

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.3491/M/2016
Assessment Year: 2011-12**

DCIT 14(2)(1), 432, Aayakar Bhavan, 4 th Floor, M.K. Marg, Mumbai - 400020	Vs.	M/s. Lavasa Corporation Ltd., Hincon House, L.B.S Marg, Vikhroli (West), Mumbai - 400 083 PAN: AABCT 4435E
(Appellant)		(Respondent)

**ITA No.3614/M/2016
Assessment Year: 2011-12**

M/s. Lavasa Corporation Ltd., Hincon House, L.B.S Marg, Vikhroli (West), Mumbai - 400 083 PAN: AABCT 4435E	Vs.	CIT(A)-22, Earnest House, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Niraj Sheth, A.R.
Revenue by : Shri Chaudhary Arunkumar Singh, D.R.

Date of Hearing : 01.05.2019
Date of Pronouncement : 21.05.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled appeals one by the assessee and the other by the Revenue have been preferred against the order dated 18.02.2016 of the Commissioner of Income Tax (Appeals)

[hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

ITA No.3614/M/2016 (assessee's appeal)

2. Ground No.4 is not pressed during the course of hearing and therefore the same is dismissed as not pressed.

3. At the outset, the Ld. Counsel of the assessee submitted that ground No.1 is not being argued, however, assessee reserves the right to argue the said issue in future and therefore it wants to keep the issue alive. The Ld. D.R. did not oppose the arguments of the Ld. A.R. After hearing both the parties and perusing the material on record, we hold that ground No.1 need not to be adjudicated at this stage.

4. The issue raised in ground No.2 is against the confirmation of disallowance by Ld CIT(A) as made by the AO under section 14A read with rule 8D in the assessment order on the ground that assessee has not claimed any income as exempt under section 10 and therefore the provisions of section 14A read with rule 8D are not applicable.

5. The facts in brief are that assessee earned dividend income of Rs.6.38 Cr during the instant year relevant to assessment year A.Y. 2011-12 from liquid schemes of mutual fund. The said income was not claimed an exempt as the same was netted against the gross finance charges of Rs.283.53 crores debited to the P&L account and net finance charges after reducing the dividend income was claimed deduction under section 36(1)(iii) of the Act. It was also stated in note No.7 to computation of

income that the assessee has not made any disallowance under section 14A of the Act as the entire dividend income was deducted against the interest expenditure and only net expenditure was claimed under section 36(1)(iii) of the Act. Thus no exempt income under section 10(35) of the Act was claimed. However, the AO while passing the assessment order under section 143(3) of the Act dated 14.03.2014 disallowed a sum of Rs.31,60,57,358/- under section 36(1)(iii) of the Act and also disallowed Rs.24,34,50,491/- under section 14A of the Act read with rule 8D.

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

"7.6 The matter has been considered. For the same reasons discussed at para 7.3 above, the Assessing Officer's action in making disallowances u/s 14A by invoking Rule 8D is upheld. Regarding the calculation errors pointed out by the appellant, it is held as under:

i. It has been held by various courts that the interest expenses to be considered for disallowance under Rule 8D is the net interest expense after setting off interest income. Moreover, the interest expenses already disallowed will also have to be excluded from the gross interest expenses for calculating interest disallowance under Rule 8D.

ii. Regarding average value of investment, it is seen from perusal of the appellant's financials that the value adopted by the Assessing Officer is correct. Perusal of Schedule F of the balance sheet shows investment as on 31.03.2010 at Rs. 379,59,40,000/- and as on 31.03.2011 at Rs. 128,18,91,000/-. I, therefore, find no reason to interfere with the A.O.'s working of average value of investment.

The Assessing Officer is directed to recompute the disallowance under Rule 8D in the light of the above findings. The Assessing Officer is also directed to grant exemption u/s 10(34) in respect of the dividend income as per law. The appellant's ground of appeal is partly allowed."

7. The Ld. A.R. submitted before the Bench that the assessee has claimed net interest expenditure after reducing the dividend income and thus assessee has not availed exemption in respect

of dividend income but the dividend income forms part of the assessee's total taxable income. Therefore, provisions of section 14A of the Act does not apply to the assessee. The Ld. A.R. in defence of his arguments relied on a couple of decisions namely (i) Credit Lyonnais vs. ACIT (ITA No.9596/M/2004 as affirmed in DIT vs. Credit Lyonnais in ITA No.2120 of 2013 by Hon'ble Bombay High Court (ii) CIT vs. Cortech Energy P. Ltd. 372 ITR 97 (Guj). The Ld. A.R. submitted that purpose behind section 14A of the Act by not permitting the deduction of expenditure incurred in relation to exempt income which does not form part of the total income is to ensure that assessee does not get double benefit as held in the case of Maxopp Investment Ltd. vs. CIT (2018) 91 taxmann.com 154 (SC). Therefore where the assessee does not claim any exemption of income, there is no need for invoking provisions of section 14A of the Act. The Ld. A.R. also relied on the decision in the case of CIT vs. Mahendra Mills 243 ITR 56 SC wherein it has been held by the Hon'ble Supreme Court that a privilege granted by the Act can not become a disadvantage as in that case the assessee was permitted to disclaim depreciation since that was more beneficial to the assessee. The Ld. A.R. also drew the attention of the bench to the assessment orders passed by the AO in assessee's own case in A.Y. 2009-10 and 2010-11 wherein the AO has accepted the similar claim made by the assessee in not claiming exemption in respect of dividend income. The Ld. A.R. submitted that the Revenue has to follow a consistent treatment as it has accepted the claim in the earlier years and the said claim can not be rejected in the subsequent years when there is no change in the facts and circumstances. The Ld. A.R. relied

on the decision of Radhasoami Satsang vs. CIT (1991) 193 ITR 321 (SC). In alternative submissions, the Ld. A.R. submitted that the investments which have not fetched any exempt income during the year can not be considered for the purpose of making disallowance under rule 8D by relying on a series of decisions namely;

