

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में ।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI ANIL CHATURVEDI, AM
AND
SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA No.81/RPR/2016
निर्धारण वर्ष / Assessment Year : 2012-13

Shree Nakoda Industries Ltd.,
Mowa, Shankar Nagar,
Raipur, (C.G.)

PAN : AABCG3854G

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,
Circle – 1(2), Raipur, (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri A. Maloo
Revenue by : Shri Sanjay Kumar

सुनवाई की तारीख / Date of Hearing : 17.01.2019
घोषणा की तारीख / Date of Pronouncement : 18.01.2019

आदेश / ORDER**PER ANIL CHATURVEDI, AM :**

This appeal filed by assessee emanate out of the order of Commissioner of Income-Tax (A)-I, Raipur dated 01-02-2016 for A.Y. 2012-13.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a company stated to be engaged in trading of iron and steel products namely ingots, billets, sponge iron etc. Assessee electronically filed return of income for A.Y. 2012-13 on 22-09-2012 declaring total income of Rs.86,43,670/-. The case was selected for scrutiny and thereafter the assessment was framed u/s 143(3) vide order dated 14-11-2014 and the total income was determined at Rs.1,26,60,910/-. Aggrieved by the order of AO, assessee carried the matter before Ld. CIT(A), who vide order dated 01-02-2016 (in Appeal No. 03/14-15) dismissed the appeal of assessee. Aggrieved by the order of Ld. CIT(A), assessee is now in appeal before us and raised following grounds :

- “1. That on the facts and on the circumstances of the case, Learned CIT(A) has erred in sustaining the disallowance of Rs.40,17,237/- on account of inadmissible expenses u/s. 14A r.w.r. 8D. The

disallowance made by the A.O. is unjustified, unwarranted and uncalled for.

2. *The assessee reserves the rights to add, amend or alter any grounds of appeal at the time of hearing.”*

3. During the course of assessment proceedings on perusing the Balance sheet the Assessing Officer noted that the assessee had invested Rs.4.41 crores in the shares of three companies. The assessee was asked to explain as to why provisions of section 14A should not be invoked since, the income from shares is exempt from tax. Apart from making other submissions also submitted that assessee has not any exempt income and therefore provisions of section 14A are not applicable. The submissions of assessee were not found acceptable to Assessing Officer. Assessing Officer thereafter worked out the disallowance on account of interest expenditure at Rs.40,17,237/- and disallowed the same u/s. 14A r.w. Rule 8D of the Act. Aggrieved by the order of Assessing Officer, the assessee carried the matter before the CIT(A) who upheld the order of Assessing Officer by observing as under :

“2.3 As seen from the above facts the appellant has claimed that no exempt income has been earned during the year and, therefore, the AO has erred in making the disallowance. As per the appellant the AO has not given any reason to reject appellant's contention that no expenditure has been incurred during the year. On going through Sec. 14A, I find that the "no deduction shall be allowed in respect of expenditure incurred by in relation to income 'which does not form part of the total income". Here section does not say that the tax free income should be earned during the financial year relevant to the particular assessment year for making disallowance u/s 14A. The section simply talks about the income whether earned during the year or not, which does not form part of the total

income. The appellant has invested in shares. As and when the income is received it will be tax free. Therefore, relatable expenditure has to be disallowed in terms of his section. The amount to be disallowed has been computed as per Rule 8 D.

Appellant has claimed that the investment was made out of own funds No documents have been filed in respect of A Y 2005-06 to show that the investments were made out of own funds. Another claim of the appellant is that the investment was not made to earn income but it was made out of business expediency. Appellant has not explained what the stated business expediency was. Further section 14A does not differentiate between an investment for business expediency and investment otherwise. Whatever be the reason for making investment, in case of earning Or dividend, the same is tax exempt. Therefore, the disallowance is sustained and the ground taken by the appellant is rejected.”

Aggrieved by the order of Ld. CIT(A), assessee is now in appeal before us.

4. Before us, Ld. A.R. reiterated the submissions made before the Assessing Officer and CIT(A) and further submitted that since assessee has not earned any exempt income no disallowance u/s. 14A is called for. With respect to disallowance of interest he pointed to the Balance Sheet of company which is placed in the paper book at page 17 and submitted that the assessee has sufficient interest free funds in the form of Share Capital and Reserves and Surplus which are much more than the investment and in such a situation no disallowance of interest is called for. He therefore submitted that the addition be deleted.

5. The Ld. D.R. on the other hand supported the order of Assessing Officer and CIT(A) and further submitted that assessee has not proved that interest free funds have been used for the purpose of making investment. He thus, supported the order of lower authorities.

