

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI  
BEFORE SHRI R.C. SHARMA, AM AND SHRI RAVISH SOOD, JM**

आयकर अपील सं./I.T.A. No.1357/Mum/2013

(निर्धारण वर्ष / Assessment Year: 2009-10)

DCIT-10(1), Mumbai 455, 4 <sup>th</sup> Floor, Aayakar Bhavan, 4 <sup>th</sup> floor, M.K Marg, Mumbai - 400020	<b>बनाम/</b> Vs.	L & T Infrastructure Finance Co. Ltd. 3 -B, Laxmi Towers, 2 <sup>nd</sup> floor, Bandra Kurla Complex, Bandra (E) Mumbai 400051
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.		AABCL2283L
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Tufail A. Khan
प्रत्यर्थी की ओर से/Respondentby	:	Ms. Heena Doshi

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	03/02/2017
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	08/02/2017

आदेश / ORDER

**PER RAVISH SOOD, JM:**

The present appeal is directed against the order passed by the CIT(A)-21,  
Mumbai, dated 09.11.2012, which in itself arises from the order passed by the

A.O. u/s 143(3) of the Income Tax Act 1961 (for short 'Act'), dated 16.12.2011. The revenue assailing the order of the CIT(A) had raised before us the following grounds of appeal:-

- “1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)'s erred in deleting the interest cost considered by AO for the purpose of disallowance u/s 14A r.w Rule 8D without appreciating the fact that the assessee has not been able to prove that the investments are not made out of borrowed funds on which interest has been paid.*
- 2. The appellant prays that the order of the CIT(A)'s on the above ground be set aside and that of the assessing officer be restored.*
- 3. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.”*

2. The brief facts of the case are that the assessee company which is engaged in the business of providing financial products and services for development/establishment of infrastructure projects and providing infrastructure loans had e-filed its return of income on 29.09.2009, declaring income of Rs. 119,49,09,219/-. The return of the assessee was processed as such u/s 143(1) of the Income-tax act, 1961 (for short 'Act').

3. The case of the assessee was taken up for scrutiny proceedings u/s 143(2) of the 'Act'. That during the course of the assessment proceedings the A.O observed that the assessee had earned dividend income of Rs.1,44,04,463/- which was claimed as exempt u/s. 10(35), against which it had disallowed an expenditure of Rs.8,72,668/- u/s. 14A (i.e. @ 0.5% of the average investments)

in its return of income. The A.O however not finding himself as being in agreement with the disallowance carried out by the assessee, therein proceeded with and worked out the disallowance u/s.14A r.w Rule 8D at Rs. 7,01,97,623/-.

4. The assessee being aggrieved with the assessment therein carried the matter in appeal before the CIT(A). The assessee assailing the disallowance of Rs. 7,01,97,623/- carried out by the A.O u/s 14A and substantiating its contention that no part of interest paid on borrowed funds could be related to the investments made by the assessee, therein submitted that during the previous year relevant to the A.Y.2009-10 the borrowed funds were mainly utilized by the assessee for providing infrastructure loans, which was the main business activity of the assessee. That in the backdrop of the aforesaid facts, the assessee justifying the disallowance of a sum of Rs.8,72,668/- (i.e. @ 0.5% of the average investments) which was *suo motto* carried out in the return of income, therein submitted that as there was an inextricable nexus between the 'interest paid' on borrowed funds and the 'interest received' on the infrastructure loans which represented 99% of the total income of the assessee, with a resultant net surplus 'interest income' having been earned by the assessee during the year under consideration, therefore the 'interest paid' was not considered for the purpose of computing disallowance as per Sec. 14A in the return of income. The assessee further fortifying its contention that the borrowed funds had been channelized into its business of advancing infrastructure loans, therein submitted that the loan funds of the assessee company comprised of Term Loan from Banks (Rs.1355 crores); Bank O/D (Rs.216 crores); Commercial Papers (Rs.100 crores); and secured NCDs (Rs.100 crores). It was submitted by the assessee that as per RBI Circular

dated 01.07.2009 term loans cannot be given by banks for investment activities, therefore the question of utilizing term loans for making investments did not arise. The assessee further submitted before the CIT(A) that during the year under consideration as it had not made any new investments, except for investments in 'growth oriented' mutual funds which did not earn any exempt income, therefore the question of utilizing borrowed funds for making investments to earn exempt income did not arise.

5. The assessee further elaborating the nature of investments, therein submitted that the same consisted of investment in equity shares of 'BSCPL', a strategic investment on which it had not earned any dividend income, as well as investment in 'growth oriented' mutual funds which were not capable to earn any exempt income at all and were redeemed in April, 2009, therein resulting into a short term capital gain of Rs.7,78,918/- which was offered for tax in A.Y.2010-11. That in the backdrop of the aforesaid facts, it was thus averred by the assessee that no part of interest paid on borrowed funds could be related to the investments made by the assessee. It was further submitted by the assessee that the A.O. while framing the assessment order has disallowed a sum of Rs.7,01,97,623/- without appreciating as to whether the method followed by the assessee was correct or not, and irrespective of the genuineness of the claim of the assessee in respect of expenses incurred in relation to exempt income, had rather simply proceeded on the premises as if the disallowance as per Rule 8D was automatic.

