

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1945/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

DCIT-1(1)(1) 579, Aayakar Bhawan, M.K. Road, Mumbai-400020	बनाम/ Vs.	M/s. Aegis Logistics Ltd. 40, Peninsula Chambers, peninsula Corporate Park, G.K. Marg, Lower Parel, Mumbai-400013
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACA3302N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Ram Tiwari (Sr. AR)	
Assessee by:	Shri Ketan Ved	

सुनवाई की तारीख / Date of Hearing: 18.05.2018
घोषणा की तारीख /Date of Pronouncement: 23.05.2018

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 22.12.2015 passed by the Commissioner of Income Tax (Appeals)-2, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the AY. 2011-12.

2. The revenue has raised the following grounds: -

“1. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) was correct in stating that the interest portion of Rs.6,32,96,027/- be not considered in computing disallowance u/s 14A r.w. Rule 8D2(ii).

Being the final fact finding authority, the Hon'ble ITAT may be requested to set aside the issue for fresh consideration to the filed of the AO.

Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) was correct in restricting the disallowance made u/s 14A of the Act r.w. Rule 8D of the Rules to the extent of dividend income from non-trade investment.

The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

3. The brief facts of the case are that the assessee filed its return of income on 29.09.2011 declaring a total income to the tune of Rs.43,23,03,929/- for the A.Y.2009-10. The return was processed u/s 143(1) of the Act. The case was selected for the scrutiny. Therefore notice u/s 143(2) of the I.T. Act, 1961 dated 21.09.2012 was issued and served upon the assessee. Thereafter, on account of change of incumbent further notice u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. The assessee company was engaged in the profession of facilities for storage and Terminaling of bulk liquid chemicals, petrochemicals, liquefied gas and oils at Mumbai. The assessee disclosed the investment of Rs.9453.07 lacs in its balance sheet and earned the dividend income of Rs.118.17 lacs exempt u/s 10 of the Act. The assessee disallowed a sum of Rs.1,72,085/- on account of expenses incurred to earn exempt income. The assessee also claimed the interest expenditure of Rs.6,32,96,027/- during the year. Thereafter on seeing the facts and circumstance of the case, the Assessing Officer disallowed the expenditure incurred to earn the exempt income to the tune of Rs.11,073,251/-. The total income of the

assessee was assessed to the tune of Rs.44,66,77,920/-. The assessee was not satisfied, therefore, filed an appeal before the CIT(A) who allowed the claim of the assessee in connection with the disallowance of u/s 14A r. w. Rule 8D of the Act. Feeling aggrieved, the revenue has filed the present appeal before us.

ISSUE NO. 1

4. Before discussing the present issue, it is necessary to consider the application for condonation of delay. The appeal has been filed 7 days delay which is not so long. The appeal is required to be decided on merits in the interest of justice, therefore, we condone the delay. Under this issue, the contention of the revenue is that the CIT(A) is not correct in not considering the interest portion of Rs.6,32,96,027/- in computing disallowance u/s 14A r.w. Rule 8D 2 (ii) of the Act. It is necessary to advert the finding of the CIT(A) on record: -

3.4, I have considered the AG's order as well as appellant's submission in this regard. The appellant has provided year wise details of the investment made and the statement of own funds. As appellant had sufficient funds in the year in which investment were made, the investment would be considered as being made out of own funds. I have also gone through the Balance Sheet as on 31.03.2011 wherein the own funds available with the appellant is as under:

Share holders funds	Schedule	As on 31.03.2011	{Rs. in lacs}
(a) Capital	1	Rs.3,340.45	
(b) Reserves and Surplus	2	Rs.23,093.32	Rs.26,433.77
Investments	6		Rs.9,453.07

Whereas the investments made by the appellant company as per Schedule-6 is of Rs. 9,453.07 lacs. From the above facts, the investments made by the appellant company is well within the fund available with the appellant

company of Rs. 26,433.77 lacs. The AR of the appellant also is relying on the judicial decision in the cases of Reliance Utilities & Power Limited (313 1TR 340) and HDFC Bank Limited (366 1TR 505) which are also similar to the appellant's case and accordingly, I am of the considered opinion that the interest portion of Rs. 6,32,96,027/- cannot be considered in computing the disallowance u/s. HA of the LT, Act. This ground is accordingly decided in favor of the appellant.

Applicable Investment

The second issue relating to computation of disallowance is the investments that may need to be considered for the purpose of computing the disallowance under Rule BD. The appellant has objected addition of following investment.

Particulars	Investment as on 31.03.2011 (Rs. in lacs)	Investment as on 31.03.2010 (Rs. In lacs)	Average Investment (Rs. In lacs)
Investment in subsidiaries	6,764.85	1,956.98	4,360.92
Trade investments	-	433.53	216.77
Non-trade investmets	40.03	0.03	20.03
Misc. Investment	3.24	-	1.62
Investment in Government Securities	0.48	0.48	0.48

The appellants submission on the same are as under:

Investment in subsidiary company

5.3 It is submitted that no dividend has been received by the appellant from any of its subsidiary company during the aforesaid assessment year. As no exempt income is earned therefrom, the same cannot be considered for the purpose of computing the disallowance u/s 14A of the Act.

5.4 Reliance in this connection is placed on the decision of Bombay High Court in the case of CIT(A) V. Delite Enterprise (Income Tax appeal No. 110 of 2009) (Refer pages 397 to 398), wherein the Hon'ble High Court have upheld the decision of the Hon'ble Mumbai Tribunal and held that since no exempt income was earned, there should be no disallowance u/s 14A of the Act. The copy of the said decision is enclosed.

