

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI**

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 1568/MUM/2017
Assessment Year: 2012-2013**

The Dy. Commissioner of Income Tax, Circle 6(2)(1), R. No. 563, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai - 20	Vs.	M/s Corsa Holdings Pvt. Ltd., Plot No. 435, Baburao Parulekar Marg, Near Shardashram, Dadar (West), Mumbai - 400028 PAN: AABCV1747M
(Appellant)		(Respondent)

**CO No. 218/MUM/2018
(Arising out of ITA No. 1568/MUM/2017)
Assessment Year: 2012-2013**

M/s Corsa Holdings Pvt. Ltd., Plot No. 435, Baburao Parulekar Marg, Near Shardashram, Dadar (West), Mumbai - 400028 PAN: AABCV1747M	Vs.	The Dy. Commissioner of Income Tax, Circle 6(2)(1), Room No. 563, 5 th Floor, Aayakar Bhavan, M.K. Road, Churchgate, Mumbai - 400020
(Appellant)		(Respondent)

Revenue by : Shri Abi Rama Kartikiyen (DR)

Assessee by : Shri Sanjay R. Parikh (AR)

Date of Hearing: 09/01/2019
Date of Pronouncement: 29/01/2019

ORDER

PER RAM LAL NEGI, JM

These are the appeal and cross objection filed by the revenue and the assessee against the order 08.12.2016 passed by the Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-12, Mumbai, for the assessment year

2012-13, whereby the Ld. CIT (A) has allowed the appeal filed by the assessee against assessment order passed u/s 143 of the Income Tax Act, 1961 (for short 'the Act').

ITA No. 1568/MUM/2017 (Assessment Year: 2012-2013)

2. Brief facts of the case are that the assessee is a Non-Banking Financial Company, engaged in the business of making long term investments in shares/units of Mutual Funds and lending money, filed its return of income for the assessment year under consideration declaring the total income of Rs. 1,95,97,150/- under the normal provisions of law and Rs. 1,90,13,230/- u/s 115JB of the Act. The return was processed towards u/s 143 (1) of the Act. Since, the case was selected for scrutiny, notices u/s 143 (2) and 142 (1) of the Act were issued by the AO. In response to the assessee filed the details of the explanations as called for. Since, the assessee had earned dividend income of Rs. 4,03,75,910/- during the previous year and had made *suo moto* disallowance of Rs. 86,000/-, AO asked the assessee to furnish the details of investments and also to show cause as to why the disallowance should not be made u/s 14A read with Rule 8D of the Income Tax Rules. The assessee submitted that since it had already made deduction of Rs. 86,000/- no further addition is required to be made u/s 14A read with Rule 8D. However, the AO rejected the contention of the assessee and worked out the disallowance u/s 14A read with Rule 8D at Rs. 1,65,91,326/-. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee deleted the addition of Rs. 1,65,91,326/- made by the AO u/s 14A read with Rule 8D of the Rules. Against the said findings of the Ld. CIT (A), the department is in appeal before the Tribunal.

3. The revenue has challenged the impugned order by raising the following effective ground:-

“On the facts and in the circumstances of case and in law, the Ld. CIT (A) erred in restricting the disallowance of Rs. 1,65,91,326/- made u/s 14A r.w. Rule 8D to the extent of exempt income of Rs. 86,000/- claimed by the assessee and giving relief of Rs. 1,65,05,326/- to the assessee and thus ignoring the CBDT circular no. 5/2014 dated 11.02.2014 that clarifies that disallowance u/s 14A has to be made irrespective of the fact whether any exempt income has been earned during the year by the assessee or not?”

4. Before us, the Ld. Departmental Representative (DR) submitted that the Ld. CIT (A) has wrongly restricted the disallowance of Rs. 1,65,91,326/- made u/s 14A read with rule 8D to Rs. 86,000/- i.e., *suo moto* disallowance made by the assessee, ignoring the CBDT Circular No. 5/2014 dated 11.02.2014 which clarifies that disallowance u/s 14A has to be made irrespective of the fact whether any exempt income has been earned during the year by the assessee or not. Since, the assessee had earned dividend income amounting to Rs. 4,03,75,910/-, which was claimed to be exempt, the assessee was required to make disallowance of expenditure in relation to the income which does not form part of the total income in accordance with the provisions of section 14A read with rule 8D. Since, the assessee's working was found to be not acceptable, the AO has rightly computed the disallowance. Hence, the impugned order is liable to be set aside.

