

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA Nos.6288 & 6283/M/2017  
Assessment Years: 2010-11 & 2011-12**

ACIT, Circle-11(3)(2), Room No.427, Aayakar Bhavan, 4 <sup>th</sup> Floor, M.K. Marg, Mumbai – 400020	Vs.	M/s. Yash Jewellery Pvt. Ltd., 603 & 604, Block No.1, Seepz ++, SEZ, MIDC, Andheri (E), Mumbai – 400 096 <b>PAN: AAACY 2834R</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Ms. Aarti Vissanji, A.R.  
Revenue by : Shri Chaudhary Arunkumar Singh, D.R.

Date of Hearing : 08.04.2019  
Date of Pronouncement : 30.04.2019

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The above titled two appeals have been preferred by the Revenue against the orders even dated 09.06.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11 & 2011-12.

**ITA No.6283/M/2017**

2. The issue raised in the 1<sup>st</sup> ground of appeal by the Revenue is against the deletion of disallowance of Rs.2,88,69,872/- by Ld. CIT(A) as made by the AO towards notional interest on interest free advance given by the assessee on the ground that assessee has paid more than Rs.10 cores as interest on the

borrowed funds and there being no commercial expediency for advancing interest free advances.

3. The facts in brief are that during the course of assessment proceedings, the AO observed that assessee has paid interest on the borrowed funds while giving the interest free advances of Rs.6,04,77,159/- out of total advances of Rs.17,10,95,433/- as on 31.03.2011. The AO also noticed that assessee has suo moto disallowed a sum of Rs.1,06,32,804/- on account of interest attributable to interest free advances @ 3.23%. The assessee submitted before the AO that the suo-moto disallowance was made to avoid litigation with the department. The assessee submitted that the rate of disallowance of interest @ 3.23% p.a. was calculated after giving weightage to the interest free funds available to the assessee and therefore the rate of disallowance as proposed by the AO at 12% is not justified. However the AO after rejecting the contentions of the assessee applied a rate of 12% p.a. and after making allowance of suo-moto disallowance made net addition to the extent of Rs.2,88,69,872/- to the income of the assessee in the assessment framed u/s 143(3) of the Act dated 28.02.2014.

4. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee after taking into account the contentions raised by the assessee in the appellate proceedings by observing and holding as under:

“Under this Ground of Appeal the Appellant has disputed disallowance of Interest amounting to Rs. 2,88,69,872/- I have considered the rival submissions and find that the Assessing Officer (AO) has disallowance the same by holding that the Appellant had not furnished details of Interest paid The Assessing Officer therefore disallowed interest at rate of 12% attributable to interest free advances granted out of interest bearing funds taken by the Appellant Accordingly the Assessing officer worked out disallowance of Rs. 3,95,02,676/-Thereafter the Assessing Officer

added Rs. 2,88,69,872/- after deducting Rs. 1,06,32,804/- already disallowed suo motto by the appellant finally the Assessing officer calculated the disallowance of Rs. 2,88,69,872/- (3,95,02,676-1,06,32,804). On the other hand the Appellant contended that this suo motto disallowance of Rs. 1,06,32,804/- was worked out by adapting weighted average cost of borrowing at the rate of 3.23%. The Appellant therefore further contended that notional rate of 12% adopted by Assessing Officer was erroneous. I therefore find that the Assessing Officer has wrongly adopted notional rate of interest accordingly, I direct the Assessing Officer to delete the disallowance of Rs. 2,88,69,872/- in respect of interest attributable to V interest free advances, Accordingly Ground No. 1 Succeeds."

5. After hearing both the parties and perusing the material on record the written submissions of the Department, we observe from page No.13 of the paper book which contained the summarized position of assessee's own funds and borrowed funds in a tabular form right from 2007-08 to 2010-11 that interest free funds in the form of share application money pending allotment of shares and reserve and surpluses were Rs.177,02,42,970/- whereas the borrowings in the form of secured and unsecured loans were Rs.112,33,06,967/- while interest free advances given were Rs.6,04,77,159/-. We find merits in the contentions of the Ld. A.R. that the case of the assessee is squarely covered by the decision of the Jurisdictional High Court in the case of HDFC Bank Ltd Vs CIT (2014)366 ITR 505 (Bom) wherein it has been held that no disallowance is to be made where the interest free funds were available with the assessee are more than the interest free advances. We further notice that assessee has made suo-moto disallowance of 3.23% p.a. after giving weightage to the interest free funds available with the assessee. In the earlier year also, the assessee has worked out the disallowance at average cost of the funds which worked out to 4.01% by drawing our attention to page No.4 to 9 of the paper book wherein the detailed calculations have been given. We, therefore, do not find any

infirmary or illegality in the order passed by Ld. CIT(A) which otherwise appears to be a very reasoned and speaking order. Accordingly, we are inclined to uphold the order of Ld. CIT(A) by dismissing the ground raised by the Revenue.

6. The issue raised in ground No.2 is against the deletion of addition made on account of interest income of Rs.9,32,000/- by Ld. CIT(A) as made by the AO under section 10AA of the Act.

7. The facts in brief are that AO observed during course of assessment proceedings that assessee earned interest income of Rs.3,14,892/- under the head "income from other sources" which was credited in the P&L account besides showing interest income of Rs.1,07,60,017/- as income from investment activities. The AO also found that an interest income of Rs.9,32,534/- was reduced from interest cost debited to P&L Account as is clear from schedule R to annual audited accounts and accordingly called upon the assessee to explain as to why the interest income of Rs.9,32,534/- should not be taxed as income from other sources which was replied by the assessee by submitting vide letter dated 21.02.2015 that working capital facilities were used by the assessee for the purpose of its business of manufacturing of jewellery from the units situated at SEZ the profit whereof being entitled for deduction under section 10AA of the Act. The assessee submitted that the interest income earned on fixed deposits has direct nexus with the operation carried out by the assessee from aforesaid unit as the fixed deposits were required to be pledged with the bank for securing the credit facilities and therefore the interest income required to be included in the profits of business for quantifying

deduction under section 10AA of the Act. The AO rejected the contentions of the assessee and treated the interest of Rs.9,32,534/- as interest income at par with other interest income and excluded the same for the purpose of computing deduction under section 10AA of the Act.

8. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

“Under this Ground of Appeal the Appellant has disputed the exclusion of Interest income of Rs.9,32,534/- from the export turnover while calculating Deduction under section 10AA. I have perused the Assessment Order and Find that the AO has excluded the interest income from the export turnover because the Appellant has engaged in the business of jewelry and not in the Business of money lending on the other hand the Appellant submitted that they observed credit facility from the bank on a specific condition that they will place the fixed deposit with the bank and pledge the same for credit facility, I have carefully considered rival submission and find that the borrowing is directly utilized for the jewellery business, more over interest on Fixed Deposit was earned because off placing of fixed Deposit was the precondition for availing of bank facilities. I am of the opinion that interest income has direct nexus with the primary business activity of the Appellant. I direct the AO the include the interest income of Rs. 9,32,534/- to the profits from eligible unit while calculation deduction u/s. 10AA, Accordingly Ground No. 3 is allowed.”

9. After hearing both the parties and perusing the material on record the written submissions of the Department, we observe that assessee has deposited a FDR with the bank for availing credit facilities which was a precondition for sanctioning of the credit facilities on which assessee has earned Rs.9,32,534/- and the said interest was claimed as part of the profit for the purpose of deduction under section 10AA of the Act. The Ld. CIT(A) allowed the appeal of the assessee on the ground that interest income has direct nexus with the primary business activity of the assessee and eligible for deduction under section 10AA of the Act. We also find that the similar issue has been decided by the Hon'ble Karnataka High Court in the case of CIT & ors. vs.

