

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

**BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER  
&  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.-3023/Del/2015  
(Assessment Year: 2010-11)**

The Sonapat Urban Co-operative Bank Ltd. New Subji Mandi, Sonapat Haryana PAN : AAAAT0374M	Vs.	ACIT Sonapat Circle Haryana
<b>Appellant</b>		<b>Respondent</b>

**Assessee by: Smt. Rano Jain, Adv.  
Revenue by: Shri N.K.Bansal, Sr.DR**

<b>Date of Hearing</b>	<b>13.02.2019</b>
<b>Date of Pronouncement</b>	<b>28.02.2019</b>

**ORDER**

**PER SUDHANSHU SRIVASTAVA, J.M.:**

This appeal is preferred by the assessee against order dated 23.03.2015 passed by the Ld. CIT (Appeals)-Rohtak for assessment year 2010-11 and the sole issue in dispute for us is the confirmation of disallowance of Rs. 14,66,454/- made by the Assessing Officer u/s 14A of the Income Tax Act, 1961 (hereinafter called 'the Act').

2. The brief facts of the case are that the assessee is a Co-operative banking society and is engaged in the business of banking. The return of income was filed declaring an income of Rs. 2,41,29,787/-. The case was selected for scrutiny and during the course of assessment proceedings the AO noticed that the assessee had earned dividend income of Rs. 12,12,840/-. The AO asked the assessee to show cause as to why the assessee had not made any disallowance u/s 14A of the Act and in response thereto it was submitted by the assessee that the dividend was earned from the investment in Non-SLR Securities as per the RBI guidelines and further that the assessee was under an obligation to invest 10% of the deposits in these SLRs. It was further contended that the assessee had not incurred any expenditure like commission or extra salary expenses etc. in earning the above dividend income. However, the AO noted that the assessee had borrowed funds on which interest to the tune of Rs. 5,67,91,279/- was paid during the year. The AO also noted that assessee had made investments in shares and mutual funds during the year to the tune of Rs. 24,57,47,529/-. The AO proceeded to apply provisions of Sections 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 and made a disallowance of Rs. 12,85,88,582/-. The assessment was completed at an income of Rs. 3,67,18,369/-. The assessee

preferred an appeal before the Ld. CIT (Appeals) who partly allowed the assessee's appeal. The Ld. CIT (Appeals) noted that the assessee had invested only Rs. 1,54,82,500/- in shares and mutual funds and not the amount of Rs. 24,57,47,529/- as has been adopted by the Assessing Officer for the purpose of computing the disallowance. Thereafter, by application of Rule 8D, the disallowance was recomputed at Rs. 14,66,454/- by the Ld. CIT (Appeals) and, thus, the assessee got relief of Rs. 1,11,22,128/-. Now the assessee is in appeal challenging the action of the Ld. CIT (Appeals) in confirming the disallowance of Rs.14,66,454/-.

3. The Ld. Authorised Representatives submitted that there was no nexus between the investment made by the assessee and the funds borrowed. It was further submitted that since no borrowed funds had been utilized by the assessee, no disallowance u/s 14A could be made. Our attention was drawn to page 6 of the paper book filed by the assessee and it was demonstrated that as per the balance sheet as on 31<sup>st</sup> March, 2010, the assessee had capital and free reserves of Rs. 19,63,45,667/- and the exempt income bearing investments were only to the tune of Rs. 1,54,82,500/-. The Ld. Authorised Representative further submitted that it was settled law that an assumption is to be made in the presence of excess of owned funds that investments have been made not out of borrowed

funds, but out of owned funds. Reliance was placed on the judgment of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Max India Ltd reported in (2016) 388 ITR 81 (P & H) wherein it had been held that if interest free funds were available, presumption would arise that investment would be out of the interest free funds generated or available with the company if the interest free funds were sufficient to made the investments. Reliance was also placed another judgment of the Hon'ble Punjab and Haryana High Court in the case of CIT vs. Hero Cycles Ltd. reported in (2010) 189 Taxman 50 (P & H).

4. In response, the Ld. Sr. Departmental Representative placed reliance on the concurrent findings of both the lower authorities and it was vehemently argued that all the conditions required for making the disallowance u/s 14A of the Act were met in this case and, therefore, the disallowance as confirmed by the Ld. CIT (Appeals) deserved to be upheld. The Sr. Departmental Representative also placed reliance on the judgment of the Hon'ble Punjab and Haryana High Court in the case of Avon Cycles Ltd. vs. CIT reported in 228 taxman 268 Punjab and Haryana in support of his contention.

5. We have heard the rival submissions and have also perused the material on record. It is seen that as per the balance sheet for

year under consideration, the assessee had funds to the value of Rs. 19,63,45,667/- in the form of share capital and other reserves and surplus whereas the investments pertaining to exempt income were only to the tune of Rs. 1,54,82,500/- as is evident from page 30 of the paper book filed by the assessee. We agree with the averment of the Ld. Authorised Representative that in case where the assessee has surplus funds which are more than enough to cover the investments, an assumption has to be made that such investment have been made out of free reserves/surplus funds and not out of borrowed funds. The judgment of the Hon'ble Punjab and Haryana High Court in the case of CIT vs. Max India Ltd. (supra) squarely covers the issue in favour of assessee wherein the Hon'ble Punjab and Haryana High Court observed as under :-

*“Merely because the Interest free funds with the assessee have decreased during any period, it does not follow that the funds borrowed on interest were utilized for the purpose of investing in assets yielding exempt income. If even after the decrease the assessee has interest free funds sufficient to make the investment in assets yielding the exempt income, the presumption that it was such funds that were utilized for the said investment remains. There is no reason for it not to. The basis of the presumption as we will elaborate later is that an assessee would invest its funds to its advantage. It gains nothing by*

*investing interest free funds towards other assets merely on account of the interest free funds having decreased. In that event so long as even after the decrease thereof there are sufficient interest free funds the presumption that they would be first used to invest in assets yielding exempt income applies with equal force."*

5.1 We also note that the Hon'ble Punjab and Haryana High Court rendered this judgment after considering the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities and Power Ltd. 2009 (313) ITR (Bombay) which addressed an identical issue. We also note that ITAT Chandigarh Bench in the case of M/s Highway Industries Ltd vs. ACIT reported in 2016 (6) TMI 737 – ITAT – CHANDIGARH has duly noted that the judgment of the Hon'ble Punjab and Haryana High Court in the case of Avon Cycles (supra), on which the Ld. Sr. DR has relied, nowhere lays a proposition with regard to quantum of expenditure in respect of mixed funds. We also note that in a later judgment dated 24.07.2015 in the case of Bright Enterprises Ltd in ITA No. 624 of 2013 (O&M), the Hon'ble Punjab and Haryana High Court has held that they are in complete agreement with the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities and Power Ltd. that if interest free funds were available, a presumption would arise that investment would be out of interest

free funds generated or available with the company if the interest free funds were sufficient to meet the investment. Therefore, respectfully following the ratio of the aforesaid judgment/s of the Hon'ble Punjab and Haryana High Court, which is the Jurisdictional High Court for the assessee, we set aside the order of the Ld. CIT (Appeals) and direct that the disallowance u/s 14A be deleted.

6. In the final result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 28.02.2019.

**Sd/-**  
**(R.K.PANDA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: 28.02.2019

\*BR\*

Copy forwarded to:

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

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	28/02/2019
Date on which the typed draft is placed before the dictating Member	28/02/2019
Date on which the typed draft is placed before the Other Member	28/02/2019
Date on which the approved draft comes to the Sr. PS/PS	28/02/2019
Date on which the fair order is placed before the Dictating Member for pronouncement	28/02/2019
Date on which the fair order comes back to the Sr. PS/PS	28/02/2019
Date on which the final order is uploaded on the website of ITAT	28/02/2019
Date on which the file goes to the Bench Clerk	28/02/2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	