

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA**  
(समक्ष)Before श्री ए. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम .बालागणेश, लेखा सदस्य  
[Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

**I.T.A. No. 1893/Kol/2016**  
**Assessment Year: 2006-07**

Assistant Commissioner of Income-tax, Circle-6(2), Kolkata.	Vs.	Rainbow Investments Limited (Successor to Hilltop Holdings India Ltd.) (PAN: AAACH6631H)
Appellant		Respondent

Date of Hearing	20.06.2018
Date of Pronouncement	27.06.2018
For the Appellant	Shri A. Bhattacharjee, Addl. CIT
For the Respondent	Shri D. S. Damle, FCA

**ORDER**

**Per Shri A.T.Varkey, JM**

The appeal filed by the Revenue is against the order of Ld. CIT(A)-2, Kolkata dated 16.06.2016 for AY 2006-07.

2. Ground Nos. 1 and 2 of revenue’s appeal are as under:

*“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in accepting the calculation made by the AR without verifying the facts and allowed the assessee’s ground for statistical purposes.*

*2. Whether by doing so, the Ld. CIT(A) erred in misleading the AO into accepting the assessee’s misconceived position regarding the claim of allowance of interest for non business purposes.”*

3. Briefly stated facts of the case are that the AO in the assessment order disallowed interest of Rs.1,46,98,905/- against the claim of assessee of Rs.1,68,95,293/- as a deduction filed in the return of income, u/s. 14A of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) as he found that borrowed funds were utilized for investing in shares, dividend which were exempt u/s. 10(33) of the Act. On appeal, the Ld. CIT(A) gave partial relief to the assessee by directing the AO to recalculate the disallowance as per the

calculation made by the AR which comes to Rs.67,00,535/-. Aggrieved, revenue is in appeal before us.

4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the issue is squarely covered by the decision ITAT in assessee's own case in ITA No. 318/Kol/2006 for AY 2002-03 dated 10.08.2007 wherein the Tribunal vide para 15 of its order has held as under:

*"We have heard the rival submissions and perused the orders of authorities below. Sec 14A provides that any expenditure relating to earning of income which is not includible in the total income; cannot be allowed in computing the total income. Language of Sec 14A indicates that on expenditure incurred in relation to earning of exempted income is not permissible and therefore the nexus of the expenditure should be established with the tax free income. Where an assessee incurs composite expenditure which produces income which is partly chargeable and partly non chargeable then in working out the disallowable expenditure u/s 14A; apportionment should be made by applying income criterion. In our considered opinion apportionment of expenditure on income criteria would be reasonable and appropriate having regarded to the language used in Sec 14A. Moreover, we find that the same AO in the assessment of Brabourne Investments Ltd applied the income criteria for quantifying interest disallowable u/s. 14A of the Act. In the circumstances, we do not find any reasons for AO to adopt entirely different formula for quantifying the amount disallowable u/s. 14A of the Act. For these reasons therefore we do not find any infirmity in the CIT(A)'s order directing AO to compute the disallowance u/s. 14A on the basis of dividend received which was exempt u/s. 10(33) of the Act. Ground No. 3 of the Revenue's appeal is therefore rejected."*

Against the aforesaid order, revenue preferred appeal before the Hon'ble jurisdictional High court. Hon'ble High court vide ITA No. 308 of 2006 in GA No. 1444 of 2008 dated 06.08.2008 confirmed the action of the ITAT and dismissed the revenue's appeal. Since Ld. DR could not bring out any change in facts and in law, we do not find any infirmity in the order of the Ld. CIT(A) and the same is hereby upheld. This ground of appeal of revenue is dismissed.

5. Ground no. 3 of revenue's appeal is as under:

*"3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in allowing the assessee's contention of non-recognition of interest income of Rs.3.03 crores as had been computed by the AO for the AY 2006-07."*

6. Ground no. 3 is against the relief of Rs.3.03 cr. being non-recognition of accrued interest. On perusal of records the AO found that the assessee has not recognized interest income as the loans given to parties. During the course of assessment proceedings the assessee was asked to explain why interest was not charged as loan given to parties and also

asked to show cause why interest on accrual basis should not be recognized and be taken in computing total income of the assessee. The assessee filed its reply vide its letter dated 14.11.2008 and 24.11.2008, which the AO reproduced in the assessment order at page 4 to 6. After considering the reply of the assessee, the AO observed that interest on the loans given by the assessee should be recognized on accrual basis. He also opined that even the contention of assessee is accepted that it is working as NBFC and hence non-accrual of interest income is allowed as per RBI guidelines cannot be accepted, after the clarification issued by the RBI that the assessee company cannot function as NBFC, neither can carry out any function of NBFC. Therefore, the AO computed the accrued interest of Rs.3.03 cr. to the assessee and accordingly added the same to the total income of the assessee. On appeal, the Ld. CIT(A) following the order of the Tribunal in assessee's own case for AY 2002-03, 2004-05 and 2005-06 deleted the addition as made by the AO and allowed this ground of appeal of assessee. Aggrieved, revenue is before us.

7. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the issue is squarely covered in favour of the assessee by the decision of ITAT in assessee's own case in ITA No. 318/Kol/2006 for AY 2002-03 dated 10.08.2007 wherein the Tribunal vide para 11 of its order has held as under:

*"11. We therefore, find that in the assessee's own case the Tribunal has held that in assessing the total income of the assessee RBI Prudential norms were relevant & had to be taken into a/c. As per Clause 3(2) of the said guidelines the assessee could not recognize interest on the loans considered as NPA. In these circumstances, interest on such loans could not be assessed to tax merely because the assessee followed mercantile system of accounting. It is not dispute by the Revenue that the loans in respect of which the assessee did not recognize interest, were not NPA or that Clause 3(2) of the said prudential guidelines was not properly followed. In absence of any such material before us we have no hesitation in holding that there was no infirmity in the order of the CIT(A) deleting the addition of Rs.1,68,34,053/-. We also find that on identical facts and on the identical reasoning the CIT(A) had allowed relief to M/s. Brabourne Investment Ltd. in his order dated 09.12.2005 and the coordinate bench of the Tribunal in ITA No. 369/K/06 had upheld the relief allowed. For the reasons discussed in the foregoing and following the appellate order dated 5.1.2007, we reject the ground no. 2 of the Revenue's appeal."*

Against the aforesaid order, revenue preferred appeal before the Hon'ble jurisdictional High court. Hon'ble High court vide ITA No. 308 of 2006 in GA No. 1444 of 2008 dated 06.08.2008 confirmed the action of the ITAT and dismissed the revenue's appeal. Since Ld. DR could not bring out any change in facts and in law, we do not find any infirmity in

the order of the Ld. CIT(A) and the same is hereby upheld. This ground of appeal of revenue is dismissed.

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

Order is pronounced in the open court on 27.06.2018

Sd/-  
(M. Balaganesh)  
Accountant Member

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 27th June, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ACIT, Circle-6(2), Kolkata.
2. Respondent – Rainbow Investments Limited (Successor to Hilltop Holdings India Ltd.) 31, N. S. Road, Kolkata-700 001.
3. The CIT(A) -2, Kolkata. (sent through e-mail)
4. CIT Kolkata
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Sr. Pvt. Secretary