

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Kolkata Bench, KOLKATA  
(Bench- "D")**

**BEFORE SRI ABY T.VARKEY, JUDICIAL MEMBER AND  
DR. A L SAINI, ACCOUNTANT MEMBER**

I.T.A No. 840/Kol/2016  
Assessment Year: 2008-09

I.T.O. Ward-11(2) [PAN : AACCA5623N] (Appellant)	-Vs-	M/s. Alosha Vanijya Pvt. Ltd.  (Respondent)
--	------	---

For the Appellant	Sk. Z.H. Tanweer, JCIT, Sr. DR.
For the Respondent	Miraj D Shah, Advocate
<b>Date of Hearing</b>	<b>27.12.2016</b>
<b>Date of Pronouncement</b>	<b>31.01.2017</b>

**ORDER**

**Per Aby T.Varkey, JM**

This is an appeal preferred by the Revenue against the order of the CIT(A)-XVI, Kolkata, dt. 29.02.016, for assessment year 208-09.

2. The Revenue has raised the following grounds of appeal :-

- 1) *The Ld. CIT(A)-16, Kolkata, erred in deleting the addition of Rs. 37,66,989/- made by the Assessing Officer u/s 14A of the I.T. Act, 1961 read with rule 8D(2)(ii) of the I.T. Rule 1962.*

- 2) *That on the facts and in the circumstances of the case, Ld. CIT(A) is not correct in holding that no part of interest paid can be taken for computation of disallowance under rule 8D(2)(ii).*
- 3) *That the appellant craves to add, delete or modify any of the grounds of appeal before or at the time of hearing.*

Though there are three grounds the third ground is general in nature and does not require any adjudication. Ground No. 1 & 2 relates to a sole issue only that the Revenue is aggrieved by the decision of the Ld. CIT(A) deleting an addition of Rs. 37,66,989/- made by the AO u/s 14A of the Income Tax Act (hereinafter the "Act") r.w. Rule 8D(2)(ii) of the Income Tax Rules 1962 (hereinafter the "Rules").

3. Brief facts of the case is that the assessee declared total loss of Rs. 61,42,890/-, later the case was selected for scrutiny. During the assessment proceedings the AO noted that the assessee company was engaged in the trading in shares and securities and also advancing Loans and Advances. The AO noted that the assessee has invested huge amount of capital in shares including unquoted shares and has kept it as stock in trade. According to the AO the unquoted shares are not tradable, so it cannot be held as stock in trade and so he was of the opinion that the amount for purchase of unquoted share has to be treated as investment. Thus, according to the AO the average investment during the relevant assessment year was of Rs. 3.08 crores in shares. The AO noted that the assessee has paid interest of Rs. 5.81 crores during the relevant assessment year. The AO asked the assessee to explain as to why Section 14A of the Act r.w. Rule 8D should not be applied in the case of the assessee. The

AO was not satisfied with the reply of the assessee and was of the opinion that Rule 8D r.w. Section 14A of the Act has to be applied and he noted that since no direct expenditure is attributable to managing investment in shares , Rule 8D(2)(i) is not applicable and thereafter he calculated the disallowance as below:

*The disallowance u/s 14A as per Rule 8D is as under:-*

*(v) Rule 8D(2)(ii)-  $a \times b / c$*

*Here, a = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year **Rs.5,81,55,884/-**.*

*b = the average of value of investment, income from which does not or 'shall not' from part of the total income, as appearing to the balance sheet of the assessee, on the first day and last day of the previous year- **Rs.3,08,13,095/-***

*c = the average of the total assets as appeared in the balance sheet of the assessee, on the first day and the last day of the previous year- **Rs.45,57,01,639/-**.*

*So,  $a \times b / c = \mathbf{Rs.37,66,989/-}$*

*(vi) Rule-8D(iii)- An amount =  $\frac{1}{2}$  % of the average of value of investment, income from which 'does not' or 'shall not' from part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.*

$\frac{1}{2}$  % of RS.3,08,13,095/- = **Rs.1,54,065/-**

*Therefore, total of **Rs.39,09,516/-** (Less already considered by the assessee Rs.11,538/-) is considered and disallowed as expenditure related to earning of exempt income u/s.14A, as per method provided under Rule 8D.*

Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who upheld the contention of the assessee and held that the assessee earned interest income of Rs. 1,21,30,795/- and has incurred interest expenditure of Rs. 1,08,56,069/- and thus on netting the same the assessee had earned interest and, therefore, the Ld. CIT(A) following the decision of the co-ordinate bench of the Tribunal ***in ACIT vs. Champion Commercial Co. Ltd. [139 ITD 108]*** and the co-ordinate bench in ***REI Agro Ltd vs. DCIT in I.T.A. No. 1331 & 1423/Kol/2011*** held that no interest expenditure can be held liable to be disallowed under Rule 8D(2)(ii) of the Income Tax Rules, 1962. Thereafter the Ld. CIT(A) while deciding the addition made under Rule 8D(2)(ii) of the Rules made estimation of the 5% of the dividend income and accordingly disallowed Rs.99,997/- in place of Rs. 39,09,516/- made by the AO.

4. We note that the Revenue has challenged only the deletion of the addition made on account of Rule 8D(2)(ii) of the Income Tax Rules, 1962 and not in respect to the restricted addition confirmed by the Ld. CIT(A) under Rule 8(D)(2)(iii), therefore, we are adjudicating only the issue in respect to the

addition made by the AO u/s 8D(2)(ii) which has been deleted by the Ld. CIT(A).

We note from the audited financial statement that the assessee has debited a net sum of Rs.4,58,36,028/- as interest expenses the breakup of the same was given by the Ld. CIT(A) which is reproduced as under :

<i>Particulars</i>	<i>Amount</i>
<i>Interest Paid to Secured Creditors for share trading business</i>	<i>4, 72, 98, 455/-</i>
<i>Interest Paid to Unsecured Creditors for business activity of advancing loans</i>	<i>1,08, 56, 069/-</i>
<i>Interest on late payment of FBT</i>	<i>1,360/-</i>
<i>Total Interest Paid</i>	<i>5, 81, 55, 884/-</i>
<i>Less: Interest income from business of advancing loans</i>	<i>1, 21, 30, 795/-</i>
<i>Less: Interest income from refund received from income tax</i>	<i>1,89,061/-</i>
<i>Net Amount of Interest Paid Debited to the Profit &amp; Loss A/c</i>	<i>4, 58, 36, 028/-</i>

5. We take note that the case of the assessee is that it has paid an amount of Rs. 4,72,98,455/- to its secured loan creditors. The secured creditors are NBFC associated with big broking houses. According to the Ld. AR they had provided the margin funding to the assessee. According to the Ld. AR the borrowings from the secured creditors were used by the assessee to trade in shares and securities both in cash segment and in the future segment of the capital market. The arrangement between the secured creditors and the assessee was such that the secured creditors would finance trades executed by the assessee through their Group Stock Broking arm. It was brought to our notice that no part of the funds disbursed by the secured creditors can be

withdrawn by the assessee for another purpose as the payee could only be their Stock Broking arm and none else. It was thus pleaded that the money borrowed from secured creditors was solely used for the purpose of the business of the assessee. We take note that the Ld. CIT(A) after taking into consideration the financial statements and going through the books of account of the assessee, came to the conclusion that the money borrowed and the interest paid there upon were for the purpose of the business of the assessee. We take note that the assessee has paid interest of Rs. 4,72,98,455/- to its secured loan creditors who provided margin funding to the assessee and that no part of the funds disbursed by the secured creditors could be withdrawn by the assessee for any other purpose, as the payee could only be their stock broking arm and none else. We find that the Ld. CIT(A) has arrived at the finding that the funding made by the secured creditors was solely for treating unlisted shares, securities and derivatives through their stock broking arm. This finding of the Ld. CIT(A) could not be controverted by the Ld. DR. So, therefore, the Ld. CIT(A) rightly found that the money borrowed and interest paid thereupon were for the purpose of the business of the assessee. In respect to the interest paid to the unsecured creditors for business activity of advancing loan of Rs. 1,08,56,069/, we note that the assessee has received interest income from business of advancing loans to the tune of Rs. 1,21,30,795/- and thus when netted we find that the assessee has earned interest income from money lending business, which means the assessee has earned more than what it has advanced and as such no part of the same can be considered for disallowance u/s 14A by applying Rule 8D(2)(ii). The Ld. CIT(A) has rightly relied on the decisions of the co-ordinate bench of the Tribunal in Asstt. CIT v. Champion Commercial Co. (supra) & in REI Agro Pvt. Ltd (supra) arriving at the finding that in the facts

and circumstances that Rule 8D(2)(ii) is not applicable. So, we do not find any infirmity in the order of the Ld. CIT(A) in deleting the addition of Rs.37,66,989/- by applying 8D(2)(ii) of the Rules, so we confirm it and dismiss these grounds of appeal i.e. Ground No. 1 & 2. Since the Revenue has not challenge in its ground of appeal against the decision of the Ld. CIT(A) in respect of Rule 8D(2)(iii), we are not adjudicating the Ld. CIT(A)'s decision on it.

Therefore, we do not find any infirmity in the order passed by the Ld. CIT(A) in respect to application of Rule 8D(2)(ii) in the facts and circumstances of the case and we confirm the same.

6. In the result the appeal of the Revenue is dismissed.

**Order pronounced in the Court on .01.2017.**

Sd/-  
[Dr. Arjun Lal Saini]  
Accountant Member

Sd/-  
[A.T.Varkey]  
Judicial Member

Dated : **31.01.2017**

{SC SPS}

Copy of the order forwarded to:

1. I.T.O. Ward – 11(2), Kolkata.
2. M/s. Alosha Vanijya Pvt. Ltd. 40/15, Moore Avenue, Kolkata-700040.
3. CIT(A)-                      Kolkata.
4. CIT –                      , Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Asstt.Registrar, ITAT, Kolkata Benches