5. On the other hand, the Ld. counsel for the assessee relying on the findings of the Ld. CIT(A) submitted that since the assessee has utilized the borrowed funds for earning taxable income, the AO has wrongly made disallowance under rule 8D(2)(ii). The Ld. counsel invited our attention to the copy of letter dated 27.02.2016 and details showing nexus between interest expenses and interest income, filed by the assessee before the AO during the course of assessment proceedings. The Ld. counsel further submitted that since the findings of the Ld. CIT(A) are based on the evidence on record and as per the provisions of law, there is merit in the appeal of the revenue. The Ld.

counsel relied on the judgment of the Hon'ble Gujarat High court passed in the case of *Pr.CIT vs. Nirma Credit and Capital (P) Ltd. (2018) 161 DTR (Guj) 333* to substantiate the contention of the assessee.

6. We have heard the rival submissions and also gone through the entire relevant record in the light of the rival contentions of the parties. The only grievance of the revenue is that the Ld. CIT(A) has wrongly restricted the disallowance u/s 14A read with rule 8D to the *suo moto* disallowance made by the assessee. The Ld. CIT(A) has set aside the findings of the AO and restricted the disallowance by holding as under:-

“ 6.2 I have carefully perused the assessment order and the submission of the appellant. The AO has made the disallowance u/s 14A r.w. Rule 8D(2)(ii) of Rs. 1,54,36,769/- and Rs. 11,54,557/- u/s 14A r w Rule 8D(2)(iii). Careful perusal of the copy of letter dated 27.02.2016 filed in the office of AO reveals that the appellant has furnished the details of nexus between the interest expenses and interest income, which makes it clear that the appellant has utilized the borrowed fund for earning the interest income. As per the said submission made during assessment proceedings, it is seen that the appellant borrowed fund from M/s IL & FS financial Services Ltd. totaling to Rs. 32.50 crores and made corresponding utilization of loans to M/s Gala Infrastructure Pvt. Ltd., M/s Arshi Construction LLP, M/s Mahavir Builders and M/s Sunshine Infraseru Pvt. Ltd. Therefore, the appellant had provided the A.O. with the evidence of nexus between the borrowed fund and its utilization for earning the taxable interest income. The balance sheet, as on 31.03.2012, also reflects the short term borrowing of Rs. 32.50 crores for which the details of utilization of the same was provided. Hence, there appears to be no diversion of und for acquiring the investment.

6.3 The computation of income submitted by the appellant during appellate proceeding is as under:

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“6.4 On perusal of the above computation of income it is seen that the appellant has itself disallowed an amount of Rs. 15,90,844/- u/s 14A r w Rule 8D(2)(iii). The directly related expense of Rs. 15,90,844/- is out of the total administrative expenses claimed in profit & loss account of Rs. 49,21,603/-. The expenses incurred are legal & professional fees of Rs. 42,33,607, Rent of Rs. 2,568, Rate and taxes of Rs. 4,14,744/-, miscellaneous expenses of Rs. 2,48,211/- and Audit fee of Rs. 22,472/-. The AO has not pinpointed any expense which is remains to be disallowable out of the common expenses incurred by the appellant. The appellant, during appellate proceedings stated that it had administrative expense of Rs. 1,71,332/- out of which it had disallowed 50% of the expenses amounting to Rs. 86,000/-. The working of the same is as under:-

v) The learned ACIT failed to appreciate that Your Appellant has suo motto disallowed majority of expenditure as follows:

Sr. No.	Particulars	Amount
I	Total expenditure debited to profit and Loss account	4,60,40,862.00
II	Less): Interest exp., Loan processing fees, and charges paid to HDFC for pledge of NPIL for loan taken from IL & FS	(4,38,82,949.00)
III	Balance Expenditure	21,56,913.00
IV	Less): Expenditure directly attributable to exempt income and Contingent provision disallowed by appellant computation of income	(18,04,844.00)
V	Expenditure after disallowance	3,52,069.00
VI	Less): surplus from Kotak fund offered to tax in previous years	(1,81,737.00)
VII	Administrative and other expenses actually claimed by assessee Less: Suo Moto Disallowance u/s 14A	1,71,332.00 (86,000.00)
VIII	Expenses actually claimed by assessee	85,332.00

Therefore, in view of the above specific fact of the case, I find force in the submission of the appellant and do not find any merit in the disallowance made by the AO. AO is directed to delete the addition made u/s 14A of the Act. Ground No. 1 is allowed.”

7. The Ld. CIT(A) has allowed this ground of appeal of the assessee on the ground that since the assessee has established that the assessee has demonstrated that the borrowed funds were utilized for earning taxable income, the AO has wrongly made disallowance under rule 8D(2)(ii) and borrowed funds were not utilized for making investments with a view to earn exempt income. In our considered view the findings of the Ld. CIT(A) are based on the evidence on record. A per the details showing nexus between interest expenses and interest income, filed by the assessee before the AO, which is available in the paper book, the assessee's gross interest income was Rs. 1,76,40,412/- as against the interest expenses of Rs. 1,55,89,042/- in the assessment year 2011-12. Similarly, the assessee's gross interest income was Rs. 4,86,61,954/- as against the interest expenses of Rs.4,06,93,492/- in the assessment year under consideration.

8. In the case of *Pr.CIT vs. Nirma Credit and Capital (P) Ltd. (2018) 161 DTR (Guj)*, the Hon'ble Gujarat High Court has held that for the purpose of applying the factors contained in rule 8D(2)(ii), prior to amendment w.e.f. 2nd. June 2016, the amount of expenditure by way of interest would be the interest paid by the assessee on the borrowings minus the taxable interest earned during the relevant financial year.

9. Section 14A (2) of the Act empowers the AO to determine the amount of expenditure incurred in relation to the income which does not form part of the total income under the Act in accordance with the method prescribed under rule 8D of the rules, in case he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to the said income

after having regard to the accounts of the assessee. In the present case, since the assessee has demonstrated by furnishing the relevant details that no part of the borrowed funds was utilized for earning exempt income, the AO has made the disallowance under rule 8D(2)(ii) in a mechanical manner. Therefore, in our considered view the Ld. CIT(A) has rightly allowed this ground of appeal of the assessee.

10. So far as disallowance under rule 8D (2)(iii) is concerned, the Ld.CIT (A) has given a detail findings of facts that the expenses charged by the assessee are not incurred in connection with earning of exempt income. The Ld. CIT (A) has also given a finding that the assessee has incurred administrative expense of Rs. 1,71,332/- out of which the assessee has disallowed 50% of the expense which comes to Rs. 86,000/-. Hence, in our considered view the Ld. CIT (A) has rightly restricted the disallowance under rule 8D (2)(iii) to the *suo moto* disallowance made by the assessee.

11. Hence, in view of the discussion in the foregoing paras in the light provisions of law as well as the judgment of the Hon'ble Gujarat High Court referred above, we do not find any legal or factual infirmity in the findings of the Ld. CIT(A) to interfere with. We accordingly, uphold the order of the Ld. CIT(A) and dismiss the appeal of the revenue.

CO No. 218/MUM/2018 (Assessment Year: 2012-2013)

The assessee has filed the cross objection against the impugned order on the following effective ground:

1. *a. The learned Commissioner of Income Tax (Appeals) erred in not adjudicating Ground relating to short credit of TDS granted by the Learned Assessing Officer by Rs. 2,47,254/- which is duly reflected in Form No. 26AS.*

- b. The learned Commissioner of Income Tax (Appeals) erred in not directing the Assessing Officer to grant TDS*

of Rs. 60,14,282/- claimed by your Appellant in the return of income which is duly reflected in Form No. 26AS against credit of Rs. 57,67,028/- granted by the learned Assessing Officer.

c. Your Appellant prays that the credit of TDS of Rs. 60,14,282/-, the income whereof is duly offered to tax, may please be granted.”

2. As pointed out by the Ld. counsel for the assessee we notice that the Ld. CIT(A) has not decided the issue raised by the assessee regarding short credit of TDS granted by the AO. The Ld. counsel submitted that this ground may be decided and the AO may be directed to grant TDS of Rs. 60,14,282/- claimed by appellant/assessee in the return of income. The Ld. DR submitted that this issue requires verification by the AO. Since, the Ld.CIT (A) has not decided the said issue, and since it requires verification at the level of AO we set aside this issue to the file of AO for adjudicating the same in the light of the contention of the assessee, after affording a reasonable opportunity of being heard to the assessee.

In the result, appeal filed by the revenue is dismissed and the Cross Objection filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29th January, 2019.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 29/01/2019

Alindra PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.

3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai