

**THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D', NEW DELHI**

**Before Sh. N. K. Saini, AM and Sh. K. N. Chary, JM**

**ITA No. 3399/Del/2014 : Asstt. Year : 2010-11**

Dy. Commissioner of Income Tax, Circle-4(1), New Delhi	Vs	M/s Jindal Stainless Steelway Ltd., Jindal Centre, 12, Bhikaji Cama Place, New Delhi-110066
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AABCJ4346C</b>		

**Assessee by : Sh. Nipun Mittal, CA**

**Revenue by : Sh. Sampooranand, Sr. DR**

<b>Date of Hearing : 27.09.2017</b>
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<b>Date of Pronouncement : 24.10.2017</b>
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**ORDER**

**Per N. K. Saini, AM:**

This is an appeal by the department against the order dated 31.03.2014 of ld. CIT(A)-VII, New Delhi.

2. The only effective ground raised in this appeal reads as under:

*“Whether on the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition of Rs.43,74,554/- made by the AO on account of 14A r.w. Rule 8D?”*

3. Facts of the case in brief are that the assessee filed its return of income on 09.10.2010 declaring an income of Rs.15,54,17,150/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

Later on, the case was selected for scrutiny. During the course of assessment proceedings, the AO asked the assessee to explain as to why disallowance u/s 14A of the Act r.w. Rule 8D of the Income Tax Rules, 1962 should not be made in respect of investments made. The AO made the disallowance of Rs.43,74,554/- u/s 14A of the Act r.w. Rule 8D of the Income Tax Rules, 1962.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted as under:

*"1) That the learned Deputy Commissioner of Income Tax, New Delhi has grossly erred on facts and circumstances of the case in applying Rule 8D of the Income Tax Rule, 1961, by disallowing interest amounted to Rs 43,74,554/- under Rule 8D of the Income Tax Rules, 1961. Besides above the assessee has suo-motto disallowed while furnishing return of Income for the said assessment year 0.5% of average investments amounting to Rs. 3,97,817/-*

*That Rule 8D has to be applied where the assessee has incurred expenditure during the previous year which is not directly attributable to any particular income or receipt. We have furnished the complete details of interest incurred by the Company during assessment proceedings and that there was no interest which is not attributable to any particular of income or receipt and that funds taken for term loan and working capital has been deployed for the purpose for which the funds were taken."*

5. It was further submitted as under:

*“The provisions of sub-section (2) and (3) to section 14A, which empowers the assessing officer to compute disallowance as per provisions of Rule 8D of the Rules, w.e.f assessment year 2008-09, also provides that disallowance as per provisions of Rule 8D can be computed, only if the assessing officer, having regard to the accounts of assessee is not satisfied with the claim of assessee that no expenditure in relation to exempt income has been incurred by assessee. In other words, even from assessment year 2008-09 and onwards, the assessing officer can compute disallowance under section 14A as per the provisions of Rule 8D, only if assessing officer, having regard to accounts of assessee, reaches a finding, that assessee has incurred expenses, having proximate nexus with earning of exempt dividend income. In the-absence of such finding, it is submitted, that assessing officer does not have power to compute disallowance under section 14A as per provisions of Rule 8D, even for assessment years 2008-09 and onwards.”*

*“The assessing officer has not pointed out any defect in the correctness of the assessee's claim of expenditure amounting to Rs. 3,97,817/- as certified by Statutory Auditor in his tax audit report. The assessing officer, in the present case, if there is no linkage or nexus between the funds borrowed by assessee and the impugned investments, hence, no interest expenditure can be disallowed by mechanically applying the provisions of Rule 8D”*

6. The reliance was placed on the following case laws:
- *Godrej & Boyce Mfg. Co. Ltd. Vs DCIT (2010) 328 ITR 81 (Bom.)*

- *CIT Vs Hero Cycles 323 ITR 518 (P&H)*
- *CIT Vs Jindal Photo Films Ltd. in ITA No. 814/Del/2011*
- *Cheminvest Ltd. Vs ITO (2009) 317 ITR (AT) 86 (Del. Spl Bench)*

7. It was also submitted as under:

*"Interest expenditure Incurred by the assessee was for borrowing used for the purposes of Investment in shares, both held for trading as well as Investment purposes. Irrespective of whether or not there was any yield of dividend on the shares purchased, the Interest incurred was relatable to earning of dividend on the shares purchased. The dividend Income being exempted from tax by virtue of section 10(34) of the Act, the Interest paid on borrowed capital utilized in purchase of shares, being the expenditure incurred in relation to dividend Income not forming part of the assessee's total Income, could not be allowed as a deduction. There was no chargeable Income against which it could be allowed as a deduction. It could not also be allowed against any other taxable Income in as much as the Interest so paid was not relatable to the earning of taxable Income."*

8. The Id. CIT(A) after considering the submissions of the assessee deleted the impugned additions by observing as under:

*"I have considered the contention of the assessing officer as well as the appellant.*

*The Appellant had disallowed 0.5% of average investment of Rs. 3,97,817/- which is also disallowed*

*by AO. There is no dispute on this part of Rule 8D / Section 14A by applicant. The AO has disallowed interest payment of Rs. 43,74,554/-, out of total interest payment of Rs.11,08,46,857/-.(net of interest received from banks of Rs. 3,51,286/- and from others of Rs. 55,84,502/-).*

*The appellant has paid interest to bank of Rs. 3,94,56,592/- on term loan. Rs.4,03,75,755/- on working capital. Rs.3,53,20,623/- on delayed payment to suppliers and Rs. 16,29,675/- for bank and finance charges.*

*Rule 8D cannot be applied for interest paid to suppliers as no part of such expenditure is for exempt income in assessee business. Also Rule 8D is not applicable to bank and finance charges, since they are paid for non exempt activities of the Company.*

*The assessing officer has nowhere proved that the term loan and working capital availed from banks is utilised for making investments in shares in group company.*

*The contention of the assessing officer to apply Rule 8D in all cases by mechanically applying Rule 8D where there is no proximate nexus that the investments has been made out of borrowed funds, is not correct. I have gone through the aforesaid table of the appellant wherein the appellant has submitted that each utilization of assets for nontaxable business assets has not been met out of borrowed funds. It is out of shareholders' funds/ internal accruals. Total owned funds of the assessee as on 31st March,2010 was Rs. 67,25,36,858/- whereas*

*investments in shares was only Rs. 9,71,31,900/-. Therefore, from demonstration of the appellant from the aforesaid table of average source of funds and average utilization of funds that no part of term loan and working capital is utilized for making investments in shares, no expenditure on account of interest for term loan and working capital under section 14A read with Rule 8D can be disallowed. I delete the addition of Rs. 43,74,554/- added by AO u/s 14A rule 8D of IT Act.*

9. Now the department is in appeal. The ld. DR reiterated the observations made by the AO and strongly supported the assessment order dated 07.02.2013.

10. In his rival submissions, the ld. Counsel for the assessee reiterated the submissions made before the authorities below and strongly supported the impugned order passed by the ld. CIT(A). It was further submitted that the assessee was having exempt income of Rs. 211/- only and even then a disallowance of Rs.3,97,817/- being 0.5% of average investment was made suo motu by the assessee. Therefore, the ld. CIT(A) rightly deleted the disallowance made by the AO. In support of the above contention, copy of the computation of income was furnished wherein it has been shown that the assessee received dividend income of Rs.211/- which was claimed as exempt u/s 10 of the Act. The reliance was also placed on the following case laws:

- *Joint Investments (P) Ltd. Vs CIT (2015) 372 ITR 694 (Del)*
- *DCIT, Circle-18(2) Vs NIIT GIS Ltd. (2017) 9 TMI 182 (ITAT Del.)*
- *M/s Amar Packaging Pvt. Ltd. Vs ITO, Co. Ward-1(4), New Delhi (2016) 5 TMI 282 (ITAT Del.)*

11. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is not in dispute that the assessee received dividend income of Rs.211/- only which was claimed as an exempt income. The assessee also disallowed suo motu, a sum of Rs.3,97,817/- in his computation of income u/s 14A of the Act.

12. On a similar issue the Hon<sup>o</sup>ble Jurisdictional High Court in the case of Joint Investments (P.) Ltd. Vs CIT (supra) held as under:

*“Section 14A or rule 8D of the Income-tax Rules, 1962, cannot be interpreted so as to mean that the entire exempt income is to be disallowed. The window for disallowance was indicated in section 14A and was only to the extent of disallowing expenditure “incurred by the assessee in relation to the tax exempt income”. This proportion or portion of the exempt income surely cannot swallow the entire amount. The order of the Assessing Officer was set aside.”*

13. Similarly, the ITAT Delhi Bench in the case of DCIT Vs NIIT GIS ltd. in ITA Nos. 6500 & 6561/Del/2014 vide order dated 30.08.2017 held as under:

*“16. We have heard the rival submission and perused the relevant material on record. In the case of Joint Investment Ltd Vs. CIT on Hon'ble Delhi High Court is of the view that disallowance under section 14A of the Act should not exceed the exempted income claimed by the assessee. The relevant finding of the Hon'ble High Court is reproduced as under:*

*"9. In the present case, the AO has not firstly disclosed why the appellant/assessee's claim for attributing f 2,97,440/- as a disallowance under Section 14A had to be rejected. Taikisha says that the jurisdiction to proceed further and determine amounts is derived after examination of the accounts and rejection if any of the assessee's claim or explanation. The second aspect is there appears to have been no scrutiny of the accounts by the AO - an aspect which is completely unnoticed by the CIT (A) and the ITAT. The third, and in the opinion of this court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is f 48,90,000/-, the disallowance ultimately directed works out to nearly 110% of that sum, i.e., f 52,56,797/-. By no stretch of imagination can Section 14A or Rule 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in Section 14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case."*

*17. Thus, respectfully following the decision of the Hon'ble Delhi High Court, we are of the opinion that the assessee has already made disallowance suo motu exceeding the exempted income, therefore, no further disallowance is required in the case of the assessee and the disallowance made by the Assessing Officer and upheld by the Ld. CIT(A), is hereby deleted. Since we have already deleted the disallowance in question, the argument of the Ld. counsel that no dissatisfaction was recorded by the Assessing Officer for rejecting the claim of the assessee, is merely rendered academic and thus, we are not adjudicating upon. The grounds of the assessee are allowed.”*

14. In the present case also, the assessee suo motu made disallowance which exceeded the exempt income. Therefore, no further disallowance was required to be made. In that view of the matter, we do not see any valid ground to interfere with the findings of the ld. CIT(A) and accordingly, do not see any merit in this appeal of the department.

15. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 24/10/2017)

Sd/-  
**(K. N. Chary)**  
**JUDICIAL MEMBER**

Sd/-  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 24/10/2017**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT