

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B", NEW DELHI**

**BEFORE SHRI. P. K. BANSAL, VICE-PRESIDENT  
&  
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.6423/DEL/2015  
Assessment Year:2011-12

DCIT Central Circle 13(2) New Delhi	v.	Jindal Stainless Steelway Ltd. Jindal Centre 12, Bhikaji Cama Place New Delhi
		TAN/PAN:AABCJ4346C
(Applicant)		(Respondent)

Applicant by:	Shri Anshu Praksh, D.R.		
Respondent by:	Shri Amit Goel, C.A		
Date of hearing	19	09	2017
Date of pronouncement:	22	09	2017

**ORDER**

***PER AMIT SHUKLA, J.M.:***

The aforesaid appeal has been filed by the Revenue against the impugned order dated 7/9/2017, passed by the Id. CIT (Appeals)-5, New Delhi for the quantum of assessment passed u/s. 143(3) of the Income Tax Act, 1961 for assessment year 2011-12. The grounds raised by the Revenue in the grounds of appeal are as under:-

- 1. That the order of the learned CIT (Appeals) is erroneous & contrary to facts & law.*
- 2. That on the facts and circumstances of the case & in law, the Ld. CIT (A) has erred in deleting the disallowance of Rs.49,13,980/- made by the AO u/s 14A of the Act.*
- 3. The CIT(A) has failed to consider that the assessee has not been in a position demonstrate that no expenses have*

*been incurred to earn exempt income. A finding has been given by the AO that the assessee has not maintained separate account to fund investment and funds stand withdrawn from common pool of fund.*

- 4. That the order of the CIT(A) is in contravention to the CBDT's circular no. 5 of 2014 wherein it has been clarified that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where tax payer in a particular year has not earned any exempt income.*
- 5. That the appellant crave leave to add, alter or amend any ground(s) of the appeal raised above at the time of hearing.*

2. The brief facts of the case are that the Assessing Officer, on a perusal of the balance sheet and profit & loss account, noted that the assessee had made investment in equity shares of various companies and during the financial year 2010-11 (relevant to the assessment year 2011-12), assessee had earned exempt income of Rs.36,10,904/-. Against this exempt income, assessee had only added back sum of Rs.4,85,660/- as expense attributable for the earning of exempt income, which was mainly on account of indirect/ administrative expenses, that is, was *suo-moto* disallowed under section 14A . It was further submitted by the assessee before the Assessing Officer that there is no direct nexus of exempt income with the expenditure which can be said to be attributable for the earning of the exempt income and during the relevant year, assessee had not made any investment and income has not been earned on long term strategic investments. However, the Assessing Officer held that the assessee is not maintaining separate bank account with respect to investment portfolio and some of the expenses can be said to

have been incurred for the purpose of earning the dividend income and assessee has not been able to demonstrate as to how the expenses have been incurred for the earning of the income which is not includible in its total income. Accordingly, he worked out the disallowance under section 14A as per formula laid down in Rule 8D and thereby made the addition of Rs.53,99,640/- and after setting-off of the disallowance suo-moto made by the assessee at Rs.4,85,660/-, final addition made by the Assessing Officer was at Rs.49,13,980/-. This disallowance mainly comprise of disallowance of interest under rule 8D(2)(ii).

3. Before the ld. CIT (A), assessee submitted that it has given complete details of interest incurred during the previous year before the Assessing Officer wherein it was duly demonstrated that term loans and working capital loans were utilized for the purpose of acquisition of fixed assets and working capital purpose, which has not been considered by the Assessing Officer at all and instead he has mechanically applied Rule 8D without pointing out any defect in the correctness of the claim of expenditure made by the assessee. Assessee's detailed submissions along with various case laws, have been incorporated and dealt by the ld. CIT (A) from pages 3 to 15 of the appellate order. The ld. CIT (A) in his detailed decision, has deleted the said disallowance mainly by observing that no interest expenses under rule 8D(2)(ii) can be said to be attributable for the earning of exempt income.

4. Before us, the ld. D.R. strongly relied upon the order of the Assessing Officer and submitted that once assessee had made investment in equity shares, the income from which is exempt or is not includible in the total income of the assessee, then disallowance u/s 14A has to be made. Hence, the Assessing

Officer has rightly worked out the disallowance under Rule 8D, which is a mandatory provision for calculating the disallowance.

5. On the other hand, the ld. Counsel for the assessee submitted that no exempt income has been earned by the assessee in the assessment year in question, therefore, no disallowance under section 14A can be made. In support of his contention, the ld. Counsel for the assessee strongly relied upon the judgment of the Hon'ble Delhi High Court in the case of **Pr. CIT vs. IL & FS Energy Development Co. Ltd. [2017] 84 taxmann.com 186 (Del.)**.

6. We have heard the rival submissions and perused the relevant finding given in the impugned order. First of all, we are unable to appreciate the contention raised by the ld. Counsel for the assessee that no exempt income has been earned by the assessee during the year, because the Assessing Officer has categorically noted that during the relevant assessment year, assessee has earned exempt income of Rs.36,10,904/- and against this exempt income, assessee has attributed expenses of Rs.4,85,660/- for the purpose of disallowance under section 14A. This fact has again been reiterated in the impugned appellate order at paragraph 3. Such contention by the ld. Counsel for the assessee is completely divorced from the material facts discussed in the assessment order as well as the ld. CIT(A)'s order nor he has placed any fact or evidence to rebut such finding of the authorities below. Thus, the contention raised by the ld. Counsel for the assessee that no disallowance should be made, as there is no exempt income, is out rightly rejected. Even the ground no. 3 of the revenue is out of context as there is exempt income shown by the assessee as discussed above.

7. On merits of the disallowance, it is seen from the assessment order that the Assessing Officer has made disallowance in accordance with Rule 8D, whereby he has disallowed the interest expenditure under Rule 8D(2)(ii) of Rs.49,13,980/- and disallowance of indirect expenditure under Rule 8D(2)(iii) of Rs. 4,85,660/-.

7.1 So far as disallowance of indirect expenditure is concerned, i.e. Rs.4,85,660/-, there is no dispute before us that the assessee has itself offered for disallowance of this amount on account of indirect expenditure which Assessing Officer has also accepted and has given set-off from the overall disallowance made by him.

7.2 As regards disallowance of interest expenditure under rule 8D(2)(ii) is concerned, we find from the order of the Id. CIT(A) that assessee has given complete details of interest incurred during the relevant previous year and has amply demonstrated the utilization of term loan and working capital loan, purely for the business purpose of assessee which is cutting, slitting of HR/CR sheets. These funds have been used for acquisition of fixed assets and for working capital purpose and no borrowed funds have been diverted or utilized for making investments. It has also been stated by the assessee that investments have been made from assessee's own funds for which there is no rebuttal by the Assessing Officer and which fact has also been appreciated by the Id. CIT (A). Once the assessee has been able to demonstrate that no investment has been made from borrowed funds, *albeit* from its own fund and no interest expenditure is attributable for earning of the exempt income, then ostensibly no disallowance under section 14A can be made qua the interest expenditure. The Assessing Officer has not recorded his 'satisfaction' after examining the nature of accounts of the assessee, especially the

accounts relating to utilization of loans and interest expenditure incurred by the assessee, which has been claimed to be directly attributable to the assessee's main business. Once the Assessing Officer has failed to carry out the mandatory requirement of sub-section (2) of section 14A before determining the amount of expenditure, then no disallowance can be made under section 14A. Thus, the order of the ld. CIT (A) in deleting the said disallowance is upheld and consequently the grounds raised by the Revenue are dismissed.

8. In the result, appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 22<sup>nd</sup> September, 2017.**

Sd/-  
**[P. K. BANSAL]**  
**VICE-PRESIDENT**

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

DATED: 22<sup>nd</sup> September, 2017

JJ:1909

Copy forwarded to:

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2. Respondent
3. CIT(A)
4. CIT
5. DR

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