

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 3651/Del/2014
Asstt. Year: 2010-11

Tourism Finance Corporation of India Ltd. 13 th Floor, IFCI Tower, 61, Nehru Place New Delhi 110 019 PAN AA ACT0706D	Vs.	ACIT Cir-16(1) New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Sanjay Agarwal, CA
Assessee by :	Shri K. Hauthang, Sr. DR
Date of Hearing	11/03/2019
Date of pronouncement	13/05/2019

ORDER

PER AMIT SHUKLA, J.M

The aforesaid appeal has been filed by the assessee against impugned order dated 28.03.2014 passed by Ld. CIT (Appeals)-19, New Delhi for the quantum of assessment passed u/s 143(3) for the assessment year 2010-11. The assessee in the grounds of appeal has raised mainly following grounds :-

“2) That on the facts and in the circumstances of the case, the learned CIT(A) has erred in not passing any speaking order in respect of deduction of Rs.2,11,55,339/- claimed by the appellant u/s 36(1)(viiia)(c) of the Income Tax Act, 1961, by clubbing the ground of appeal in respect thereof with the ground of appeal regarding deduction u/s 36(1)(viii) and adjudicating only on the issue of deduction u/s 36(1)(viii).

3) That on the facts and in the circumstances of the case, the learned CIT(A) has erred in confirming the disallowance of Rs. 5,01,34,192/- under section 14A on exempted dividend income of Rs. 75,51,892/- inspite of the fact that the Assessing Officer did not establish a clear nexus between interest bearing funds alleged to be invested for generating tax free dividend income. As a matter of fact, the appellant has invested its reserves and surplus funds in investments which has been ignored by the CIT(A) ”

2. In so far as the issue of disallowance of Rs. 2,11,55,339/- on account of doubtful debts u/s 36(1)(viiia)(c), the AO has made disallowance on the ground that it was mere provision for doubtful debts. The Ld. CIT(A) has failed to adjudicate this issue and has wrongly clubbed the same alongwith the issue relating to claim of deduction u/s 36(1)(viii).

3. Before us, Ld. Counsel has submitted that neither the AO nor the Ld. CIT (A) has given any reason for the disallowance and in fact assessee was allowed bad debts in all the years and claim of bad debts exceeding even 5% of the total income. Therefore, the matter can be remanded back to the AO to examine this issue and verify the same in line with the past precedent. Ld. DR also does not have any objection and the matter should have remanded back to the AO.

3. On perusal of the impugned orders, we find that AO has not given any reason for making such disallowance and Ld. CIT (A) has not even adjudicated the said issue. Assessee is a public financial institution and in respect of allowability of any 'provision for bad debt and doubtful debts' made by a public financial institution u/s 36(1)(viia)(c), it has to be seen that the amount for provision for bad debt and doubtful debts is not exceeding the 5% of the total income computed before making any deduction. Ld. Counsel has stated that the assessee's claim of bad debt provision of bad and doubtful debts is not exceeding 5% of the total income. In order to verify the correct position, we remand back this issue to the file of the AO who shall verify the quantum of provision of bad debt and doubtful debt as to whether the same are not exceeding the 5% of the total income or not. With this direction the ground No. 2 is treated as allowed for statistical purpose.

4. In so far as disallowance u/s 14A is concerned, the facts in brief are that the assessee has earned dividend income of Rs. 75,51,892/-. In response to the show cause notice, the assessee's contention has been that, *firstly*, assessee is a public financial institution engaged in providing long term finance for tourism industry related projects and money borrowed by way of unsecured loans are used for lending purpose to finance projects the details of interest incurred and borrowings aggregating to Rs. 33,13,13,297/-; *secondly*, it was submitted that dividend earned during the year were earned from investment in shares made over the period of time and entire details along with the loans taken and disbursed were submitted before the AO and from there it was pointed out that the investment in shares on cumulative basis was far less than the loans taken and even the profit for the year on standalone basis was more than the investment of cumulative basis in many of the years; *thirdly*, assessee has not made

investment in shares out of borrowed funds which was purely for lending purpose; and *lastly*, there are huge interest free funds available in the form of share capital and reserves and surplus and it was also demonstrated that the own funds far exceeded the subscription in shares and the interest income is also much higher than the interest cost. The reliance was also placed on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities and Power Ltd. (2009) 313 ITR 340. Assessee's detailed submission in this regard has been incorporated in the assessment order from pages 3 to 4. However, Ld. AO worked out the disallowance under rule 8D which was arrived at Rs. 5,01,34,192/- out of which disallowance on account of interest expenditure under rule 8D(2)(ii) work out to Rs. 4,55,30,141/- and indirect expenditure under rule 8D(2)(iii) worked out to Rs. 46,04,051/-. Further, this issue stands dismissed by the Ld. CIT (A) following the appellate order for the Asstt. Year 2009-10.

