

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "E", MUMBAI  
BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No.3336/Mum/2011 (Assessment Year- 2005-06)

Tata Motors Limited. Bombay House, 24, Homi Mody Street, Hutatma Chowk, Mumbai-400001 <b>PAN:AAACT2727Q</b>	<b>Vs.</b>	DCIT -2(3) Aayakar Bhavan, M.K. Road, Mumbai-20.
(Appellant)		(Respondent)

ITA No.630/Mum/2013 (Assessment Year- 2005-06)

Tata Motors Limited. Bombay House, 24, Homi Mody Street, Hutatma Chowk, Mumbai-400001 <b>PAN:AAACT2727Q</b>	<b>Vs.</b>	ACIT -2(3) Aayakar Bhavan, M.K. Road, Mumbai-20.
(Appellant)		(Respondent)

ITA No.4826/Mum/2011 (Assessment Year- 2005-06)

ACIT -2(3) R. No. 552, Aayakar Bhavan, Mumbai.	<b>Vs.</b>	Tata Motors Limited. Bombay House, 24, Homi Mody Street, Hutatma Chowk, Mumbai-400001 <b>PAN:AAACT2727Q</b>
(Appellant)		(Respondent)

Assessee by : Ms. Arati Vissanji (AR)

Revenue by : Shri Manjunatha Swamy (CIT-DR)

Date of hearing : 11.04.2018

Date of Pronouncement : 13.04.2018

**Order Under Section 254(1) of Income Tax Act**

**PER PAWAN SINGH, J.M :**

1. This group of three appeals under section 253 of Income Tax Act out of which two appeal by assessee and one cross appeal by Revenue are directed

against the order of Ld. Commissioner of Income-Tax (Appeals)-6, Mumbai, [for short the ld. CIT(A)] dated 29.01.2019 & 13.12.2011 for Assessment Years 2005-2006. In ITA No. 3336/Mum/2011 the assessee has raised the following grounds of appeal:

**Disallowance u/s.14A**

The learned Commissioner of Income-tax (Appeals) ["CIT (A)"] has erred both in law and on facts in concluding that disallowance under section 14A is applicable without verification of the details and evidences submitted by the Appellant in support of the claim that the appellant had not incurred any expenditure in relation to exempt income.

The learned CIT (A) ought to have appreciated on the basis of the facts of the appellant that in view of the decision of the Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd., no disallowance can be made u/s.14A where no expenditure had been incurred in relation to exempt income.

2. At the outset of hearing, the Ld. Authorized Representative (AR) of the assessee submits that the ground of appeal raised by assessee has become infructuous in view of the order passed by Assessing Officer while giving effect to the order of Ld. CIT(A), which is in appeal before the Tribunal in assessee's other appeal being ITA No. 630/Mum/2013.
3. Considering the contention of assessee that the assessee has filed separate appeal after giving effect by Assessing Officer to the order of Ld. CIT(A) and the same is subject matter of assessee's appeal in ITA No. 630/Mum/2013.
4. In the result, appeal of the assessee is dismissed as infructuous.

**ITA No. 4826/Mum/2011 by Revenue for A.Y. 2005-06**

5. The assessee has raised by the following grounds of appeal:

On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing assessee's claim of provision for warranty expenses which was not conclusively proved to have been spent during the previous year.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding the expenses towards issue of Foreign Currency Convertible Notes as revenue expense ignoring the fact that the same should be treated as capital expenditure.

6. Brief facts of the case are that the assessee filed return of income for relevant Assessment Year on 31.10.2005 declaring total income of Rs. 851,02,26,690/-. The assessment was completed on 26.12.2008 under section 143(3) of the Act. The Assessing Officer besides the other addition/disallowance disallowed warranty expenses of Rs. 15,39,00,000/- and expenses on issue of foreign currency convertible debt of Rs. 30,62,50,907/-. On appeal before the Ld. CIT(A) both the addition/disallowance was allowed. Thus, further aggrieved by the order of Ld. CIT(A), the Revenue has filed the present appeal before us.

7. We have heard the Ld. Departmental Representative (DR) for the Revenue and Ld. Authorized Representative (AR) of the assessee and perused the material available on record. At the outset of hearing, the Ld. AR of the assessee submits that the grounds of appeal raised by Revenue is covered in favour of assessee in assessee's own case for A.Y's 1999-2000 to 2002-03 in ITA Nos. 3329 to 3332/M/11 dated 31.08.17, ITA No. 3597 to 3601/M/11 & 1039 to 1041/M/13, ITA Nos. 6214 – 6504/M/03 for AYs 1997-98 and 1998-99 dated 06.01.17, ITA No. 7148-7441/M/04, ITA No. 1015/M/01 for

