

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2025/Ahd/2012
Assessment Year 2009-10**

The ACIT(OSD), Circle-8, Ahmedabad (Appellant)	Vs	M/s. Tanti Holding Pvt. Ltd. 5, 5, Shrimali Society, Nr. Shree Krishna Complex, Navrangpura, Ahmedabad-380009 PAN: AACCS1420K (Respondent)
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**Revenue by: Shri Saurabh Singh, Sr. D.R.
Assessee by: Shri Tushar Hemani &
Shri P.B. Parmar, A.R.**

Date of hearing : 11-04-2018
Date of pronouncement : 25-06-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This Revenue appeal for A.Y. 2009-10, arises from order of the CIT(A)-XIV, Ahmedabad dated 25-06-2012, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The revenue has raised following grounds of appeal:-

- “1). Whether the CIT(A) is right in law and on facts in deleting, the disallowance of interest expense of Rs. 29,19,452/-.”
- 2). “Whether the CIT(A) is right in law and on facts in deleting the disallowance Rs. 59,61,430/- made by the AO u/s. 14A of the Act”.
- 3). Whether the CIT(A) is right in law and on facts in deleting the addition of Rs. 59,61,430/-, being the amount of disallowance made u/s. 14A of the Act while computing Book profit/Income u/s. 115JB of the Act”.

3. In this case, return of income declaring income of Rs nil was filed on 14th Sep, 2009. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 19th August, 2010. The assessee company was engaged in the business of investment and financing. Further facts of the case are discussed under different grounds of appeal:

Disallowance on interest of Rs. 29,19,452/-

4. On scrutiny of the details filed by the assessee, it was noticed that assessee has advanced un-secured loan to Suzlan Energy Ltd. which was a related party, from the funds borrowed for business purposes. The assessing officer has also observed that assessee company has charged interest @ 12% from Suzlan Energy Ltd whereas it has paid interest on such loan @ 16.5%. The assessee has borrowed funds from IFCI and IDFC of the purpose of subscribing its right issue of equity share of Suzlan Energy Ltd. However, the right issue has not been materialized, therefore, it has advanced the borrowed fund to Suzlan Energy Ltd @ 12% for temporary period. The assessing officer has not accepted the explanation of the assessee. He was of the view that assessee has not used the borrowed fund for the purpose of business as it has advanced the borrowed fund to its related party at lower rate of interest on which it has paid interest at higher rate. Consequently, the assessing officer has disallowed an amount of Rs. 29,19,452/- (being the difference of interest charged @ 12% and paid @ 16.5% on Rs. 148 crores).

Disallowance u/s.14A and computing book profit u/s. 1115JB of the act.

5. During the course of assessment proceedings the assessing officer noticed that assessee has earned exempt income of Rs. 13,03,29,180/- Therefore the assessing officer has issued show cause notice to the assessee to explain why not disallowance u/s/ 14A should be computed as per rule 8D of IT

rule. The assessee explained that it has already disallowed expenses u/s 14A as per rule 8D amounting to Rs. 9.66 crores. It was further submitted that borrowed funds were not directly used for the purpose of investment in shares. However the assessing officer stated that assessee has made new investment of approximately Rs. 63.7 crores during the relevant previous year from borrowed fund on which it has incurred interest expenses @ 16.5% whereas assessee has not included such direct expenses in the working of disallowance u/s. 14A r.w. Rule 8D of the act. Consequently, the assessing officer has made disallowance of Rs. 59,61,430/- u/s. 14A r.w. Rule 8D and added to the total income of the assessee.

6. Aggrieved assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has deleted the addition made by the assessing officer. The relevant part of the decision of the Id. CIT(A) is reproduced as under:-

“2.3 Decision:

I have carefully perused the assessment order and the submissions given by the appellant. The A. O. has disallowed the expenditure on interest borrowed from financial institution by restricting the expenditure to 12% of the funds borrowed. It was held by him that the appellant had advanced funds to sister concern at lower rate of interest without any justification and he accordingly disallowed the difference in the rate of interest borrowed and rate of interest received on the funds advanced. The appellant has submitted that the funds were borrowed for investing in equity shares of Suzlon Energy Limited (SEL) from IFCI and IDFC at the rate of 16.5%. However, due to reasons beyond control of the appellant, the right issue did not come and the appellant advanced the money to SEL at the rate of 12%. It was a commercial decision, considering the circumstances at that point of time. The interest received from SEL has been offered in the return of income. It has further been submitted by the appellant that the borrowing of money and payment of interest thereon was for the purpose of business and, therefore, deduction should be allowed from the profits and gains of the business. The appellant has further relied on the decision of Gujarat High Court in the case of Laxmi Agents Pvt. Ltd. [125ITR 227] and the decision of Honourable Supreme Court in the case of S. A. Builders Ltd. [288 ITR1].

After considering the submission of the appellant and the facts, I am of the opinion that the facts clearly show that the appellant had borrowed the money for the purpose of subscribing for the equity shares of SEL. It is a different matter that due to some extraneous circumstances, the right issue was delayed and the issue was ultimately brought in the month of June, 2010 and the appellant ultimately subscribe for the issue. The appellant is undoubtedly in the business of investment and financing and, therefore, borrowing of the money was for the purpose of the business of the appellant. Since the appellant company could not utilize the amount borrowed for subscribing the equity shares, it advanced the money to SEL at 12% so that some part of the investment was recovered. The A. O. has not given any finding pointing out that the borrowal of money was not for the purpose of business. Merely because of the fact that the funds have been

advanced at the rate lesser than at which it were borrowed, the difference in interest cannot be disallowed as long as the purpose of the borrowing and advancing is clear. The reliance placed by the appellant on the judgment of ITAT, Ahmedabad Bench in the case of Aditya Medisales Limited [1TA No. 3272/Ahd/2002] is directly on the issue. It has been held by the honourable bench that the revenue cannot justifiably claim to put itself in the arm-chair of businessman or in the position of Board of Directors and assume the role to decide how much is reasonable expenditure, having regard to the circumstances of the case. It has further been held by the Bench that the Income Tax Authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. It is further noted that there is no dispute about the fact that the expenditure has been incurred and further the money has been advanced on interest which has been shown by the appellant in the return of income. After considering these facts and circumstances, no disallowance of interest can be made. Accordingly, the disallowance made by the A. O. is directed to be deleted and the grounds of appeal are accordingly allowed.”

“3.3 Decision:

I have carefully perused the assessment order and the submissions given by the appellant. The A. O. has made disallowance u/s. 14A by applying Rule 8D and the interest expenditure on the borrowed funds for the purpose of investment in equity shares having taken as direct expenses. The A. O. has accordingly taken indirect interest expenses at Rs.22,20,46,241/- by reducing an amount of Rs. 1,00,28,833/- on account of direct interest expenses taken by him. Therefore, in addition to an amount of Rs.9,66,64,268/- already disallowed by the appellant, disallowance of Rs.59,61,430/- has been made by him. The appellant has submitted that the borrowed funds were not directly used for the investment in shares and, therefore, proportionate disallowance was made by the appellant and the action of the A. O. was not justified.

After considering the facts, it is noted that though the appellant had borrowed certain amount for investing in the equity shares of SEL, the issue was delayed and no investment in the equity shares was made by the appellant during the year. It is also noted that the investment in equity shares was made in the month of June, 2010 which is after the present assessment year. It is also an admitted fact that the funds borrowed from IFCI and IDFC were advanced to SEL at the rate of 12% as the equity issue could not materialize. Once the amount borrowed for a specific purpose was not invested in that purpose and it was delayed and the amount was advanced for some other purpose, the funds get merged and specific use of the funds cannot be pointed out. In these circumstances, for making the disallowance u/s. 14A by applying Rule 8D, overall interest expenditure i.e. indirect expenditure will have to be taken into account. The A. O. has not also established the clear nexus between the funds borrowed and new investment of Rs.63.7 crore made during the year. Therefore, the action of the A. O. by working out the interest expenditure amounting to Rs. 1,00,28,833/- by applying the rate of 16.5% on the borrowed funds and treating it an direct interest expenditure cannot be upheld. The working of disallowance for the purpose of section 14A by taking the overall interest expenditure is, therefore, upheld and the disallowance made by the A.O. is directed to be deleted. Therefore, the third and fourth ground of appeal are allowed.”

7. We have heard the rival contention and perused the material on record carefully. The assessing officer has disallowed an amount of Rs. 29,19,452/- being the difference of interest charged at the rate of 12% on the unsecured loan advanced to the related concern Suzlan Energy Ltd. and the interest paid on the

loan @ 16.5 by the assessee. The Id. CIT(A) has deleted the disallowance made by the assessing officer after considering the fact that the assessee has borrowed the money for the purpose of subscribing for the equity shares of Suzlan Energy Ltd. however, because of some extraneous reasons the right issue was delayed and the issue was finally made in the month of June, 2010 which was subscribed by the assessee. Because of delay in subscription of the issue the assessee has advanced the money to the SEL at 12% for the period till the shares was subscribed and the assessee has recovered the part of the cost of the borrowing made from the investment. We consider that above facts demonstrate that since the assessee could not utilize the amount borrowed for subscribing the equity shares therefore it advanced the money at 12% so that some part of investment was recovered. After considering the specific facts and circumstances on this issue as above and as elaborated in the findings of the Id. CIT(A), we do not find any reason to interfere in the decision of the Id. CIT(A). The second issue is related to disallowance of Rs. 59,61,430/- made by the assessing officer u/s. 14A r.w.s. 8D of the I.T. Rule. We have heard the rival contention and perused the material on record carefully. The assessee has itself disallowed an amount of Rs. 9,66,64,268/- as expenditure incurred towards earning exempt income. However the assessing officer was of the view that assessee has made investment out of borrowed - funds @ 16.5% and observed it as direct expenses incurred to earn exempt income. Consequently, the assessing officer has worked out an expense of Rs. 10,26,25,698/- to be disallowed u/s. 14A r.w. Rule 8D of the IT Rule. It has resulted in disallowance of difference of Rs. 59,61,430/- (Rs. 10,26,25,698- 9,66,64,268/-).

After perusal of material on record we observe that the borrowed funds were not invested in the equity shares as same could not be subscribed till June, 2010 because the right issue was delayed. We consider that the assessing officer has not demonstrated that how the borrowed funds were invested in earning exempt income during the year under consideration. The assessing officer has failed to prove infirmity in the action of the assessee of treating

interest expenditure as indirect expenditure as against of treating direct expenditure by the assessing officer. In view of the above facts and the detailed findings of the Id. CIT(A) as elaborated above in this order, we do not find any error in the decision of the Id. CIT(A). Therefore, the appeal of the assessee on this issue is dismissed. The third ground of appeal of the revenue pertaining to addition of Rs. 59,61,430/- while computing book profit has become infructuous as we have upheld the decision of the Id. CIT(A) in deleting the impugned addition as per ground no. 2 of appeal as discussed supra in this order.

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

Order pronounced in the open court on 25-06-2018

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 25/06/2018

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क० तालम आदेश / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपील आधिकरण,
अहमदाबाद