5. It has been informed by the Ld. Counsel that in the assessment year 2009-10, the matter was restored back to the file of the AO to be decided afresh vide order dated 17th December, 2013 in the light of judgment of Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. vs. CIT (SC) 203 taxman 364. However, Ld. Counsel submitted that here in this case in so far as disallowance of interest is concerned, the same cannot be made in view of the fact that assessee had huge surplus funds which were to the tune of Rs. 307 crores and investments in shares were far less, i.e., around Rs. 75.24 crores. Apart from that, assessee has given a very detailed submission wherein the secured and unsecured loans were demonstrated to be fully utilised for the business purpose, i.e., for lending of business projects through which assessee has earned huge interest income. In fact assessee has earned interest income of more than Rs. 54.93

crores and has only incurred interest amount of Rs. 28.25 crores. Thus, no interest bearing funds could have been said to be used by the assessee for the purpose of subscription of shares. Accordingly, no disallowance on account of interest could have been made. Regarding disallowance under rule 8D(2) (iii), if disallowance is to be worked out, then same would Rs. 7,57,291/- for which working has been given at page 71 of the paper book and since assessee has suo moto disallowed Rs. 1 lac, therefore, disallowance if at all is to be made, then same should be restricted to Rs. 6,57,291/-.

6. On the other hand, Ld. DR strongly relied upon the order of the AO.

7. After considering the rival submissions and on perusal of the relevant finding given in the impugned order as well as material referred to before us, we find that in so far as disallowance of interest expenditure is concerned, the same cannot be made for the reason that, *firstly*, assessee has given very detailed working before the authorities below for the utilisation of loans which have been shown wholly for the purpose of business; *secondly*, assessee has huge interest free funds available with it which far exceeded the investment made in shares; and without there being any defect in the working given by the assessee regarding utilisation of loan for the business purpose, it cannot be presumed that any interest bearing funds have been diverted for investment purpose which were capable of earning of exempt income. Moreover, it is a well settled law that if assessee has surplus and interest free funds sufficient to meet its investment then it is presumed that investments are made from interest free funds available with the assessee and not from the borrowed funds. This principle was upheld by the **Hon'ble Supreme Court** in its latest judgment and **order dated 23rd March, 2019** in the case of **CIT vs**

Reliance Industries Ltd. in Civil Appeal No. 10 to 13 of 2019.

Thus, disallowance of interest is directed to be deleted.

8. In so far as disallowance under rule 8D (2)(3) is concerned, before us the Ld. Counsel has given the following working :-

COMPUTATION OF DISALLOWANCE OF 0.50% OF AVERAGE INVESTMENTS UNDER RULE 8D READ WITH SECTION 14A

INVESTMENTS	Financial Year 2009-10			Financial Year 2008-09	
	Face Value	Nos	Amount (Rs)	Nos	Amount (Rs)
Equity Shares					
Nicco Parks and Resorts Ltd.	10	100000	15,00,000	100000	15,00,000
ITC Ltd.	10	211795	3,73,82,492	276795	4,88,55,200
IDFC Ltd	10	7350	2,49,900	7350	2,49,900
Union Bank of india	10	4586	5,04,460	4586	5,04,460
Preference Shares					
IFCI Ltd.	10	2000000	2,00,00,000	2000000	2,00,00,000
0.10% Redeemable Cumulative Preference Shares					
Royale Manore Hotel & Industries Ltd	100000	239.7	2,39,70,000	282	2,82,00,000
4% Optionally Convertible Preference Shares					
Appu Hotels Ltd	10	6000000	6,00,00,000	6000000	6,00,00,000
6% Redeemable Cumulative Preference Shares					
Shri Shakti Hotel and Resorts Ltd.	10	-	-	403772	1
15% Optionally Convertible Preference Shares					
TOTAL INVESTMENTS			14,36,06,852		15,93,09,561
Average of FY 2009-10 & 2008-09			15,14,58,207		
0.50% under Rule 8D Read with Section 14A of Income Tax Act			7,57,291		

9. In view of the aforesaid working, the disallowance under Rule 8D by adopting 0.5% of the average value of investment comes out of Rs. 7,57,291/-; and since assessee has already disallowed Rs. 1 lac, therefore, balance amount of Rs. 6,57,291/- is confirmed. Accordingly, ground No. 2 is partly allowed.

10. In the result appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on 13th May, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 13/05/2019

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, New Delhi