officer were that total investment was made in shares as long term investments of ₹ 19.70 crores and in Ferrotherm partnership firm at ₹ 50,67,663/-. The total interest free funds available with the assessee comprised of share capital of ₹ 5 lakhs and Reserves & Surplus of ₹ 27.48 crores, which was much more than funds invested. Relying on the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom), the assessee stated that no disallowance is to be made out of interest expenditure. Further, the assessee also relied on the ratio laid down by the Hon'ble High Court of Delhi in Joint Investments Pvt. Ltd. Vs. CIT in ITA No.117/2015, judgment dated 25.02.2015 for the proposition that at best the disallowance under section 14A of the Act if has to be made, then the same is to be restricted to the amount of exempt

income. The secured loan of Cosmos Bank of ₹ 5 crores was utilized for working capital, in any case. The Assessing Officer rejecting the plea of availability of non-interest bearing funds for making the aforesaid investments also recorded satisfaction as to invoking of said section, in the absence of assessee having disallowed any part of expenditure relatable to earning of exempt income. The Assessing Officer also took note of reliance of assessee on the ratio laid down by the Hon'ble Bombay High Court in CIT Vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom) and referred to the Balance Sheet of said concern and observed that disallowance needs to be worked out in view of provisions of Rule 8D of the Rules. The Assessing Officer thus, disallowed under Rule 8D(ii) of the Rules at ₹ 1,19,26,198/- and under Rules 8D(iii) of the Rules at ₹ 1,07,501/-, total disallowance being ₹ 1,20,33,699/-.

5. The CIT(A) upheld the order of Assessing Officer on the ground that the ratio laid down by Hon'ble Bombay High Court in CIT Vs. Reliance Utilities and Power Ltd. (supra) was while deciding the matter under section 36(1)(iii) of the Act and further the issue decided in CIT Vs. HDFC Bank Ltd. (supra) pertained to assessment years 2001-02 to 2005-06, where the relevant provisions of section 14A of the Act were at variance. Further, Rule 8D of the Rules had been brought on the Statute only w.e.f. 24.03.2008 and because of subsequent change in law, the earlier decisions were not applicable. The CIT(A) upheld the working adopted by the Assessing Officer under Rule 8D of the Rules. The CIT(A) also held that there was no requirement of recording any satisfaction by the Assessing Officer and satisfaction, if any, is to be recorded, only if certain expenditure is claimed towards exempt income and the Assessing Officer was to satisfy the correctness of said expenditure.

6. The assessee is in appeal against the order of CIT(A).

7. The learned Authorized Representative for the assessee relying on the ratio laid down by the Hon'ble Bombay High Court in HDFC Bank Ltd. Vs. DCIT & Ors. (2016) 383 ITR 529 (Bom) held that in view of interest free funds available with the assessee, no disallowance was to be made on account of interest expenditure, if any, relatable to earning of exempt income. Our attention was drawn to the Balance Sheet placed at page 11 of the Paper Book to point out that the assessee had share capital of ₹ 5 lakhs and Reserves & Surplus to the tune of ₹ 27.49 crores, which were completely interest free, as against the same, investments were to the tune of ₹ 22,56,86,109/-. The learned Authorized Representative for the assessee further pointed out that in assessment years 2011-12 and 2012-13 when investments were to the tune of ₹ 15.40 crores and ₹ 20.43 crores and where free reserves were available to the tune of ₹ 23.29 crores and ₹ 26.09 crores, no disallowance was made on account of interest relatable to exempt income under Rule 8D(ii) of the Rules. The instant assessment year was the first year when the disallowance was made and also in assessment year 2014-15, similar disallowance was made. However, in assessment year 2015-16 when investment in current assets was to the tune of ₹ 19.11 crores and Reserves & Surplus was available of ₹ 30.43 crores, no disallowance of any kind was made. He further placed reliance on the ratio laid down by the Hon'ble High Court of Delhi in Joint Investments Pvt. Ltd. Vs. CIT (supra), wherein it has been held that disallowance under section 14A of the Act is only to the extent of disallowing the expenditure, incurred by the assessee in relation to tax exempt income could be interpreted to mean that the entire tax exempt income was to be disallowed. The learned Authorized

Representative for the assessee also stressed that no satisfaction was recorded by the Assessing Officer before invoking provisions of section 14A of the Act.

8. The learned Departmental Representative for the Revenue fairly pointed out that satisfaction was duly recorded by the Assessing Officer which is clear from perusal of assessment order itself. Further, the disallowance has been worked out as per provisions of the Act and there is no merit in the plea of assessee that no disallowance is to be made because of Reserves & Surplus available, where the said Reserves & Surplus has been utilized by the assessee for carrying out its business. Another point which was raised by the learned Departmental Representative for the Revenue was the computation of disallowance which was as per Rule 8D of the Rules, which was to be applied for working out the disallowance.

9. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is the applicability of provisions of section 14A of the Act read with Rule 8D of the Rules. The assessee has shown tax free income in the form of dividend from shares at ₹ 40,62,488/- and share of profit from partnership firm at ₹ 28,10,647/-. The Assessing Officer was of the view that in view of exempt income earned by the assessee, then disallowance has to be worked out under section 14A of the Act read with Rule 8D of the Rules and hence, disallowance in the hands of assessee. The case of assessee on the other hand, is that it had sufficient non-interest bearing funds available with it which could justify the investment in equities from which exempt income was earned and there was no merit in making any disallowance

out of interest expenditure under section 14A of the Act read with Rule 8D(ii) of the Rules. The Hon'ble Bombay High Court in the case of HDFC Bank Ltd. Vs. DCIT (2016) 383 ITR 529 (Bom) has relied on the ratios laid down in CIT Vs. Reliance Utilities and Power Ltd. (supra) and in CIT Vs. HDFC Bank Ltd. (supra) and had observed that where both interest free funds and interest bearing funds were available and the interest free funds were more than investments made, then the presumption was that investment in tax free securities would have been made out of interest free funds available with the assessee. Such was the proposition laid down by the Hon'ble Bombay High Court in CIT Vs. Reliance Utilities and Power Ltd. (supra), though, in the context of section 36(1)(iii) of the Act. The Hon'ble High Court observed that the same was consciously applied by the Court while interpreting section 14A of the Act in CIT Vs. HDFC Bank Ltd. (supra). In other words, presumption laid down in CIT Vs. Reliance Utilities and Power Ltd. (supra) is with regard to investment in tax free securities coming out of assessee's own funds. In case, they were in excess to investments made in securities, notwithstanding the fact that the assessee had borrowed certain funds on interest, the said proposition was applicable while applying provisions of section 14A of the Act. In the facts of the case before the Hon'ble High Court, the assessee had paid interest on borrowed funds and had claimed the deduction thereof. However, the assessee did not disallow any expenditure on the income earned on tax free securities on the ground that the said investment was made out of its tax free funds available. Thus, no disallowance was to be made on the expenditure claimed as interest paid on borrowed funds. The Hon'ble High Court also laid down the principle vis-à-vis effect of decision of jurisdictional High Court and coordinate Tribunals and the authorities thereunder.

10. Applying the said principle to the facts of present case, where the assessee had sufficient interest free funds available in the form of share capital and Reserves & Surplus i.e. generated out of its income from year to year, then presumption is that investment in tax free securities has been made out of said non-interest bearing funds available with the assessee. Accordingly, we hold so. Consequently, no disallowance of any part of interest expenditure is to be made since it is not the case of Revenue that investment in tax free securities has been made out of such interest bearing funds. In any case, the issue stands settled by the Hon'ble Bombay High Court in HDFC Bank Ltd. Vs. DCIT (2016) 383 ITR 529 (Bom), wherein the appeal relates to assessment year 2008-09 i.e. the year when provisions of Rule 8D of the Rules had come on Statute and applying the said ratio to the facts of the present case, we hold that no disallowance out of interest expenditure is to be made in the hands of assessee because of availability of non-interest bearing funds being more than investments made on which the income was exempt from tax. Further, on investments made in earlier and later years also, no disallowance under section 14A of the Act read with Rule 8D of the Rules has been made in assessment years 2011-12, 2013-14 and 2015-16. However, disallowance worked out under Rule 8D(iii) of the Rules at ₹ 1,07,501/- stands upheld. Accordingly, we allow the ground of appeal raised by the assessee.

11. We are not addressing the other related issues raised by the assessee vis-à-vis said disallowance made under section 14A of the Act, in view of our allowing the claim of assessee, following the ratio laid down by the jurisdictional

High Court in HDFC Bank Ltd. Vs. DCIT (2016) 383 ITR 529 (Bom). The ground of appeal raised by the assessee is thus, partly allowed.

12. In the result, appeal of assessee is partly allowed.

Order pronounced on this 21st day of March, 2018.

Sd/- (ANIL CHATURVEDI) लेखा सदस्य / ACCOUNTANT MEMBER	Sd/- (SUSHMA CHOWLA) न्यायिक सदस्य / JUDICIAL MEMBER
पुणे / Pune; दिनांक Dated : 21st March, 2018. GCVSR	

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-6, Pune;
4. The Pr.CIT-5, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune