

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 6551/DEL/2014 (A.Y 2010-11)**

Late Sh. D. K. Jain Through Legal Hier Mrs. Usha Jain D-19, Nizamuddin East New Delhi AAKPJ4559P <b>(APPELLANT)</b>	Vs	DCIT Circle-32(1) New Delhi.  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Ved Jain, CA</b>
<b>Respondent by</b>	<b>Ms. Ashima Neb, Sr. DR</b>

<b>Date of Hearing</b>	<b>14.01.2019</b>
<b>Date of Pronouncement</b>	<b>16.01.2019</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 19/09/2014 passed by CIT(A)-XXVI, New Delhi for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

*“1. That on facts and in law the orders passed by the A.O and the Commissioner of Income Tax (Appeals) (hereinafter referred to as “CIT(A)” are bad in law and void-ab-initio.*

*2. That disallowance of Rs.31,40,362/- u/s 14A by the A.O and confirmed by CIT(A) u/s 57(iii) is illegal, arbitrary, against facts and unjustified. This needs to be dropped.*

*3. That the various adverse findings recorded by the Ld.CIT(A) are totally and wholly arbitrary in as much as he has failed to appreciate the submissions and, evidence filed by the appellant during the course of appellate proceedings.”*

3. The assessee filed his return of income showing income of Rs.20,783/- which included income under all heads specified in the Income Tax Act, 1961. The case was picked up for scrutiny. Accordingly, the assessment was completed on income of Rs. 2,43,61,150 wherein the disallowance of Rs. 31,40,362/- (Rs.26,73,444/- out of interest and Rs. 4,66,718/- out of expenses) u/s 14A/57 was made.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismiss the appeal of the assessee.

5. The Ld. AR submitted that during the year under consideration, assessee on business income of Rs.4,62,870/- from his proprietorship M/s Luxar & Company and also shown the interest income of Rs. 1,54,02,558/- after claiming the deduction u/s 57 (iii) of the Income Tax Act. The assessee also earned dividend income to the tune of Rs.37,30,753/- and interest on PPF of Rs. 3,65,572/-. The Ld. AR further submitted the Assessing Officer applied Rule 8D and made the addition u/s 14A as under:-

**“A. Addition under Rule 8D (ii) is computed as under:**

i.	Amount of interest claimed by the assessee u/s 57 (iii) of the Act.	Rs.1,97,00,913/-
ii.	Amount attributable to investment in shares (25% of Rs.1,97,00,913/-)	Rs. 49,25,228/-
iii.	Net Amount of addition made by the A.O applying Rule 8D (ii) of the Act out of Rs. 49,25,228 is	(A) Rs. 26,73,644/-

**b. Addition under Rule 8D(iii) is computed as under:**

Entire expenditure claimed by the assessee		
In P & L A/c was added back by the A.O	(B)	Rs. 4,66,718/-
Total disallowance made by the A.O	(A) +(B)	Rs. 31,40,362/-

The Ld. AR submitted that the Assessing Officer held that the deduction u/s 57(iii) shall also be disallowed to the extent of addition made u/s 14A and thus no separate addition was made by on account of deduction u/s 57(iii) of the Act. The Ld. AR further submitted that the investment in these shares were made out of own fund of the assessee and, therefore, addition made by the Assessing Officer u/s 14A is unwarranted. Regarding disallowance u/s 57(iii), the Ld. AR submitted that these investments in FDRs were made by the assessee from the borrowed funds and, therefore, interest expenditure claim by the assessee u/s 57(iii) was incurred solely and exclusively for the purpose of earning the interest income. The Ld. AR submitted that it is an undisputed fact by the Assessing Officer as well as the CIT(A) that the own funds of the assessee are more than the investments made by the assessee. It is a well settled law that where the assessee has sanctioned own funds to make the investments then it would have to be presumed that the investment made by the assessee would be out of the interest free funds available with the assessee. The Ld. AR relied upon the following judgments:-