5.5 The aforesaid principle has also been laid down in the following decisions:

Decision of the Gujarat High Court in the case of Corrttech Energy Pvt. Ltd. (233 taxman 130) (Refer pages 399 to 401)

Decision of the Allahabad High Court in the case of Shivam Motors (p) Ltd) ITA. No. 88 of 2014 (Refer pages 402 to 408)

Decision of Punjab and Haryana High Court in the case of Lakhani Marketing fact

(ITA No. 970 of 2008) (Refer pages 409 to 415)

56. In addition it is submitted that when the investment in subsidiary companies would be sold, the some could also result /is taxable capital gains, securities transaction tax is paid an the rules proceed. The investment in subsidiaries therefore cannot be regarded as investment generating tax free income as they have potential of generating taxable income.

. Accordingly, thee investments are nut includible for the purpose of computation disallowance u/s 14A read with rule 8D of the Income Tax Rules.

5. Reliance in this connection is also placed on the decision of Mumbai Tribunal its the case of Avshesh Mercantile Mercantile Pvt. Ltd. (HA No. 5779/Mum/2006) (refer pages 371 to

59. Further, your Honour wilt kindly appreciate that investment in subsidiaries have not been made with a view is earn dividends, but with a view to have controlling Make in these Companies. Accordingly, these investments am in the nature of strategic investments

60 Reliance in this connection is placed on the following decision:

a. Decision of the Delhi high Court in the case of CIT v. Oriental Securities Engineers (P) Ltd 35 taxmann com 210) (Refer pages 338 to 339)

b. Decision of the Mumbai ITAT in the case of Garware Wail Ropes Ltd v. ACIT (65 SOT 86) (Refer pages 340 to 344)

c. Decision of the Mumbai ITAT in the case of JM Financial Ltd v ACIT ITA No 4521 /Mum/20 1 2) (Refer pages 345 to

d Decision of the Delhi ITAT in the case of Interglobe Enterprises Ltd v DCIT (ITA No. 1 362 &1032/Del/2012 (Refer page 150 to 361)

e Decision of the Chennai ITAT in the case of EIH Associated Hotels Ltd. v. DCIT (ITA No. 1503/Mds/2012) (Refer pages 362 to 370)”

5. On appraisal of the above mentioned finding, we noticed that the appellant has own fund more than investment. The capital and

reserves fund was to the tune of Rs.26,433.77 lacs. The investment was to the tune of Rs.9,453.07/- lacs. In view of law settled in **Reliance Utilities & Power Ltd. (313) ITR 340) and HDFC Bank Ltd. (366 ITR 505)** investment portion was not liable to be considered in computing the disallowance u/s 14A r.w. Rule 8D of the I.T. Act. The matter of controversy has rightly been adjudicated by the CIT(A) . Facts are not distinguishable at this stage also. No distinguishable material has been produced before us. In view of the said circumstances, we are of the view that the CIT(A) has rightly adjudicated the matter of controversy on this issue, therefore, we found no ground to be interfere with in this issue. Accordingly, this issue is decided in favour of the assessee against the revenue.

ISSUE NO. 2

6. Under this issue the revenue has challenged the restriction of disallowance made u/s 14A of the Act r.w. Rule 8D of the Rules to the extent of dividend income from non-trade investment. The Ld. Representative of the revenue has argued that the investment is liable to be considered for the purpose of disallowance u/s 14A of the Act r.w. Rule 8D of the Act. On the other hand, the Ld. Representative of the assessee has refuted the said contention and argued that the Ld. CIT(A) has rightly restricted the disallowance to the extent of dividend income from non-trade investment. It is also argued that the case of the assessee has duly been covered by the decision of the

Special Bench title as ACIT, Circle 17(1) New Delhi Vs. Vireet Investment P. Ltd. (2017) 82 taxmann.com 415 (Delhi Trib.)

Before going further we deemed it necessary to advert the finding of the CIT(A) on record: -

“3.5 I have considered the AO’s order as well as appellant submission in aforesaid matter. The AR of the appellant vehemently argues that the appellant company has not received any dividend income from the trade investments and therefore section 14A cannot be applicable in the appellant’s case. I have gone through the other income break-up figure as per Schedule-12 as on 31.03.2011 which is as under:

Schedule 12: Other Income

Dividend on current investments (non-trade)	Rs.118.17
Diminution in value of current investments	-
Profit on sale of long term investments(non-trade)	-
Profit on sale of current investments (non-trade)	Rs.41.69
Lease Rent	Rs.81.36
Interest on investments (long term, non-trade)	Rs.8.09
Miscellaneous receipts	Rs.85.43

From the above break-up of other income of the appellant it is understood that the appellant company received Rs.118.17 lacs as dividend income from non-trade investments. Accordingly, the AO is directed to re-work section 14A disallowances with regard to administrative expenditure limited to Rs.118.17 lacs. Accordingly, this ground of appeal is partly allowed.”

7. On appraisal of the above mentioned finding, we noticed that the CIT(A) has restricted the AO to re compute the administrative expenses to the extent of Rs.118.17 lacs which was the investment to

earn the dividend income. In this regard, the matter of controversy has been adjudicated by the Hon'ble ITAT in the case of **ACIT, Circle 17(1) New Delhi Vs. Vireet Investment P. Ltd. (2017) 82 taxmann.com 415 (Delhi Trib.)** in which it specifically held that only those investment are liable to be considered for computing average value of investment which yielded exempt income during the year. In view of the said circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and incorrectly which is not liable to be interfere with at this stage. Accordingly, this issue is being decided in favour of the assessee against the revenue.

8. In the result, the appeal filed by the revenue is hereby ordered to be dismissed.

Order pronounced in the open court on 23.05.2018.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated : 23.05.2018
Vijay

Sd/-

(AMARJIT SINGH)
JUDICIAL MEMBER

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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**