6. We have heard the rival submissions and perused the material on record. The issue in present ground with respect to disallowance u/s. 14A of the Act. It is an undisputed fact that on the investment made by the assessee, no exempt income has been earned during the year. We find that Hon'ble Gujarat High Court in the case of CIT Vs. Cortech Energy P. Ltd. (2015) 372 ITR 97 (Gujarat) has held that when there is no claim for exempt income, Section 14A would have no application. We also find that Hon'ble Delhi High Court in the case of CIT Vs. Holcim India P. Ltd. (2014) 90 CCH 81 (Delhi) has held that where no dividend income was earned by assessee, disallowance u/s. 14A is not warranted. Further the Balance Sheet of assessee reveals that the availability of interest free funds in the form of Share Capital and Reserves and Surplus is much more than the investment held by the assessee. On the issue of availability of free funds being more than investment, we find that Hon'ble Bombay High Court in the case of HDFC Vs. DCIT reported in (2016) 383 ITR 529 (Bom) has observed as under :

"15. It is clear that for the first time in the case of HDFC Bank Ltd. (Supra) that this Court took a view that the presumption which has been laid down in Reliance Utilities and Power Ltd. (Supra) with regard to investment in tax

free securities coming out of assessee's own funds in case the same are in excess of the investments made in the securities (notwithstanding the fact that the assessee concerned may also have taken some funds on interest) applies, when applying Section 14A of the Act. Thus, the decision of this Court in HDFC Bank Ltd.(Supra) for the first time on 23rd July, 2014 has settled the issue by holding that the test of presumption as held by this Court in Reliance Utilities and Power Ltd. (Supra) while considering Section 36(1)(iii) of the Act would apply while considering the application of Section 14A of the Act. The aforesaid decision of this Court in HDFC Bank Ltd. (Supra) on the above issue has also been accepted by the Revenue inasmuch as even though they have filed an appeal to the Supreme Court against that order on the other issue therein, viz., broken period interest, no appeal has been preferred by the Revenue on the issue of invoking the principles laid down in Reliance Utilities and Power Ltd. (Supra) in its application to Section 14A of the Act. Therefore, the issue which arose for consideration before the Tribunal had not been decided by this Court in Godrej and Boyce Manufacturing Co. Ltd. (Supra). It arose and was so decided for the first time by this Court in HDFC Bank Ltd. (Supra). Thus, there is no conflict as sought to be made out by the impugned order. Thus, impugned order has proceeded on a fundamentally erroneous basis as the ratio decidendi of the order in Godrej and Boyce manufacturing Co. Ltd. (Supra) had nothing to do with the rest of presumption canvassed by the petitioner before the Tribunal on the basis of the ratio of the decision of this Court in HDFC Bank Ltd. (Supra).

16. *At the hearing Mr. Suresh Kumar, Learned Counsel for the Revenue urged that on the facts of this case no fault can be found with the order of the Tribunal. It is submitted that, the petitioner was not able to establish before the Assessing Officer and the CIT(A) that the amounts invested in the interest free securities came out of interest free funds available with the petitioner. In that view of the matter, it is submitted by him that the order of this Court in HDFC Bank Ltd.(Supra) would not apply to the facts of the present case. We are unable to understand the above submission. The Assessing Officer passed the Assessment order on 22nd December, 2010 under section 143(3) of the Act. The CIT(A) passed an order on 21st November, 2011 dismissing the petitioner's appeal. On both the dates, when the orders were passed by the Assessing Officer and CIT(A), the authorities did not have the benefit of the order of this Court in HDFC Bank Ltd. (Supra) rendered on 23rd July, 2014. Once the issue is settled by the decision of this Court in HDFC Bank Ltd. (Supra), there is now no need for the assessee to establish with evidence that the amounts which has been invested in the tax free securities have come out of interest free funds available with it. This is because once the assessee is possessed of interest free funds sufficient to make the investment in tax free securities, it is presumed that it has been paid for out of the interest free funds. Consequently, we do not find any merit in the above submission made at the hearing on behalf of the Revenue."*

7. Before us Revenue has not pointed any contrary binding decision nor has demonstrated that the aforesaid decision has been set aside or overruled by higher judicial authority. Considering the totality of aforesaid facts, we are of view that in the present case no disallowance u/s. 14A is called for. Thus, the grounds of appeal of assessee is allowed

8. In the result, the appeal of assessee is allowed.

Order pronounced on 18th day of January, 2019.

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 18th January, 2019.
RK

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

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, I.T.A.T., Raipur

//True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	17.01.2019	Sr.PS/PS
2	Draft placed before author	18.01.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		