Hewlett Packard Global Soft Ltd. (2018) 403 ITR 453 (Karn) (FB)  
wherein it has been held as under:

“37. On the above legal position discussed by us, we are of the opinion that the respondent-assessee was entitled to 100 per cent exemption or deduction under section under section 10A of the Act in respect of the interest income earned by it on the deposits made by it with the banks in the ordinary course of its business and also interest earned by it from the staff loans and such inter-business and also interest earned by it from the staff loans and such interest income would not be taxable as “income from other sources” under section 56 of the Act. The incidental activity of parking of surplus funds with the banks or advancing of staff loans by such special category of assessee covered under section 10A or 10B of the Act is integral part of their export business activity and a business decision taken in view of the commercial expediency and the interest income earned incidentally cannot be de-linked from its profits and gains derived by the undertaking engaged in the export of articles as envisaged under section 10A or section 10B of the Act and cannot be taxed separately under section 56 of the Act.

10. The assessee submitted before us that the facts of the case as decided by the Hon’ble Karnataka High Court (supra) in the aforesaid case the surplus funds were put in the FDR whereas the assessee’s case stands on better footing on the ground that FDR was placed with the bank as a precondition for sanctioning the credit facilities for the purpose of business eligible for deduction u/s 10AA of the Act. We, therefore, do not find any defect or infirmity in the order of Ld. CIT(A) and uphold the same by dismissing the ground raised by the Revenue.

11. The issue raised in ground No.3 & 4 is against the deleting of disallowance of Rs.2,04,96,643/- by Ld. CIT(A) as made by the AO under section 14AA read with rule 8D.

12. The facts in brief are that the AO found during the course of assessment proceedings that assessee has made huge investments to the tune of Rs.45,01,04,750/- as on 31.03.2011 in the securities which are capable of yielding exempt income and no disallowance has been made towards expenses incurred

in connection therewith. Accordingly the AO issued show cause notice to the assessee as to why the provisions of section 14A read with rule 8D should not be applied. The assessee replied to the said notice by submitting that the investments were made out of own funds and no disallowance of expenditure under section 14A is required to be made. However, the AO rejecting the contentions of the assessee calculated the disallowance by applying section 14A read with rule 8D at Rs.2,04,96,643/- comprising interest of Rs.1,82,46,120/- under rule 8D2(ii) and Rs.22,52,524/- under rule 8D2(iii). The Ld. CIT(A) deleted the disallowance on the ground that the investments in the securities capable of yielding exempt income were made out of own funds and also that during the year these investments did not yield any dividend income.

13. After hearing both the parties and perusing the material on record, the written submissions of the Department, we observe that the assessee has not earned any exempt income during the year and once it is established that assessee has not received any exempt income during the year no disallowance under section 14A read with rule 8D can be made. The said decision of the Ld. CIT(A) is in accordance with the ratio laid down by the Hon'ble Bombay High Court in the case of Pr. CIT vs. Ballarpur Industries Ltd. in ITA No.15 of 2016 dated 13.10.2016. Further we observe that in the case of Pr. CIT vs. Oil Industry Development Board (2019) 103 taxmann.com 326 SC in which the Hon'ble Supreme Court has dismissed the appeal of the Revenue by holding that no substantial question of law arose for our consideration. In the said case the Tribunal has held that no disallowance is called for where there is no exempt income

which has been upheld by the Hon'ble Delhi High Court. We, therefore, do not find any reason to interfere in the order of Ld. CIT(A) which is a correct and reasoned order and is in accordance with the ratio laid by the Hon'ble Apex Court and jurisdiction high court. Accordingly, ground No.3 & 4 of the Departmental appeal are dismissed by upholding the order of Ld. CIT(A).

**ITA No.6288/M/2017**

14. The issues involved in the present appeal are identical to the ones as stated above in ITA No.6283/M/2017 for A.Y. 2010-11, therefore, our finding in ITA No.6283/M/2017 for A.Y. 2010-11, would, mutatis mutandis apply to this appeal as well.

15. In the result, both the appeals of the Revenue are dismissed.

**Order pronounced in the open court on 30.04.2019.**

**Sd/-  
(Mahavir Singh)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 30.04.2019.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.