

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD BENCH

**Before: Shri Amarjit Singh, Accountant Member  
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 450/Ahd/2017  
Assessment Year 2012-13**

M/s. Madhu Silica Pvt. Ltd. Plot No. 53,55,56B, GIDC, Chitra, Bhavnagar PAN: AABCM4381J (Appellant)	Vs	The ACIT, Circle-1, Bhavnagar (Respondent)
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**Revenue by: Shri Mudit Nagpal, Sr. D.R.  
Assessee by: Shri Tushar Hemani, A.R.**

Date of hearing : 06-02-2019  
Date of pronouncement : 18-02-2019

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This assessee's appeal for A.Y. 2012-13, arises from order of the CIT(A)-6, Ahmedabad dated 27-01-2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The solitary ground of appeal of the assessee is against the decision of ld. CIT(A) in confirming the action of the assessing officer in disallowing Rs. 40,77,207/- u/s. 14A r.w. Rule 8D of the IT Rule , 1962.

3. The fact in brief is that during the course of assessment proceedings, the assessing officer noticed that assessee company has shown dividend of Rs. 1,70,27,593/- claiming as exempt u/s. 10(34) of the IT act and also claimed expenses on account of interest to the amount of Rs. 2,98,47,199/-. The assessee was asked to explain why the interest expenses incurred for earning exempt income should not be disallowed as per provisions of section 14A of the act. The assessee has furnished a detailed submission as produced at page number 3 to 5 of the assessment order claiming that it has not made any investment in the shares/ mutual funds by borrowing the interest bearing funds. The assessing officer has not agreed with the explanation filed by the assessee and computed the allocation of expenses in relation to exempt income for the purpose of section 14A r.w. rule 8D of the income tax rule 1962 to the amount of Rs. 40,77,207/- and added to the total income of the assessee.

4. Aggrieved assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee..

5. During the course of appellate proceedings before us, ld. counsel has contended that assessee company was having sufficient interest free fund for making investment and ld. CIT(A) has erred in sustaining the impugned addition made by the assessing officer. On the other hand the Ld. DR has placed reliance on the order of the lower authority.

With the assistance of ld. counsel we have gone through the material on record and it is noticed that assessee was having substantial interest free fund against investment made by it as mentioned hereunder:-

<i>Particulars</i>	<i>Balance as at 31.03.2012 (Rs. in Lacs)</i>	<i>Balance as at 31.03.2012 (Rs. in Lacs)</i>
<i>(A) Interest free funds: Share capital Reserves &amp; Surplus Total</i>	<i>540.00</i> <i>14,840.41</i> <i>-----</i> <i>15,380.41</i>	<i>480.00</i> <i>12,075.20</i> <i>-----</i> <i>12,555.20</i>
<i>(B) Investments</i>	<i>2,578.01</i>	<i>1,759.74</i>
<i>(C) Ratio of interest free funds &amp; Investments (A/B * 100)</i>	<i>5.97 times</i>	<i>7.13 times</i>

In this connection, the ld. counsel has also placed reliance on following judicial pronouncements:-

- > *CIT vs. Torrent Power Ltd. - 363 ITR 474 (Guj.)*
- > *CIT vs. Suzlon Energy Ltd. - 354 ITR 630 (Guj)*
- > *CIT vs. Gujarat Power Corporation Ltd. - 352 ITR 583 (Guj)*
- > *CIT vs. Hitachi Home & Life Solutions (I). Ltd. - (2014) 41 taxmann.com 540 (Guj)*
- > *CIT vs. Reliance Utilities & Power Ltd. - 313 ITR 340 (Bom)*
- > *Munjal Sales Corporation vs. < IT - 298 ITR 298 (SC).*

We observe that it has been demonstrated from the above material on record that the assessee was having sufficient interest free fund in the form of share capital and free reserves as against the investment made from which exempt income was earned. After considering the decision of Honorable High Court in the case of CIT vs. Reliance Utilities Power Ltd, we consider that there was no merit in disallowing the interest expenses to the amount of Rs. 29,92,770/- out of the total disallowance made by the assessing officer of Rs. 40,77,207/-. However, we sustain the addition in respect of administrative expenditure to the amount of Rs. 10,84,437/- as computed by

the assessing officer under para 6 of the assessment order as investment cannot be made without incurring administrative and other expenses.. Accordingly, this appeal of the assessee is partly allowed.

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

Order pronounced in the open court on 18-02-2019

**Sd/-**  
**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 18/02/2019**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**आदेश क०० तलम अ० षत / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलार्थ अधिकरण,  
अहमदाबाद