Assessment Year 1996-97 dated. 31.07.07, ITA Nos. 2744/M/97 & 1962/M/2000 dated. 06.02.17 & ITA No. 7061/M/98 for Assessment Year 1994-95 dated 19.04.06. The Ld. DR for the Revenue on going through the chart furnished by Ld. DR. Considering that this ground of appeal is covered in favour of assessee. We have noted that similar ground of appeal was raised by Revenue in A.Y. 1999-00 to 2002-03 and the co-ordinate bench of Tribunal passed the following order:

“20. We have considered the submissions of the parties and perused the order of the Tribunal in assessee's own case for AY 1997-98 and 1998-99 in ITA No. 6214-6504IMJ2003 and ITA No. 7148/M/2004 dated 06.01.2017. The perusal of the order shows that similar disallowance was made against the assessee for AY 1997-98 and for AY 1998-99, however on appeal before CIT(A) the disallowance was deleted. The revenue filed appeal before the Tribunal and the same was dismissed vide order dated 06.01.2017 by following the order for AY 1996-97. The appeal of the revenue was dismissed by the coordinate bench of the Tribunal with the following order;

*Next ground is about provision for warranty of Rs.35.61 crores. It is found that identical ground raised by the AG, was dismissed by the Tribunal, while deciding the appeal for AY 1996-97. We are reproducing paragraph no.2 of the pg. 10 of the said order and it reads as under:-*

*Ground No.7 in revenue's appeal relates la provision for warranty expenses" of Rs. 12,55,68,000/-. Both the parties agreed that this issue is covered in favour of the assessee by the decision of the Tribunal in assessee's own case for the AYs 1992-93, 1994-95 and 1995-96 (ITA No.961/M/03 dt. 23. 3. 03, ITA No.6705/M/98 dt.19.4.06 and ITA No.1690/M/00 dt.6.2.07). wherein the Tribunal has allowed the claim of the assessee. Following the same, the issue is decided in favour a/the assessee and against the revenue.”*

*Respectfully following the above order of the Tribunal, Ground No.7 is decided against the A.O.”*

21. Considering the decision of Tribunal in assessee’s own case for Assessment Year 1997-98 and for Assessment Year 1998-99 and following the principal of consistency the ground of appeal raised by the revenue is dismissed.”

8. Considering the decision of Tribunal in assessee’s own case as referred above, wherein the identical ground of appeal was dismissed in appeal for assessment years 1994-1995 to 2002-2002. Thus, following the order of the

Tribunal, we do not find any merit in the grounds of appeal raised by Revenue.

9. Ground No.2 relates to expenses towards the Foreign Currency Convertible Notes. The Ld. AR of the assessee submits that this ground of appeal is also covered in favour of assessee in assessee's in assessee's group case in Tata Iron & Steel Company Vs. DCIT for A.Y. 1987-88, 1989-90 & 1990-91 in ITA No. 3982, 3984/Mum/03 and the decision of Rajasthan High Court in CIT Vs. Secure Meters Ltd. (321 ITR 611) and the decision of Hon'ble Bombay High Court in Tata SSL Ltd. in ITA No. 449 of 2011 dated 05.11.2012. The ld. AR of the assessee also relied upon the decision of Hon'ble Supreme Court in case of India Cements Ltd. Vs CIT 60 ITR 52, CIT Vs ITC Hotel Ltd. 334 ITR 109 (Kar), CIT Vs Havells India Ltd. 352 ITR 376 (Del.), CIT Vs Instrumentation Ltd. (37 taxmann.com 271 (Raj.) and CIT Vs Sukhjit Starch & Chemicals Ltd. 326 ITR 29 (P & H). The ld. DR for the Revenue fairly conceded that this ground of appeal is also covered in favour of assessee.

10. We have considered the submission of ld. representative of the parties and find that similar ground of appeal was raised in assessee's group companies in Tata Iron & Steel Company Ltd. Vs. DCIT in appeal for A.Y. 1987-88, 1989-90 & 1990-1991 in ITAs No. 3965-3967/Mum/2003 and 3982-3984/Mum/2003 and the Tribunal vide order dated 07.03.2014 allowed the

similar relief. The Id. AR of the assessee has placed on record the copy of decision on record (Page 98 to 141 of Legal Paper Book).

11. The Hon'ble Rajasthan High Court in case of CIT Vs Secure Meters Ltd. (supra) while considering the allowability of expenditure in relation to conversion of debentures held that when debenture issued, whether it is convertible or non-convertible, it does not militate against the nature of debenture, being loan. The expenditure incurred would be admissible as revenue expenditure. The Hon'ble Court also referred and relied the decision of Hon'ble Calcutta High Court in case of CIT Vs East India Hotels (252 ITR 680). The Hon'ble Rajasthan High Court also referred and relied the decision of Hon'ble Supreme Court in India Cement Ltd. (supra) wherein it was held that the aspect from consideration by holding that it is irrelevant to consider the object, with which the loan was obtained. We have noted that the Id CIT(A) has allowed the relief to the assessee by following the decision of Hon'ble Rajasthan High Court in case of Secure Meters (supra), against which the appeal filed by Revenue was dismissed by the Hon'ble Supreme Court.

12. Considering the above legal and factual discussion, we do not find any merit in the grounds of appeal raised by Revenue.

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

**ITA No. 630/Mum/2013 by assessee**

14. The assessee has raised the following grounds of appeal:

(1) Disallowance under section 14A

*The learned Commissioner (Appeals) has erred in law and facts in confirming the disallowance made by assessing officer on ad hoc basis of 5% of the attempt income under the provisions of section 14 A of the income tax act, disregarding the facts of the case that no expenditure had been incurred in relation to exempt income.*

*The learned Commissioner (Appeals) has erred in law and facts in confirming the disallowance under section 14A without verification of the details and evidences submitted by the appellant in support of the claim that the appellant had not incurred any expenditure in relation to the attempt income.*

15. The learned AR of the assessee submits that the grounds of appeal raised by

assessee are covered in favour of the assessee in assessee's own case for assessment year 1999-2000 to 2002-03 in ITA No.(s)3329 to 3332 /M/2011.

The learned AR further submits that assessee owned sufficient interest free funds then the investment made to earn the exempt income. No interest disallowance was made in earlier years. The learned AR of the assessee also relied upon the decision of Hon'ble Bombay High Court in case of HDFC Bank Ltd versus CIT (383 ITR 529 Bom) and in Reliance Utilities and Power Ltd (313 ITR 340 Bom). On the other hand the learned AR for the revenue fairly conceded that this ground of appeal is covered in favour of assessee.

16. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have noted that similar ground of appeal was raised by the assessee in earlier assessment year as submitted by learned AR of the assessee and the Tribunal in assessee's own case vide order dated 31 August 2017 passed the following order;

“6. We have considered the rival submissions of the parties and have gone through the orders of authorities below. We have seen that during the relevant financial year the assessee has earned dividend income of Rs. 15.82 Crore. The AO while giving effect to the order of ld CIT(A) disallowed 5% of dividend income u/s 14A of the Act. We have perused the financial statement of assessee as on 31.03.2002. The assessee was having Capital of Rs. 319.82 Crore and Reserve & Surplus of Rs. 2145.24 Crore. Thus, the assessee has total Capital, and Reserve & Surplus fund of Rs. 2465.06 Crore. The assessee during the relevant financial year has made the investment of Rs. 1189.92 Crore. From the perusal of financial statement, we have noted that the interest free funds available with the assessee are more than the investment made during the year. The Hon’ble Bombay High Court in Reliance Utility and Power Ltd (supra) held that where both the interest free funds and interest bearing funds are available and the interest free funds are more than the investment made the presumption is that the investment is made out of interest free funds available with the assessee. The High Court further held that for the years for which Rule 8D is not applicable and in the event the AO is not satisfied with the working given by the assessee, the disallowance under section 14A has to be made on reasonable basis. The Hon’ble jurisdictional High Court in HDFC Bank Ltd. (supra) held that while considering disallowance under Section 36(1)(iii) the application of Section 14A of the Act would apply. Considering the fact that no interest bearing funds were utilized in earning the exempt income. Thus, no interest disallowance can be made while disallowance u/s 14A of the Act.

7. We have further noticed that the AO has not recorded his dissatisfaction about the claim of assessee, further the lower authority has not disputed that the majority investments are in group companies. We have noted that the Co-ordinate Bench of Kolkata Tribunal in Ashoka Trading Co. Pvt. Ltd., Sagrika Goods & Service Pvt. Ltd. , Diamond Company Ltd. and S.R. Batliboi & Co. (supra), the Tribunal has taken a consistent view to allow reasonable disallowance and restricted the disallowance u/s 14A of the Act to 1% of the dividend income. Thus, respectfully following the decision of Co-ordinate Bench, we restrict the disallowance u/s 14A to 1% of the exempt income and direct the AO to work out the disallowance accordingly.”

17. Considering the decision of Tribunal in assessee’s own case as referred above, wherein the identical ground of appeal was dismissed in appeal for assessment years 1999-2000 to 2002-03. We direct the assessing officer to restrict the disallowance under section 14 A to 1% of the dividend income. In the result the ground of appeal raised by assessee is allowed.

18. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 13<sup>th</sup> day of April 2018.

Sd/-  
**(RAJENDRA)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 13/04/2018

S.K.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

BY ORDER  
(Asstt.Registrar)  
**ITAT, Mumbai**