- CIT Vs. Max India Ltd. ITA No. 186 of 2013 dated 6/9/2016(Punjab & Haryana High Court)
- CIT Vs. HDFC Bank Ltd. In ITA No. 330 of 2012 dated 23<sup>rd</sup> July 2014 (Bombay High Court) / [2014] 366 ITR 505 (Bombay)
- Gujarat High Court in the case of CIT(A) vs. Suzlon Energy Ltd. (2013) 354 ITR 630.
- H. T. Media Ltd. Vs. Principal Commissioner of Income Tax-IV, New Delhi-2017] 399 ITR 576 (Delhi)

The Ld. AR further submitted that the expenses have been incurred only with the motive of earning the interest income by way of investment in FDRs and advances given and no disallowance was called for by the assessee. The Ld. AR submitted that since the complete details of nexus between the funds raised from the bank and amount invested were on record both before the Assessing

Officer as well as CIT(A). The same should have been taken into account by both the Revenue Authorities which was not done in assessee's case. The Ld. AR further submitted that regarding the addition of Rs. 4,66,718/- made by the Assessing Officer under Rule 8D (iii), the assessee is running a proprietorship firm in the name of Luxar Pen Company. The Assessing Officer has not pointed out that these expenses have been incurred for earning any exempt income despite there being license income of Rs. 5 lacs credited in profit and loss account. Thus, the Ld. AR submitted that the action of the Assessing Officer treating the entire expenses for the purpose of earning exempt income is unjustified and untenable. Therefore, the Ld. AR submitted that the entire addition made by the Assessing Officer has to be deleted.

6. The Ld. DR submitted that the Assessing Officer has given a nexus between the investment in respect of interest income and interest expenses. Thus, the Assessing Officer has taken all the aspects of the provisions of Section 14A/57(iii) before making an addition. The Ld. DR pointed out that in-fact the investment was decreased and borrowings were increased in the present Assessment Year. The Ld. DR relied upon the decision of the Hon'ble Punjab & Haryana High Court in case of A-One Cycles Ltd. 228 Taxman 368 and Hon'ble Supreme Court decision in case of S. A. Builders Ltd. vs. CIT 288 ITR 1 (SC). The Ld. DR submitted that not claiming expenditure of the investment of Rs. 4,00,62,000/- approximately is not tenable that there was no expenses at all. Thus, the Assessing Officer and the CIT(A) rightly made addition under Rule 8D (ii) &(iii).

7. We have heard both the parties and perused the material available on record. Since the complete details of nexus between the funds raised from the bank and amount invested were on record both before the Assessing Officer as well as CIT(A), the same should have been taken into account by both the Revenue Authorities which was not done in assessee's case. It is pertinent to note that no borrowed money utilized for investment and therefore, no interest

disallowance to be made. Moreover, during the year under consideration the value of FDR has reduced by Rs. 10 crores which means that this much amount was available with the assessee for making investment out of his own funds. Thus, the Assessing Officer is directed to delete the disallowance on account of interest income. Further, the Assessing Officer has not pointed out that expenses have been incurred for earning any exempt income despite there being license income of Rs. 5 lacs credited in profit and loss account. Thus, the submission of Ld. AR that the action of the Assessing Officer treating the entire expenses for the purpose of earning exempt income is to some extent plausible. But we cannot overlook the aspect that for such a huge investment there cannot be administrative expenses to manage these investments. Therefore we direct the Assessing Officer to restrict the expenditure claimed by the assessee to Rs. 2,50,000/- towards administrative expenses for these investments. Thus, appeal of the assessee is partly allowed.

8. In result, appeal of the assessee is partly allowed for statistical purpose.

**Order pronounced in the Open Court on 16<sup>th</sup> JANUARY, 2019.**

Sd/-

**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 16/01/2019  
*R. Naheed \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

## ASSISTANT REGISTRAR

## ITAT NEW DELHI

Date of dictation	14.01.2019
Date on which the typed draft is placed before the dictating Member	15 .01.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	16.01.2019
Date on which the final order is uploaded on the website of ITAT	16.01.2019
Date on which the file goes to the Bench Clerk	16.01.2019
Date on which the file goes to the Head Clerk	