1. Pr. CIT vs. Zee News Ltd. in ITA No.785 & 789/M/2015
2. Pr. CIT vs. Rivian International Pvt. Ltd. (ITXA No.693 of 2015)
3. Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Del)
4. ACIT vs. Vireet Investment (P) Ltd. (2017) 82 taxmann.com 415 (Del)

Similarly, the Ld. A.R. also submitted that expenditure which is already capitalized can not be taken into account for the purpose of computing disallowance under section 14A of the Act as same would amount to double disallowance which is not permitted under the Act as has been held in the case of Nirma Credit & Capital (P) Ltd. (2017) 85 taxmann.com 72 (Guj-HC). The Ld. A.R. also made without prejudice submission that disallowance under section 14A must not exceed the exempt income as has been held 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. The ld Dr on the other hand relied on the order of ld CIT(A).

8. We have heard the rival submissions of both the parties and perused the material on record including the decisions referred to by the Ld. A.R. We find from the perusal of the record that during the year the assessee has not claimed any exempt income under section 10(35) of the Act but instead reduced the same from the interest claimed under section 36(1)(iii) of the Act

and only net claim of interest was made. The said position has been accepted by the Revenue itself in A.Y. 2009-10 and 2010-11 in the assessment proceedings as is clear from the perusal of assessment orders placed before us. We are in agreement with the contentions of the Ld. A.R. that the provisions of section 14A are not applicable if income is not claimed as exempt. The case of the assessee is squarely covered by the decisions of *Credit Lyonnais vs. ACIT* (supra) and *CIT vs. Cortech Energy P. Ltd.* (supra). We are therefore not in agreement with the conclusion drawn by the Ld. CIT(A) and accordingly by setting aside the order of Ld. CIT(A) direct the AO to delete the disallowance. The ground no 2 is allowed.

9. The issue raised in ground No.3 is against the confirmation of addition made under section 14A while calculating book profit under section 115JB of the Act.

10. After hearing both the parties and perusing the material on record, we are of the view that any disallowance made under section 14A read with rule 8D is not to be considered in the computation of book profit under clause (f) of explanation 1 of section 115JB of the Act as section 115JB is a separate code in itself. The case of the assessee is squarely covered by the decision of *ACIT vs. Vireet Investment (P) Ltd.* (supra) and *Everest Kanto Cylinder Ltd. vs. ACIT (LTU) 395 (Mum-Trib.)*. We would like to point out that this is the position of law that even if there is a disallowance under section 14A read with rule 8D the same is not to be considered for the purpose of computing book profit but in the present case since we have deleted the

disallowance under section 14A read with rule 8D, therefore, this ground of the assessee is automatically allowed.

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

ITA No.3491/M/2016 (Revenue's appeal)

12. The only issue raised by the Revenue in its appeal is against the order of Ld. CIT(A) wherein it has been held that ultimate cost of borrowing would be the gross interest expenses as netted off by interest income earned from deployment of such borrowed funds.

13. The facts in brief are that during the assessment proceedings, the AO rejected the computation of average cost of borrowing as submitted by the assessee on the ground that assessee has netted off the interest and dividend income against the finance charges to compute the cost of borrowing. According to the AO the dividend income has been allowed as exempt income whereas interest income has been assessed to tax separately as income from other sources and hence instead of net interest expenses gross interest expenses should be considered for the purpose of computation of average cost of borrowing. Accordingly, the AO calculated the average cost of borrowing at 14.03% as against 12.5% calculated by the assessee.

14. In the appellate proceedings, the assessee submitted before the Ld. CIT(A) that the AO has wrongly taken the gross finance charges for the purpose of calculating overall cost of borrowing and rejected the assessee's contentions that interest income

from short term deployment of borrowed funds to be netted against the interest expenses as there is a clear nexus between the two. The Ld. CIT(A) held that the ultimate cost of borrowing would be the gross interest expense as netted off by the interest income earned from deployment of borrowed funds. The Ld. CIT(A) has held that it would be immaterial whether the interest income has been assessed as income from other sources or as business income and accordingly directed the AO to compute the overall cost of borrowed funds by reducing the interest income from the gross interest expense.

15. After hearing both the parties and perusing the material on record including the impugned order, we find that the Ld. CIT(A) has taken a very reasoned and possible view of the issue and we do not find any reason to interfere in the same. Moreover, the Ld. D.R. has failed to bring any new facts or materials before us to take a different view than what has been taken by the Ld. CIT(A). Accordingly, we uphold the order of Ld. CIT(A) by dismissing the appeal of the Revenue.

16. In result the appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

Order pronounced in the open court on 21.05.2019.

Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 21.05.2019.

* 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.