

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "I" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, HON'BLE JUDICIAL MEMBER &  
SHRI Dr. A.L. SAINI, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 389/MUM/2017  
(Asst. Year : 2012-13)**

DCIT, Circle-6(3)(1),  
Mumbai.

vs.

M/s. Indrajit Power Pvt. Ltd.,  
Uttam House, 69, P.D. Mello  
Road, Carnac Bunder, Mumbai

(Appellant)

PAN No. AAACI 8656 B  
(Respondent)

**C.O.No. 168/MUM/2018  
(Arising out of ITA No. 389/MUM/2017)**

M/s. Indrajit Power Pvt. Ltd.,  
Uttam House, 69, P.D. Mello  
Road, Carnac Bunder, Mumbai.

vs.

DCIT, Circle-6(3)(1),  
Mumbai.

PAN No. AAACI 8656 B  
(Appellant)

(Respondent)

Assessee by : Shri K. Shivaram, Sr.Adv. &  
Shri Rahul K. Hakani, Adv.  
Department By : Shri Virendra Singh – DR

Date of hearing : 19/06/2018.  
Date of pronouncement : 27/06/2018.

**ORDER**

**PER Dr. A.L. SAINI, ACCOUNTANT MEMBER**

The captioned appeal filed by the Revenue and the Cross  
Objections filed by the assessee pertaining to Assessment Year

2012-13, are directed against the order passed by the Id. CIT(A)-12, Mumbai, in appeal No. CIT(A)-12/DCIT-6(3)(1)/134/15-16, dated 02/11/2016, which in turn arises out of the assessment order passed by the Assessing Officer under sec. 143(3) of the Income Tax Act, 1961 (for short, "Act"), dated 25/03/2015.

**2.** The grievances raised by the Revenue are as follows:-

- "1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the disallowance made under sec. 14A r.w.rule 8D of Rs. 1,85,38,029/- ignoring the CBDT circular No. 05/2014 dated 11/02/2014 that clarifies that disallowance under sec. 14A has to be made irrespective of the fact whether any exempt income has been earned during the year by the assessee or not?"*
- 2. The appellant prays that the order of the Id. CIT(A) on the above grounds be set aside and confirm the order of the A.O.*
- 3. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

**3.** The grievances raised by the assessee in Cross Objection are as follows:-

- "1. The Id. CIT(A) failed to appreciate that for the purpose of computing disallowance under sec. 14A r.w.r. 8D, average investment was Rs. 1 crore and not Rs. 33,75,39,850/- as adopted by the Id. Assessing Officer.*
- 2. The Id. CIT(A) failed to appreciate that disallowance u/s 14A r.w.r. 8D(2) is bad in law as assessee had sufficient non-interest bearing funds and investment during the year was not out of borrowed funds.*
- 3. The Id. CIT(A) failed to appreciate that Id. Assessing Officer erred in applying Rule 8D(2)(iii) to the facts of the present case.*
- 4. The respondent craves lead to add, amend, alter or vary the grounds of appeal at the time of or before the date of hearing."*

**4.** Since the appeal filed by the Revenue and the Cross Objections filed by the assessee relate to the same assessment year, same assessee and identical issues are involved, therefore they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

**5.** The facts of the case in brief are that during the course of assessment proceeding, the Assessing Officer noticed that the assessee has made investment which fetches exempt income or which does not fetch any income. In this regard, the assessee was asked to furnish a working of disallowance u/s 14A r.w.r. 8D and also show cause why disallowance u/s 14A r.w.r 8D should not be made. In response, the assessee has not submitted any explanation, details and reply. The Assessing Officer has considered that firstly the disallowance u/s. 14A not only includes disallowance on account of interest expenses, but also on account of administrative expenses. Since the assessee has completely failed to justify the rationale of not making any disallowance u/s. 14A, the disallowance has to be made under rule 8D of the I.T. Rules, 1962. The Assessing Officer noted that the Hon'ble Jurisdictional High Court in the case of *Godrej & Boyce Mfg. Co. Ltd*, reported in (2010) 328 ITR 81 (Born) has categorically held

that Rule 8D read with section 14A is not arbitrarily or unreasonable, but can be applied if assessee's method is not satisfactorily. The Hon'ble Court also held that from assessment year 2008-09 provision of Rule 8D will apply. The court further held that section 14A is founded on the valid rationale that the basic principle of taxation is to tax net income i.e. gross income minus expenditure. In view of the above, the Assessing Officer computed the disallowance as per Rule 8D as under:-

Sr.No.	Particulars	Amount.
1	The amount of expenditure directly relating to income which does not form part of total income –Rule 8D(2)(i)	NIL
2	Expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt an amount computed in accordance with the following formula namely:  A x B/C Rs. 31,60,31,155 x (Rs. 33,75,39,850/Rs.633,06,24,268)	Rs. 1,68,50,330
	A = The amount of expenditure by way of interest other than amount of interest included in clause (i) incurred during the previous year B = The average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee on the first day and last day of the previous year. C = The average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year – Rule 8D(2)(ii)	
3	i) Average value of investments opening balance of investments + C losing balance of investments/2	Rs. 16,87,699

	<p>= (Rs. 2,00,00,000 + Rs.65,50,79,700 /2 = Rs. 33,75,39,850/-)</p> <p>ii) Disallowance An amount equal to one half percent of the average of the value of investment income from which does not or shall not form part of the total income as appearing in the balance sheet of the assessee on the first day and the last day of the previous year.</p> <p>iii) 0.5% of</p>	
4	Total disallowance	Rs. 1,85,38,029

Accordingly, the Assessing Officer disallowed Rs.1,85,38,029/- u/s. 14A r.w.r. 8D and added back to the total income of the assessee.

**6.** Aggrieved by the stand, so taken by the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) with success. The Id. CIT(A) noted that there is no receipt of exempt income during the assessment year under consideration, therefore section 14A r.w.r 8D do not apply to the assessee, hence, he deleted the addition made by the Assessing Officer.

**7.** Aggrieved by the order of the Id. CIT(A), the Revenue is in appeal and the assessee is in Cross Objection before us on the same issue. Id. Departmental Representative for the Revenue has primarily reiterated the stand so taken by the Assessing Officer, which we have noted in our earlier para and is not being repeated

for the sake of convenience and brevity. On the other hand, Id. counsel for the assessee has defended the order passed by the Id. CIT(A).

**8.** We have given a careful consideration to the rival submissions and perused the material available on record. We note that the assessee during the year under consideration does not have any exempt income. It is a settled position of law that unless there is an exempt income in a particular year, section 14A is not triggered for that year. The case of the assessee is that investments are made from interest free funds available and such investments made by the assessee for controlling interest and not for earning any tax free income. The assessee made investments in unquoted equity share of Aura Minerals Pvt. Ltd. of Rs. 2 crores which is much less than the reserve & surplus of Rs.42,95,91,531/-. Now, it is a settled position that if there is no exempt income, the disallowance under sec. 14A should not be made and the Assessing Officer has admitted the fact that the assessee has not received any exempt income during the year under consideration. Therefore, we are of the view that the addition should not be made unless and until there is a receipt of exempt income for the assessment year under consideration, and for that, we rely on the judgment of the Hon'ble Delhi High Court

in the case of *Cheminvest Ltd. vs. CIT* (2015) 378 ITR 33 (Delhi-HC), wherein it was held that no disallowance under section 14A can be made in a year in which no exempt income had been earned or received by the assessee. The expression 'does not from part of total income' in section 14A envisages that there should be an actual receipt of income, which was not includible in the total income, during the relevant previous year for the purpose disallowing any expenditure incurred in relation to the said income, therefore, section 14A would not apply if no exempt income was received during the relevant previous year. That being so, we decline to interfere in the order passed by the Id. CIT(A), his order on this issue is hereby upheld and the ground of appeal raised by the Revenue is dismissed.

**9.** The assessee has raised the cross objection vide Cross Objection No.168/MUM/2018. We note that the Cross Objections are only supporting to the order of the Id. CIT(A). As we dismissed the appeal of the Revenue on the same issue, therefore, the Cross Objections filed by the assessee has become infructuous and is accordingly dismissed *in limini*.

**10.** In the result, appeal filed by the Revenue and the Cross Objections filed by the assessee are dismissed.

Order Pronounced in open Court on this 27<sup>th</sup> day of June, 2018.

Sd/-  
**(SAKTIJIT DEY)**  
**Judicial Member**

sd/-  
**(A.L. SAINI)**  
**Accountant Member**

**Dated : 27<sup>th</sup> June, 2018.**

**vr/-**

*Copy to:*

1. *The Assessee - M/s. Indrajit Power Pvt. Ltd., Uttam House, 69, P.D. Mello Road, Carnac Bunder, Mumbai.*
2. *The Revenue - DCIT, Circle-6(3)(1), Mumbai.*
3. *The Pr.CIT-6, Mumbai.*
4. *The CIT(A)-12, Mumbai.*
5. *The D.R., Mumbai.*
6. *Guard file.*

By order

Dy./Asst. Registrar,  
ITAT, Mumbai.