6. That it was further submitted by the assessee that its share capital plus reserves during the year, viz upto 31.03.2009 were Rs.626 crores and Investments were only Rs.115 crores. Out of Rs.115 crores of investments, it was submitted by the assessee that an amount of Rs.90 crores were invested in

‘growth oriented funds’ which were taxable as capital gains on their redemption in the period relevant to A.Y.2010-11. Thus in the backdrop of the aforesaid facts, it was submitted by the assessee that the effective amount of investment thus remained at Rs.25 crores, against which it had received exempt income in the form of dividend. It was however averred by the assessee that as its share capital and free reserves were more than the investments which had earned exempt income, therefore in light of the judgment of the **Hon’ble High Court of Bombay** in : **CIT vs. Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Bom)**, it was to be presumed that it had invested its own funds towards the investments which earned exempt income. The assessee had in order to further support his aforesaid contention, therein relied on the following orders/judgments:-

- (i) M/s.Achutel Products Ltd. vs. ACIT/DCIT & ACIT vs. M/s. Achutel Products Ltd. (ITA Nos.3183-3185-2649/Mum/2011)
- (ii) M/s.Mazopp Investment Ltd. &Ors. Vs. CIT (Del) (2012) 247 CTR (Del) 162
- (iv) Punjab State Coop & Marketing Fed. Ltd.(ITA Nos. 548-579/Chd/201 1)

7. The CIT(A) finding favor with the contentions of the assessee that the effective investments of the assessee which had earned exempt income during the year remained at Rs. 25 crore, and as the assessee had substantial share capital and free reserves of Rs. 626 crores during the year, therefore held that in light of the judgment of the **Hon’ble High Court** in the case of **Reliance Utilities & Power Limited (supra)**, it had to be presumed that the assessee had invested its own funds towards making of the said investments, as result whereof no part of the interest expenditure was liable to be disallowed u/s 14A

in the hands of the assessee. The CIT(A) thus being of the view that as the disallowance u/s 14A as regards the administrative expenses had to be carried out in view of the judgment of the **Hon'ble High Court of Bombay** in the case of **:Godrej & Boyce Mfg. Co. Ltd. 328 ITR 81**, therefore directed the A.O that the disallowance u/s 14A relatable to the exempt income earned by the assessee during the year under consideration be worked out at 0.5% of the average investment on Rs.25 crores. The observations of the CIT(A) are culled out as under:-

*“2.3 I have considered the facts of the case. The appellant's share capital and reserves is Rs.626 crores up to 31.03.2009 and appellant's investment were Rs.115 crores, out of which Rs.90 crores were invested where income is taxed. The appellant has not made any investment during the year. These investments are carried from the earlier year. For the Rs.90 crores investment where appellant has invested in taxable growth mutual funds, these investments were sold by the appellant during the A.Y.2010-11 and same was offered to tax during the A.Y.2010-11 and filed the return of income. Hence these investments of Rs.90 crores could not be called as investment for the exempt income. Hence any addition for Rs.90 crores, investment regarding interest expenditure and administrative expenditure is not called for as this is not exempt income.*

*Regarding Rs.25 crores investment during the year for which income received is exempt, appellant's share capital and reserves are Rs.626 crores and investment for earning the exempt income is only Rs.25 crores. Since share capital and reserves are more than the investment it has to be presumed that appellant had invested its own*

*funds hence the addition of interest made by the A.O. is to be deleted in view of the Bombay High Court decision in the case of CIT vs. Reliance Utilities (2009) 178 Taxman 135 (Bom) wherein it is held that when the own funds are more than the investment, it is presumed that appellant had invested from his own funds. Following the above decision the addition made by the A.O. is not justified, hence the ground of appeal for the interest expenditure disallowed by the A.O. is allowed in favour of the appellant.*

*Regarding the administrative expenses, this is mandatory in view of the Bombay High Court decision in the case of Godrej & Boyce Mfg. Co. Ltd. 328 ITR 81 wherein it is held that "provisions of Rule 8D of IT Rules which have been notified w.e.f. 24.03.2008 shall apply w.e.f. A.Y. 2008-09". Hence, following the decision, I direct the A.O. to compute the disallowance of 0.5% of the average investment on Rs.25 crores for investment made by the appellant for earning exempt income."*

8. We have heard the Ld. Representatives of both the parties, perused the orders of the lower authorities and the records before us. We have given a thoughtful consideration to the facts of the case in light of the settled position of law and are unable to persuade ourselves to take a view different from that as had been arrived at by the CIT(A). We are of the considered view that the CIT(A) had rightly concluded that as the investments of the assessee which earned exempt income remained at Rs. 25 crores, and as the assessee had substantial share capital and reserves of Rs. 626 crores during the year, therefore in light of the judgment of the **Hon'ble High Court of Bombay** in the case of **Reliance Utilities & Power Limited (supra)** it had to be presumed

that the assessee had invested its own funds towards making of the said investments, as result whereof no part of the interest expenditure could be related to the investments made by the assessee, and resultantly no disallowance u/s 14A as regards the interest expenditure was called for in the hands of the assessee. The CIT(A) had further very fairly directed that in light of the judgment of the **Hon'ble High Court of Bombay** in the case of :**Godrej & Boyce Mfg. Co. Ltd. 328 ITR 81 (Bom)**, a disallowance of 0.5% of the average investment on Rs.25 crores be made in respect of the investment made by the assessee for earning exempt income. That during the course of hearing of the appeal no perversity in the order of the CIT(A) had been pointed out by the Ld. D.R which could persuade us to dislodge the well reasoned order of the first appellate authority. We thus in the backdrop of our aforesaid observations uphold the order of the CIT(A) and dismiss the appeal filed by the revenue.

7. The appeal filed by the revenue is dismissed.

Order pronounced in the open court on \_08/02/ 2017.

Sd/-  
(R.C Sharma)

Sd/-  
(Ravish Sood)

लेखा सदस्य / Accountant Member

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 08.02.2017

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**