

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI  
BEFORE SHRI G.S.PANNU, AM AND SHRI RAVISH SOOD, JM**

ITA No.2724/Mum/2016

(निर्धारण वर्ष / Assessment Years:2011-12)

M/s Tata Power Trading Company Limited Corporate Centre, 'A' Block, 34, Sant Tukaram Road, Carnac Bunder, Mumbai-400009	<b>बनाम/ Vs.</b>	Deputy Commissioner of Income Tax, Circle-7(3) Room. No. 615, 6 <sup>th</sup> Floor, Aayakar Bhavan, Mumbai-400020
स्थायी लेखा सं./जीआइआर सं./PAN No.		AABCT9887A
<b>(अपीलार्थी /Appellant)</b>	<b>:</b>	<b>(प्रत्यर्थी / Respondent)</b>

अपीलार्थी की ओर से / <b>Appellant by</b>	<b>:</b>	Shri Milin Thokore, A.R
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	<b>:</b>	Shri Rajesh Kumar Yadav, D.R

सुनवाई की तारीख / <b>Date of Hearing</b>	<b>:</b>	22.03.2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	<b>:</b>	30.05.2018

**आदेश / O R D E R**

**PER RAVISH SOOD, JUDICIAL MEMBER:**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-14, Mumbai, dated 25.01.2016, which in itself arises from the order passed by the A.O under Sec. 143(3) of the Income tax Act,

1961 (for short 'Act'), dated 05.03.2014. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:

*"Each of the grounds of appeal and the sub grounds there under are without prejudice to and independent of one another.*

**Ground No. 1**

*On facts and in circumstances of the case and in law, the Commissioner of Income- tax (Appeals) [hereinafter referred to as the CIT(A)] erred in confirming the disallowance of gift expenditure of Rs.4,39,991/-.*

**Ground No. 2**

- (a) *On facts and the circumstances of the case and in law, the CIT(A) erred in upholding the disallowance under section 14A read with Rule 8D(2)(ii) in respect of interest expenditure of Rs. 1,23,010/-.*
- (b) *On facts and the circumstances of the case and in law. the CIT(A) erred in confirming the disallowance under section 14A read with Rule 8D(2)(iii) of Rs. 1,28,336/-.*

*The appellant craves leave to add to, amend, alter, vary, omit or substitute the above grounds of appeal or add a new ground or grounds at any time before or at the time of the hearing of the appeal."*

2. Briefly stated, the facts of the case are that the assessee company which is engaged in the business of trading of power had e-filed its return of income for A.Y 2011-12 on 30.09.2011, declaring an income of Rs.18,89,25,702/-. The case of the assessee was thereafter taken up for scrutiny assessment under Sec. 143(2).

3. During the course of the assessment proceedings, the A.O disallowed the expenses of Rs.4,39,991/- which were claimed by the assessee to have been incurred in respect of gifts made to clients and employees. The A.O further observing that though the assessee had during the year under consideration earned dividend income of Rs.2,67,50,687/-, but had not disallowed any expenses in relation to earning of such tax free income. On the basis of his aforesaid observations, the A.O made a disallowance under Sec.14A of Rs.1,56,689/-, viz. (i). disallowance of interest expenditure under Rule 8D(2)(ii): Rs.28,352/-; and (ii). disallowance under Rule 8D(2)(iii):

Rs.1,28,886/-. The income of the assessee was assessed by the A.O at Rs.18,95,22,380/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee, was however not persuaded to subscribe to the same and sustained the aforesaid additions/disallowances.

5. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee, at the very outset of the hearing of the appeal submitted that as the assessee was in a service industry, hence it had a limited requirement of fixed assets. It was submitted by the ld. A.R that during the year under consideration the assessee had paid interest of Rs. 1,23,010/- on temporary overdrawn balances in Current account, which funds were used for its working capital requirement. The ld. A.R submitted that as on 01.04.2010 it had own funds of 55.87 crores and investment in equity shares of Power Exchange of India Ltd (for short 'PXIL') on the said date was Rs. 2.63 crore. On 31.03.2011 the own funds of the assessee were Rs. 61.29 crores and the investments in the aforesaid shares was Rs. 2.50 crores. The ld. A.R submitted that no fresh investments were made during the year. Still further, it was submitted by the ld. A.R that no loan was taken by the assessee company. It was the contention of the ld. A.R that in the backdrop of availability of substantial own funds with the assessee, no disallowance of any interest expenditure under Sec. 14A r.w Rule 8D(2)(ii) was called for in its hands in respect of investment made in equity shares of PXIL. In support of his aforesaid contention, the ld. A.R relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT-2, Mumbai Vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom). The ld. A.R further assailed the disallowance of Rs. 1,28,886/- made in the hands of the assessee under Sec. 14A r.w Rule 8D(2)(iii). The ld. A.R submitted that disallowance of Rs. 1,56,689/- made by the A.O under Sec. 14A r.w Rule 8D, without providing any explanation for not accepting the claim of the assessee that no expense

was incurred for earning of the exempt dividend income, could not be sustained in light of the judgment of the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT & Anr. (2017) 394 ITR 0449 (SC). It was submitted by the ld. A.R that as held by the Hon'ble Apex Court, the A.O remained under a statutory obligation to record his satisfaction that having regard to the accounts of the assessee, as placed before him, it was not possible for him to generate the requisite satisfaction with regard to the correctness of the claim of the assessee as regards the expenses disallowed under Sec. 14A for earning of the exempt income. It was the contention of the ld. A.R that the disallowance made by the A.O in the absence of any such satisfaction, not being in conformity with the judgment of the Hon'ble Apex Court, was thus liable to be vacated. It was further submitted by the ld. A.R that as the assessee had incurred expenditure of Rs.4,39,991/- on gifts made to clients and employees in the normal course of its business, thus no disallowance of the said expenditure was liable to be made. Per contra, the ld. Departmental representative (for short 'D.R') relied on the orders of the lower authorities.

6. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We shall first advert to the disallowance of gift expenses of Rs.4,39,991/- made by the A.O. We find that the assessee had placed on record substantial material which duly substantiated that the aforesaid expenditure was incurred by the assessee in respect of gifts made to the clients for promotion and growth of its business, while for those given to the employees on Diwali were backed with the intent of creating harmonious relations between the management and staff. We find that the assessee had not only placed on record the supporting bills, but had also furnished the detailed employee wise list to whom the gifts aggregating to Rs.1,78,100/- were given after getting the approval of the management. Still further, the list of the employees to whom trolley bags and T-Shirts of Rs.42,875/- and Rs.22,575/-, respectively, were given, had also been submitted with the A.O.

We are of the considered view that in the backdrop of the aforesaid supporting material, and the fact that the said expenditure had been incurred by the assessee wholly and exclusively for its business, thus the same could not have been disallowed. We thus, not being persuaded to subscribe to the observations of the lower authorities, delete the disallowance of Rs.4,39,991/-. The **Ground of appeal No.1** is allowed.

7. We have further deliberated on the facts leading to the disallowance of Rs.1,56,689/- made under Sec. 14A r.w Rule 8D. We are persuaded to be in agreement with the claim of the ld. A.R that in the backdrop of substantial own funds available with the assessee, no disallowance of any part of the interest expenditure was called for under Sec. 14A r.w Rule 8D(2)(ii). We find that our aforesaid view stands fortified by the judgment of the Hon'ble High Court of Bombay in the case of CIT-2, Mumbai Vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom). Alternatively, we are also persuaded to subscribe to the claim of the ld. A.R, that as held by the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT & Anr. (2017) 394 ITR 0449 (SC), the A.O while dislodging the claim of the assessee that no disallowance under Sec.14A was liable to be made, remained under a statutory obligation to record his satisfaction that having regard to the accounts of the assessee, as placed before him, it was not possible for him to generate the requisite satisfaction with regard to the correctness of the said claim of the assessee. We are of the considered view that as the A.O had failed to record his satisfaction while refusing to accept the claim of the assessee that no expenses were incurred for earning of the exempt dividend income, and had rather mechanically carried out the disallowance under Sec. 14A r.w Rule 8D, the same on the failure on his part to comply with the statutory obligation so cast on him, thus cannot be sustained and on the said count itself is liable to be vacated. We thus in terms of our aforesaid observations are unable to persuade ourselves to uphold the disallowance of Rs.1,56,689/- made by the A.O under Sec. 14A r.w. Rule 8D in the hands of the assessee. The **Ground of appeal No. 2** is allowed.

8. The appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 30.05.2018

Sd/-

(G.S. Pannu)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 30.05.2018

Ps. Rohit

Sd/-

(Ravish Sood)

JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant : M/s Tata Power Trading Company Limited, Corporate Centre, "A" Block, 34, Sant Tukaram Road, Carnac Bunder, Mumbai..
2. प्रत्यर्थी / The Respondent : DCIT Circle 7(3), Room No. 615, 6<sup>th</sup> Floor, Aaykar Bhawan, Mumbai
3. आयकर आयुक्त(अपील) / The CIT(A)-14, Mumbai
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.