

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ “बी” चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH**  
**BENCH “B” CHANDIGARH**

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य**  
**BEFORE: SH. SANJAY GARG, JUDICIAL MEMBER &**  
**SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. 59/CHD/2015  
& ITA No. 413/CHD/2018  
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Rajbir Singh Walia, House No. 336, Sector 9-D, Chandigarh.	बनाम	The DCIT, Circle 1(1), Chandigarh.
स्थायी लेखा सं./PAN NO: AAPW8792P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri S.K.Bhasin  
राजस्व की ओर से/ Revenue by : Shri Manjit Singh, Sr.DR  
सुनवाई की तारीख/Date of Hearing : 20.09.2018  
उद्घोषणा की तारीख/Date of Pronouncement : 17.12.2018

**आदेश/Order**

**PER ANNAPURNA GUPTA, A.M.**

Both the appeals have been filed by the same assessee against the orders passed u/s 250 (6) of the Income Tax Act, 1961 ( hereinafter referred to as 'Act') by the Commissioner of Income Tax (Appeals) Chandigarh, [in short as CIT(A)]. While the appeal in ITA 59/CHD/2015 is in relation to the quantum proceedings and is against order passed by the CIT(A) dated 31.10.2014, the appeal in ITA 413/CHD/2018 is against the action of the Id. CIT(A) in affirming the levy of penalty u/s 271(l)(c) of the Act consequent to the additions made in quantum proceedings vide his order dated 27.02.2018. Since both the issues are inter-related, they were therefore taken up together for hearing.

2. We shall first be dealing in the assessee's appeal in quantum proceedings in ITA 59/CHD/2015. The assessee has raised the following grounds of appeal :

- 1) *The order of the CIT(Appeals), Chandigarh is bad in law & on facts.*
- 2) *The Ld. CIT(Appeals) has erred in confirming the order passed by AO in invoking the provisions of Sec 14A as there is no nexus between exempt income and interest expenditure.*
- 3) *The Ld. CIT(Appeals) has erred in confirming the order passed by AO regarding disallowance of proportionate interest as per the provisions of section 36(1) (in) as fund has been incurred for the purpose of business and there is no diversion of funds.*
- 4) *The appellant craves leave to add or amend any ground of appeal.*

3. The ground Nos. 1 and 4 are general in nature and need no adjudication.

4. Ground No. 2 deals with the issue of disallowance of expenditure made in relation to earning of exempt income under the provisions of Section 14A of the Act. Briefly stated the assessee had made total investments of Rs. 24,56,448/- in shares of various companies. The Assessing Officer (AO) noted that interest of Rs. 30,52,044/- had been debited to the Profit & Loss Account on the unsecured loans taken by the assessee and so he questioned the assessee about disallowance u/s 14A of the Act. The assessee claimed that he had not incurred any expenditure for earning the exempt income but the AO was not satisfied with the explanation of the assessee and accordingly, made disallowance of Rs. 27,09,084/- u/s 14A read with Rule 8D of the Income Tax Rules, 1962.

5. The matter was carried in appeal before the CIT(A) who upheld the disallowance so made.

6. Before us, Id. counsel for the assessee contended that it had been pointed out to the CIT(A) that the assessee had sufficient own funds for the purpose of making the investments calling for no



b. Rolta	Rs. 341.65
c. DSQ Software	Rs. 5180.79
d. Himachal Futuristic	Rs. 2,95,246.32
e. Divine Distributors Pvt. Ltd.	Rs. 5,93,430/-
f. Horizon Fincap Ltd	Rs. 14,39,000/-

8. It was pointed out that out of the above, only investment of Rs. 4.24 lacs in shares of listed companies were capable of earning dividend. It was, therefore, contended that in any case, the disallowance of expenses was to be worked out only in relation to those investments as per Rule 8D(2)(ii). It was also contended that the assessee had in any case earned dividend income of Rs. 30,000/- during the year and the disallowance could not have exceeded the said amount. Reliance was placed on the decision of the Chandigarh Bench of the Tribunal in the case of ACIT Vs Punjab State Cooperative & Marketing Federation Ltd. in ITA No. 548/CHD/2011 in support of this proposition.

9. The Id. DR on the other hand, relied on the order of the lower authorities contending that the assessee's contention could not be accepted in view of the explicit provisions of Section 14A of the Act read with Rule 8D.

10. We have heard the rival contentions and carefully perused the orders of the authorities below. We find merit in the contention of the Id. counsel for the assessee that no disallowance u/s 14A was warranted in the present case under Rule 8D(2)(ii) on account of sufficiency of own interest free funds available with the assessee. The fact that the own funds available with the assessee in the form of profits made during the year were to the tune of Rs. 13.71 Cr and in the form of share capital, to the tune of Rs. 27.39 Cr, while the investment in shares of companies, amounted to a mere Rs. 24.56

lacs, is not disputed. In the face of the said fact and considering the position of law in this regard laid down by various Courts as relied upon by the Id. counsel for the assessee in the case of HDFC Bank Ltd. (supra) and Reliance Utilities (supra), no disallowance u/s 14A could be made- of interest where sufficient own funds are available with the assessee. In view of the same, we delete the disallowance of interest made by applying Rule 8D(2)(ii) in the present case.

11. As for the disallowance of other expenses made as per Rule 8D(2)(iii) of the Act, we agree with the contention of the Id. Counsel for the assessee that firstly the disallowance in any case cannot exceed the quantum of exempt income earned by the assessee. The Hon'ble Apex Court in the group of cases with the lead case being Maxopp Investment Ltd. vs CIT in C. No. 104-109 of 2015 dt.12- 02-2018 dealt with the case of State Bank of Patiala also wherein it upheld the order of the Hon'ble Punjab & Haryana High Court restricting the disallowance to the extent of exempt income earned. The relevant findings of the Hon'ble Apex Court in the said case is as under :

8. " 40. We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT (A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT"

12. In view of the same, we held that the disallowance, in any case, cannot exceed the exempt income which undisputedly is Rs. 30,000/- by way of dividend. Further, we also agree with the Id.

counsel for the assessee that even while applying Rule 8D(2)(iii), only those investments which have earned dividend income during the year have to be taken into action while applying the stipulating affirmation. The Hon'ble Delhi High Court in the case of ACB Ltd. vs ACIT in ITA No.615/2014 dt.24-03-15, has categorically laid down this proposition holding as under :

*"The AO, instead of adopting the average value of investment of -which income is not part of the total income i.e. the value of tax exempt investment, chose to factor in the total investment itself. Even though the CIT(Appeals) noticed the exact value of the investment which yielded taxable income, he did not correct the error but chose to apply his own equity. Given the record that had to be done so to substitute the figure of ^38,61,09,287/- with the figure of ^3,53,26,800/- and thereafter arrive at the exact disallowance of .05%.*

*5. In view of the above reasoning, the findings of the IT AT and the lower authorities are hereby set aside. The appeal is allowed"*

13. In view of the above, we hold that the entire disallowance of interest under Section 14A read with Section 8D(2)(ii) is to be deleted since the assessee had sufficient own funds for the purpose of making the impugned investments while the disallowance of other expenses under Rule 8D(2)(iii) is to be restricted to the extent of exempt income earned and is to be worked out by considering only those investments which have earned exempt income during the year. The ground of appeal No. 2 is, therefore, partly allowed.

14. Ground of appeal No. 3 relates to the disallowance of interest expenses u/s 36(l)(iii) of the Act Briefly stated the assessee had debited interest of Rs. 30,52,044/- to the Profit & Loss Account. The AO noticed that the assessee had invested an amount of Rs. 1,81,59,583/- in purchase of land and its development in Zirakpur. The AO was of the view that this investment was not for business consideration or commercial expediency and accordingly, we

disallow proportionate interest @ 12% on the investment so made which was upheld by the CIT(A).

15. Before us, Id. counsel for the assessee contended that it had sufficient own funds for the purpose of making the impugned investment in the form of profits for the year being Rs. 13.171 Cr and own capital to the tune of Rs. 27.39 Cr and therefore, no disallowance u/s 36(l)(iii) of the Act was warranted. Reliance was placed on the decision of the Hon'ble jurisdictional High Court in the case of CIT, Ludhiana Vs Rakesh Gupta in ITA 37/2014 and on the decision of the Hon'ble Apex Court in the case of Hero Cycles Pvt. Ltd. Vs CIT(Central) Ludhiana in Civil Appeal No. 514 of 2008.

16. The Id. DR on the other hand, relied on the order of the authorities stating that the disallowance had been rightly made since the assessee had failed to demonstrate commercial expediency for making the impugned investment.

17. We have heard the rival contentions. We are in agreement with the contention of the Id. counsel for the assessee that no disallowance of interest was warranted in the present case in view of the fact that the assessee had sufficient funds which far exceeded the investment made in land and the presumption in such case was that the own interest free funds had been used for making the investment. The fact that the assessee had earned profits to the tune of Rs. 13.71 Cr. during the year is not disputed and also not in dispute is the fact that the investment in land amounted to Rs. 1.81 Cr. Therefore, the availability of own interest free funds with the assessee for making the impugned investment is established beyond doubt. Further, we agree with the Id. counsel for the assessee that

the judicial position in this regard as laid down by the jurisdictional High Court in the case of Shri Rakesh Gupta (supra) and by the Hon'ble Apex Court in the case of Hero Cycles (supra) is that where sufficient own funds are available, it is to be presumed that the same have been utilized for investment. In view of the same, there is no reason for making any disallowance of interest u/s 36(l)(iii) of the Act and the entire disallowance made is, therefore, deleted. The ground of appeal No. 3 is, therefore, allowed. In a fact, appeal of the assessee is partly allowed.

18. In the result, appeal of the assessee is partly allowed.

19. We shall now take up the appeal of the assessee in ITA 413/CHD/2018. Penalty u/s 271(l)(c) of the Act was levied for concealing/furnishing inaccurate particulars of income relating to the two additions made u/s 14A and u/s 36(l)(iii) of the Act in the quantum proceedings. Since we have deleted the addition made u/s 36(l)(iii) of the Act and also the disallowance made of interest u/s 14A amounting to Rs. 17,78,886/-, no penalty survives in relation to the same. As for the disallowance of expenses made under Rule 8(D)(2)(iii) of the Rules, the same has been directed by us to be re-worked by taking into consideration only those investments which have yielded dividend income subject to restriction of the disallowance to the extent of dividend income earned. The penalty, therefore, at most survives only on this disallowance upheld. But even the same is not leviable since undisputedly all particulars relating to the expenses were duly furnished by the assessee and it was only on account of disallowing claim of the assessee by applying Rule prescribed under law in this regard that the addition was

made. The assessee cannot in such circumstances be charged with having concealed/furnished any inaccurate particulars of income so as to attract levy of penalty u/s 271(1)© of the Act. The penalty so levied is directed to be deleted. The appeal of the assessee therefore is allowed.

20. In the result, ITA 59/CHD/2015 is partly allowed and ITA 413/CHD/2018 is allowed.

Order pronounced in the Open Court on 17.12.2018

Sd/-

(संजय गर्ग)  
(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

Sd/-

(अन्नपूर्णा गुप्ता)  
(ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar